

SECURITIES SCAM: GENESIS, MECHANISM AND IMPACT

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INTRODUCTION

In April 1992, the first press report appeared indicating that there was a shortfall in the Government Securities held by the State Bank of India. In a little over a month, investigations revealed that this was just the tip of an iceberg which came to be called the securities scam, involving misappropriation of funds to the tune of over Rs. 3500 crores (about \$ 1.2 billion). In an ever expanding ambit, the scam has engulfed top executives of large nationalized banks, foreign banks and financial institutions, brokers, bureaucrats and politicians. The functioning of the money market and the stock market has been thrown in disarray. The scam has generated such immense public interest that it has become a permanent feature on the front pages of newspapers. A large number of agencies, namely, the Reserve Bank of India (RBI), the Central Bureau of Investigation (CBI), the Income Tax Department, the Directorate of Enforcement and the Joint Parliamentary Committee (JPC) are currently investigating various aspects of the scam.

In an attempt to expedite legal processes, the government responded to the scam with promulgation of an ordinance and setting up of a special court to try those accused in the scam. The ordinance ordered attachment of property of all the accused and voided all transactions done by the accused brokers and their firms after April 1, 1991. These extraordinary measures were so harsh that even the purchases made by genuine investors were invalidated, if the shares at some stage had been routed through the accused brokers. This led to the creation of what came to be known as "tainted" shares. The tainted shares were worthless in the market as they could not be sold. This created a panic among investors and brokers and led to a prolonged closure of the stock exchanges along with a precipitous drop in the price of shares. In less than 2 months

following the discovery of the scam, the stock prices dropped by over 40%, wiping out market value to the tune of Rs. 100,000 crores. The scam also had an impact on the liberalization policies being pursued by the government with several reform measures being put on hold.

As is to be expected, everyone was trying to disown the responsibility for the scam. The RBI blamed the commercial banks, charging them with negligence and extensive violation of banking regulations. The commercial banks in turn blamed the RBI for inefficient functioning and ineffective supervision. The brokers are being accused by all of downright fraud. The government has chosen the ubiquitous term "systems failure" to describe the reason for the scam.

THE TWO SECURITIES MARKET

The scam was in essence a diversion of funds from the banking system (in particular the inter-bank market in government securities) to brokers for financing their operations in the stock market. The key to understanding the scam is therefore a clear understanding of these two markets: the government securities market and the stock (corporate securities) markets.

Characteristic	Government Securities Market	Stock Market
Securities	- Government Securities - PSU (Public Sector Undertakings) Bonds - Units of the Unit Trust of India	Corporate Securities (shares and debentures)
Trading Volume	Rs. 3000 - 4000 crores (over \$ 1 billion) a day	Rs. 50 - 200 crores (\$15 - 70 million)
Market Capitalization	Rs. 100,000 crores	Rs. 250,000 crores (at BSE Sensitive Index of 4500)
No of Transactions	250 per day	50,000 per day
Players	- Banks - Financial Institutions	- Individuals - Companies - Financial Institutions
Inter-mediaris	About a dozen brokers approved by the Reserve Bank of India (RBI)	About 500 brokers in the Bombay Stock Exchange
Finance	Money Market ("Formal" market)	Badla Finance Market ("Informal" Money Market)
Cost of Finance	18-20%	35-40%

The crucial part of the comparison is the last element which indicates that the cost of finance in the informal money market which finance stock market operations is about twice that of the formal market in which banks lend to each other against government securities.

The difference in the cost of finance in the two markets cannot be attributed to the difference in the level of risk. Since badla finance is made available to a stock broker for a short duration (typically a fortnight) and there are institutional safeguards against default by the broker, operators in the market do not regard badla finance as highly risky. Though there is no published data, the historical default rates (as a percentage of the total quantum of credit

outstanding) in badla finance are believed to be quite low. A comparison with returns available in low grade long term corporate debentures indicates that the interest rate in the badla market is disproportionately high in relation to its risk. It is important to distinguish between (a) free markets where different instruments offer different yields determined by their risk and liquidity and (b) artificially segmented markets where similar or slightly different instruments provide vastly different yields totally unrelated to risk or any other characteristic. The phenomenon of high interest rates in badla finance is mainly due to artificial segmentation of the markets.

It is quite clear therefore that there were enormous profits to be had for anybody who could find a way of breaching the artificial wall separating the two markets and arbitrage between them. That in essence was what the scam was all about. To understand the motivation of different players involved in such diversion, it is necessary to examine the changes in the economic environment that preceded the discovery of the scam, and how these changes were affecting the principal players in both markets.

Liberalization of the Economy

After assuming office in June 1991, the new government accelerated the process of economic liberalization under the auspices of the International Monetary Fund (IMF). The opening up of the Indian economy as a result of these measures promised an unprecedented growth and prosperity for the private corporate sector as new sectors of the economy were being allowed private participation and various administrative impediments were being removed. Anticipating the good tidings for the private sector, the stock market started booming - the Bombay Stock Exchange Sensitive Index (Sensex) rose from around 1000 in February 1991 to a peak of 4500 in March 1992 just before the scam came to light. This meant an enormous increase in the scale of finance required by operators in the stock market.

Heavy margins imposed by the Bombay Stock Exchange on settlement trading added to the funds requirement.

At the same time, the new free market philosophy confronted the public sector with new challenges. There was immense pressure on the public sector to perform – to perform in financial terms. The nationalized banks too were under the same pressure to improve their bottom line. The proposed increase in capital adequacy requirement (mandated by the Narasimham Committee report) added to the pressure on the banks.

Another innovation in the banking sector in the period preceding the scam was the Portfolio Management Scheme (PMS). Shorn of the verbiage, in operational terms, PMS was simply a deposit which was not subject to interest rate ceilings or to reserve requirements. The scheme was designed to permit deployment of large amounts of surplus cash available with several public sector undertakings (PSUs) particularly in the oil sector. A large part of this surplus cash resulted from borrowings in the international markets (by PSUs, at the instance of the government) to bolster the country's precarious foreign exchange reserves. An intense competition developed among the banks for these funds as they were unfettered by reserve requirements.

To compete for PMS funds from the PSUs as well as to enhance their own profitability, banks were forced to look for higher returns. This was happening at the same time when there was a growing need for funds in the informal money market to finance stock market operations at very high rates of interest. The time was therefore most appropriate for somebody to find innovative ways of diverting funds from the banking system to the stock market. Brokers who were operating in both the markets were ideally placed to do this, and thus the scam was born.

THE READY FORWARD DEAL

The crucial mechanism through which the scam was effected was the ready forward (RF) deal. The RF is in essence a secured short term (typically 15 day) loan from one bank to another bank. The lending is done against government securities, exactly the way a pawnbroker lends against jewellery or other valuables.

In form, however, the RF is not a loan at all. The borrowing bank (Bank 2) actually sells the securities to the lending bank (Bank 1) and buys them back at the end of the period of the loan at (typically) a slightly higher price. The price difference represents the interest on the loan.

The RF is what in other countries is known as repo or repurchase agreement. It is a very safe and secure form of lending and is very common throughout the world. The US repo market, for example, is about a hundred times larger than the Indian RF market.

The RF in India serves two main purposes:

Like repo markets around the world the RF deals provide much needed liquidity to the government securities markets.

- Like repo markets around the world the RF deals provide much needed liquidity to the government securities markets.
- The RF deals are an important tool in the hands of the banks to manage their Statutory Liquidity Ratio (SLR) requirements. Banks in India were required to maintain 38.5% of their demand and time liabilities (DTL) in government securities and certain approved securities which are collectively known as SLR securities. RF helps in managing this requirement in two ways:

- (a) A bank which has a temporary surge in DTL may not want to buy SLR securities outright and then sell them when the DTL comes back to normal. Instead it can do an RF deal whereby it effectively borrows the securities

from a bank which has surplus SLR securities. An RF in SLR securities can thus be seen either as lending of money or as borrowing of securities

- (b) An RF deal is not legally a loan. The amount borrowed by a bank under RF is not regarded as a part of the bank's liabilities. Therefore it is not a part of its DTL, and does not attract the SLR requirement. Had the bank borrowed outright, it would have had to maintain 38.5% of the borrowing in SLR securities.

THE MECHANICS OF THE SCAM

As explained above, a ready forward deal is, in substance, a secured loan from one bank to another. To make the scam possible, the RF had to undergo a complete metamorphosis: it had to become an unsecured loan to a broker.

The three crucial steps to effect the metamorphosis were:

- The settlement process in the government securities market became broker intermediated, that is, delivery and payments started getting routed through a broker instead of being made directly between the transacting banks.
- The broker through whom the payment passed on its way from one bank to another found a way of crediting the money into his account though the account payee cheque was drawn in favour of a bank.
- While the above two steps transformed an RF deal from a loan to a bank into a loan to a broker, it would still be a secured loan. However, the brokers soon found a way of persuading the lending bank to dispense with security for the loan or to accept worthless security.

Settlement Process

The normal settlement process in government securities is that the transacting banks make payments and deliver the securities directly to

each other. The broker's only function is to bring the buyer and seller together and help them negotiate the terms, for which he earns a commission from both the parties. He does not handle either the cash or the securities. During the scam, however, the banks or at least some banks adopted an alternative settlement process which was similar to the process used for settling transactions in the stock market. In this settlement process, deliveries of securities and payments are made through the broker. That is, the seller hands over the securities to the broker who passes them on to the buyer, while the buyer gives the cheque to the broker who then makes the payment to the seller. In this settlement process, the buyer and the seller may not even know whom they have traded with, both being known only to the broker.

There were two important reasons why the broker intermediated settlement began to be used in the government securities markets:

- The brokers instead of merely bringing buyers and sellers together started taking positions in the market. In other words, they started trading on their own account, and in a sense became market makers in some securities thereby imparting greater liquidity to the markets.
- When a bank wanted to conceal the fact that it was doing an RF deal, the broker came in handy. The broker provided contract notes for this purpose with fictitious counterparties, but arranged for the actual settlement to take place with the correct counterparty.

Account Payee Cheques

A broker intermediated settlement allowed the broker to lay his hands on the cheque as it went from one bank to another through him. The hurdle now was to find a way of crediting the cheque to his account though it was drawn in favour of a bank and was crossed account payee.

As it happens, it is purely a matter of banking custom, that an account payee cheque is paid only to the payee mentioned on the cheque. In fact, exceptions were being made to this norm, well before the scam came to light. Privileged (corporate) customers were routinely allowed to credit account payee cheques in favour of a bank into their own accounts to avoid clearing delays, thereby reducing the interest lost on the amount. Normally, if a customer obtains a cheque in his own favour and deposits it into his own account, it may take a day or two for the cheque to be cleared and for the funds to become available to the customer. On the other hand, when banks make payments to each other by writing cheques on their account with the RBI, these cheques are cleared on the same day. The practice which thus emerged was that a customer would obtain a cheque drawn on the RBI favouring not himself but his bank. The bank would get the money and credit his account the same day. This was the practice which the brokers in the money market exploited to their benefit.

Dispensing with the Security

The brokers thus found a way of getting hold of the cheques as they went from one bank to another and crediting the amounts to their accounts. This effectively transformed an RF into a loan to a broker rather than to a bank. But this, by itself, would not have led to the scam because the RF after all is a secured loan, and a secured loan to a broker is still secured. What was necessary now was to find a way of eliminating the security itself.

Three routes adopted for this purpose were:

- Some banks (or rather their officials) were persuaded to part with cheques without actually receiving securities in return. A simple explanation of this is that the officials concerned were bribed and/or negligent. A more intriguing possibility is that the banks' senior/top management were aware of this and turned a blind eye to it to benefit from higher returns the brokers could offer by

diverting the funds to the stock market. One must recognize that as long as the scam lasted, the banks benefited from such an arrangement. The management of banks might have been sorely tempted to adopt this route to higher profitability

- The second route was to replace the actual securities by a worthless piece of paper – a fake Bank Receipt (BR).
- The third method was simply to forge the securities themselves. In many cases, PSU bonds were represented only by allotment letters rather than certificates on security paper. And it is easier to forge an allotment letter for Rs. 100 crores worth of securities than it is to forge a 100 rupee note.

BANK RECEIPTS

In an RF deal, as we have discussed it so far, the borrowing bank delivers the actual securities to the lender and takes them back on repayment of the loan. In practice, however, this is not usually done. Instead, the borrower gives a Bank Receipt (BR) which serves three functions:

- The BR confirms the sale of securities.
- It acts as a receipt for the money received by the selling bank. Hence the name – bank receipt.
- It promises to deliver the securities to the buyer. It also states that in the meantime the seller holds the securities in trust for the buyer

In short, a BR is something like an IOU (I owe you securities!), and the use of the BR de facto converts an RF deal into an unsecured loan. The lending bank no longer has the securities; it has only the borrower's assurance that the borrower has the securities which can/will be delivered if/when the need arises.

Advantages of using BR

In case of government securities, the RBI had issued a directive that BRs should not be used.

The reason was that, for these securities, the RBI, through its Public Debt Office (PDO), acts as the custodian. Physical securities are never issued, and the holding of these securities is represented by book entries at the PDO. The ledger in which the PDO maintains these accounts is called the Subsidiary General Ledger (SGL), and these securities are referred to as SGL securities. When a holder of these securities sells them and wishes to transfer them to the buyer, he fills up an SGL transfer form and gives it to the buyer. This SGL form can be compared to a cheque: the buyer deposits it into his SGL account at the PDO, and the PDO makes a book entry reducing the holding of the seller and increasing that of the buyer.

Because of this facility, the RBI does not permit use of BRs for these securities. Had the PDO functioned efficiently and carried out its bookkeeping without delays, RBI would have been justified in not permitting use of BRs for government securities. Unfortunately, the PDO was very inefficient and laggardly in its functioning. This was a very serious matter because, like a cheque, an SGL form can also bounce if the seller does not have sufficient holding of securities in his SGL account. The buyer needs to be informed about this promptly; else, he may resell the same securities by issuing his own SGL forms in the belief that he has sufficient balance in his account. The inefficiency of the PDO made the SGL form an inconvenient and unreliable instrument, and banks preferred to use BRs even for the SGL securities, in violation of the RBI's directive.

BRs Issued without Backing of Securities

As stated earlier, a BR is supposed to imply that the issuer actually has the securities and holds them in trust for the buyer. But in reality the issuer may not have the securities at all. There are two reasons why a bank may issue a BR which is not backed by actual securities:

- A bank may short sell securities, that is, it sells securities it does not have. This would be done if the bank thinks that the

prices of these securities would decrease. Since this would be an outright sale (not an RF), the bank issues a BR. When the securities do fall in value, the bank buys them at lower prices and discharges the BR by delivering the securities sold. Short selling in some form is an integral part of most bond markets in the world.

- The second reason is that the bank may simply want an unsecured loan. It may then do an RF deal issuing a "fake" BR which is a BR without any securities to back them. The lending bank would be under a mistaken impression that it is making a secured loan when it is actually advancing an unsecured loan. Obviously, lenders should have taken measures to protect themselves from such a possibility.

During the scam, the brokers perfected the art of using fake BRs to obtain unsecured loans from the banking system. They persuaded some small and little known banks – the Bank of Karad (BOK) and the Metropolitan Cooperative Bank (MCB) – to issue BRs as and when required. These BRs could then be used to do RF deals with other banks. The cheques in favour of BOK were, of course, credited into the brokers' accounts. In effect, several large banks made huge unsecured loans to the BOK/MCB which in turn made the money available to the brokers.

CONTROL SYSTEMS

The scam was made possible by a complete breakdown of the control system both within the commercial banks as well as the control system of the RBI itself.

The internal control system of the commercial banks involves the following features:

- Separation of Functions: The different aspects of securities transactions of a bank, namely dealing, custody and accounting are carried out by different persons. Dealing refers to the decision about which transactions are to be

entered into with which parties. Custody involves receiving and delivering securities/substitute instruments and cheques for the transactions done. Accounting involves maintenance of the investment account of the bank and its reconciliation with the SGL account of the bank maintained by the PDO of the RBI.

- **Counterparty Limits:** The moment an RF deal is done on the basis of a BR rather than actual securities, the lending bank has to contend with the possibility that the BR received may not be backed by any/adequate securities. In effect, therefore, it may be making an unsecured loan, and it must do the RF only if it is prepared to make an unsecured loan. This requires assessing the creditworthiness of the borrower and assigning him a "credit limit" up to which the bank is prepared to lend. Technically, this is known as a counterparty limit. Strictly, a counterparty limit is required even if an RF is done against actual securities because the securities may decline in value and the RF may end up becoming only partly secured though it was fully secured to begin with.

The control system of the RBI should ideally involve the following:

- The PDO keeps track of the aggregate of each type of government security claimed by all the banks and ensures that the figures tally with the aggregate value of the securities at the end of each day. If all BRs are backed by securities, the seller's investment account would decrease and the buyer's account would increase by the transaction amount, leaving the aggregate unchanged.
- A reconciliation of the SGL securities claimed by each bank through mandatory periodic statements with the total holding as recorded in the SGL account (of the bank) at the PDO, would

help in pin-pointing the banks whose accounts need to be investigated.

These simple control mechanisms were not being operated by the PDO. What is more surprising is that even when discrepancies were discovered, such as when some SGL forms sent to the PDO bounced because of inadequate inventory of securities in the seller's account, the intimation regarding the inadequacy of securities was communicated to the buyer leisurely, may be through a letter by ordinary post, which could take days to reach. In the mean

time, if the buyer sells the same securities on the strength of the SGL sent to the PDO, it could start an ever expanding chain of bounced SGLs! It appears that the PDO was not particularly perturbed by such possibilities.

WINDOW DRESSING BANK BALANCE SHEETS

Most banks carry investments in their books at their cost of acquisition and do not mark it down to market. This creates serious distortions during a period when the prices of securities are falling. Under the current system of accounting, these losses are recognized only when the securities are sold.

This means that a bank would be reluctant to sell these securities and show the loss in its books. It was in this context that the banks and the brokers resorted to innovative methods of window dressing the bank balance sheet. The basic idea is as follows:

- (a) The bank sells the securities trading at a discount to a broker at face value or at a price which is much higher than the prevailing market prices. The broker incurs a huge loss in this transaction as he will have to resell the securities to some other bank at market prices.
- (b) The bank then buys some other securities from the same broker at prices well above market prices. The broker therefore makes a huge profit in the second transaction which compensates

him for the loss incurred in transaction (a).

Thus, the net result of the two transactions is that neither the bank nor the broker makes any profit or loss. Then why would these transactions be done? The reason is that while the profit earned through transaction (a) would improve the bottom line (profit) for the bank, the loss suffered by the bank in transaction (b) would not be reflected in its profit and loss account at all. The securities bought would simply appear in the bank's balance sheet at inflated values. It is a most ingenious way of creating paper profits. As far the broker is concerned, the price in transaction (a) can be as high as the bank wants so long as he gets a correspondingly higher price in transaction (b).

What the scam investigations have revealed is that window dressing of this kind was rampant. Instances have been recorded of the same broker selling the same security on the same day to different banks at vastly different prices. This makes it very difficult to fathom the motives for a single transaction in isolation from other transactions done by a bank. Unless one can put together the entire series of transactions, it is impossible to know whether the banks or the brokers have been the net gainers through all the manipulative transactions. It is conceivable that some brokers were willing to absorb a part of the losses as a quid pro quo for other "services" which the banks provided them.

It is interesting to note that even the pure RF deal involves an element of window dressing. The lending bank shows the interest received as an income in its profit and loss account. But the borrowing bank does not show the interest paid as an expense, because it simply carries the investment in its books at the higher repurchase price.

It is, in fact, quite likely that the enormous increases in the profits that some of the banks reported in 1992 over the previous year, can at least in part be explained by use of such "creative" accounting practices.

IMPACT OF THE SCAM

The immediate impact of the scam was a sharp fall in the share prices. The index fell from 4500 to 2500 representing a loss of Rs. 100,000 crores in market capitalization. Purely technically speaking, scam just resulted in withdrawal of about Rs. 3,500 crores from the market, which for a market of the size of Rs. 250,000 crores (at an index level of 4500) is a very small amount, and therefore should have little impact on the prices. There were however two major reasons for the fall, both related to the government's knee jerk response to the scam. First was the phenomenon of tainted shares which created panic in the market and second was the perceived slow down of the reform process which destroyed the very foundation on which the boom was based.

The government set up a special court and promulgated an ordinance with several draconian provisions to deal with the scam. Sections (3) and (4) of the ordinance attached the properties of all individuals accused in the scam and also voided all transactions that had at any stage been routed through them after March 31, 1991. Since the accused were active brokers in the stock markets, the number of shares which had passed through their hands in the last one year was colossal. All these shares became "tainted" shares, and overnight they became worthless pieces of paper as they could not be delivered in the market. Genuine investors who had bought these shares well before the scam came to light and even got them registered in their names found themselves being robbed by the government. This resulted in a chaotic situation in the market since no one was certain as to which shares were tainted and which were not.

The government's liberalization policies came under severe criticism after the scam, with Harshad Mehta and others being described as the products of these policies. Bowing to the political pressures and the bad press it received during the scam, the liberalization policies were put on hold for a while by the government. The

Securities Exchange Board of India (SEBI) postponed sanctioning of private sector mutual funds. Implementation of some aspects of the Narasimham Committee recommendations on the banking system was also delayed. Some question marks arose regarding privatization as the chairman of the committee looking into this ended up in jail on charges of involvement in the scam. The much talked about entry of foreign pension funds and mutual funds became more remote than ever. The Euro-issues planned by several Indian companies were delayed since the ability of Indian companies to raise equity capital in world markets was severely compromised.

CONCLUSION

It is clear that the government, the RBI and the commercial banks are as much accountable as the brokers for the scam. The brokers were encouraged and abetted by the banks to divert funds from the banking system to the stock market. The RBI too stands indicted because despite knowledge about banks over-stepping the boundaries demarcating their arena of operations, it failed to reign them in. The looting was done with active connivance and sometimes full knowledge of the very individuals who were supposed to guard against such a possibility.

An important lesson from the scam is that artificial insulation of closely related markets from each other is counterproductive in the long run. Just as water finds its own level, money also seeks out the highest levels of return after due adjustments for risk and liquidity. Even after ten years of progressive liberalization of our financial markets, artificial barriers exist between the money market and the stock market, between the market for corporate securities and the market for government securities and between the formal money market and the informal one. Integration of these markets with the attendant equalization of returns in these markets is a matter which should be accorded the highest priority in the agenda for financial reforms. This

integration will allow a coherent yield curve to emerge covering the entire financial markets.

REFERENCE

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The scam highlighted the need for regulatory reforms in India's financial market.

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- Reuters (2024)*. "Anil Ambani banned from the Indian securities market for 5 year."

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This article examines the legacy of Harshad Mehta's scam, discussing the enduring issues of bank fraud and the lessons that remain unlearned in India's financial sector.

- **Lawful Legal (2020)** "Decoding The Deception: A Case Study of The Harshad Mehta Scam And Its Repercussions In The Indian Stock Market"

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