

Consultation Paper on Amendments/Clarifications to the
SEBI (Investment Advisers) Regulations, 2013

1. **Objective:**

To solicit the comments/views from public on the consultation paper proposing amendments/clarifications to the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred as “**IA Regulations**”). The objective of the consultation paper is to specify uniform standards across all the intermediaries/persons engaged in providing investment advisory services irrespective of whether such activity is incidental to their primary activity or not and to address the gaps or overlaps in legal or regulatory standards.

2. **Background**

IA Regulations were notified on January 21, 2013. The object of the IA Regulations, *inter alia*, was to lay the framework for independent financial advisers and to address the conflict of interest arising due to the dual role played by distributors of financial products. To address such conflicts, IA Regulations specified that the investment adviser shall:

- i. act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.
- ii. not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.

- iii. maintain an arms-length relationship between its activities as an investment adviser and other activities.
- iv. disclose to its client, any consideration by way of remuneration or compensation or in any other form whatsoever, received or receivable by it or any of its associates or subsidiaries for any distribution or execution services in respect of the products or securities for which the investment advice is provided to the client.
- v. disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

As on September 28, 2016, 515 investment advisers are registered with SEBI.

3. Recent Developments:

- i. RBI, vide circular dated April 21, 2016, issued guidelines on investment advisory services offered by Banks. It is *inter alia* stated in the guidelines that the banks cannot offer investment advisory services departmentally. Accordingly, banks desirous of offering investment advisory services may do so either through a separate subsidiary set up for the purpose or one of the existing subsidiaries after ensuring that there is an arms-length relationship between the bank and the subsidiary.
- ii. AMFI in consultation with SEBI has clarified that the data feed of the investors who subscribe to direct plan on the advice of the investment advisers may be shared

with such investment advisers after taking the explicit written consent of the investors.

- iii. PFRDA had come out with draft regulations for regulating the retirement advisors (“Retirement Adviser Regulations”) to provide a framework for eligibility, registration process, fees etc. of Retirement Adviser and to define the scope of work and responsibility of the Retirement Adviser.
- iv. Globally, many regulators of the countries such as United Kingdom, United States of America, Australia, Canada, etc., are in the process of moving towards fee based investment advisory model.

4. Proposals:

The amendments/clarifications proposed to the IA Regulations are enumerated as under:

4.1 Re-look on the exemption from registration provided to Mutual Fund Distributors:

4.1.1 Regulation 4(d) of the IA Regulations, *inter alia*, provides exemption from registration as an investment adviser to any distributor of mutual funds, who is a member of a self-regulatory organisation recognised by SEBI or is registered with an association of asset management companies of mutual funds, providing any investment advice to its clients incidental to its primary activity.

4.1.2 Under the existing framework, a mutual fund distributor can sell mutual fund products and also provide incidental or basic advice on mutual fund products

and can also help in executing the transactions. Such distributors are required to conduct risk profiling and comply with the requirement of appropriateness of the product. Distributors are getting the commission from the fund houses i.e. AMCs and additionally can also charge execution/advisory fee to the client.

4.1.3 In terms of IA Regulations, investment advisers are not allowed to sell any product and/or to provide execution services. Only corporate entities registered as investment adviser can offer execution or distribution services, subject to the condition that the investment advisory services are offered through separate identifiable division or department. Such entities are required to keep their investment advisory services clearly segregated from other activities and shall be required to maintain arms-length relationship between their activity as an investment adviser and other activities. Further, investment adviser can obtain consideration/fee from the client being advised only and is required to comply with the higher requirements than that of distributors such as fiduciary obligation, maintenance of records, etc.

4.1.4 In order to have a level playing field in respect of investment advisory services offered on mutual fund products, it is proposed that:

- a) Mutual Fund distributors shall not be allowed to provide incidental or basic investment advice in respect of mutual fund products. If they want to engage themselves in providing incidental or basic investment advisory services on mutual fund products, they need to register themselves as an investment adviser under IA Regulations. A period of three years shall be provided for those distributors who seek to migrate



as an investment adviser to enable them to obtain necessary certification and to comply with other requirements specified in IA Regulations to act as an investment adviser.

- b) Many persons engaged as distributors or agents call themselves by varied names such as 'independent financial adviser' or 'wealth adviser'. This creates confusion in the minds of the investors. In order to avoid such confusion as to their role and responsibility, it is proposed that no person shall be allowed to use the name 'independent financial adviser' or 'wealth adviser' unless he obtains registration from SEBI as an investment adviser. Accordingly, all the persons including existing mutual fund distributors who are using the nomenclature as independent financial advisers, wealth adviser, etc. shall comply with aforesaid requirement of changing the nomenclature within a period of three years.
- c) The person who seeks to continue to engage in the distribution of mutual fund products shall use the nomenclature as 'Mutual Fund Distributor'. Such person shall not be allowed to provide basic or incidental advice in respect of mutual fund products except describing the product specification without recommending any particular product.
- d) The mutual fund distributors who want to shift from commission based model to fee based advisory model shall be required to register as an investment adviser under IA Regulations. They shall be allowed to receive trail commission for the products already distributed subject to

disclosures to the clients. They shall undertake fresh business only under fee based advisory model from the date of their registration as an investment adviser and shall receive consideration or fee from the client being advised only in respect of mutual fund products.

4.2 Re-look on the exemptions from registration provided to certain persons engaged in providing investment advice:

4.2.1 Under the existing framework, exemptions from registration as an investment adviser have been granted to various persons under Regulation 4 of IA Regulations, such as any person giving incidental advice to their clients, stock brokers, portfolio managers, chartered accountants, company secretaries, etc.

4.2.2 In order to have uniform standards across all the intermediaries/persons engaged in providing investment advisory services, it is proposed that:

- a) The registration under IA Regulations shall be mandatory for all the persons who, for consideration, are engaged in the business of providing investment advice in respect of securities or investment products, irrespective of whether such activity is ancillary to their primary activity or not.
- b) All the persons engaged in financial planning services shall mandatorily be required to register themselves as investment adviser.
- c) Exemption shall be applicable only to the persons carrying out investment advisory activities which are permitted under any other regulations specified by SEBI such as merchant bankers registered with

SEBI can render corporate advisory services, etc., and to the persons providing advice only on insurance products regulated by IRDA, pension products regulated by PFRDA, etc.

4.3 Investment advisory services through a separate subsidiary:

4.3.1 In terms of Regulation 22 of IA Regulations, banks, NBFCs and body corporates providing investment advisory services to their clients shall keep their investment advisory services segregated from such activities. Such entities are allowed to offer investment advisory services only through separately identifiable departments or divisions (SIDDs). The distribution or execution services can only be offered subject to the following:

- (a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.
- (b) The investment adviser shall maintain arms-length relationship between its activities as investment adviser and distribution or execution services.
- (c) All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through the investment adviser.

4.3.2 Under the existing framework, individuals registered as investment adviser are not allowed to provide distribution, referral or execution services as it is not practically possible for them to maintain segregation between advisory activities and other activities.

4.3.3 RBI has issued circular dated April 28, 2016 on investment advisory services offered by Banks. It is, inter alia, stated in the guidelines that banks desirous of offering investment advisory services may do so either through a separate subsidiary set up for the purpose or through one of the existing subsidiaries after ensuring that there is an arms-length relationship between the bank and the subsidiary.

4.3.4 In order to address the concerns arising from the conflict of interest in an effective manner, it is proposed that, the investment advisory services shall not be allowed to be offered through separate division or department. Investment advisory services are required to be offered only through separate subsidiary. Further, a time period of three years is proposed to be provided for existing entities offering investment advisory services through separate department or division to set up a separate subsidiary.

4.4 Clarification in respect of investment product and advice in electronic/broadcasting media:

4.4.1 In terms of Regulation 2(i) of IA Regulations, “investment advice” means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely

available to the public shall not be considered as investment advice for the purpose of IA Regulations.

4.4.2 However, the term 'investment products' has not been defined in the IA regulations.

4.4.3 It is, therefore, proposed to define the term investment product as, “Investment products shall include all financial instruments that are regulated by any financial sector regulator in India. However, advice exclusively on products in non-securities market which are regulated by sectoral regulators shall be outside the scope of the IA regulations”.

4.4.4 It is also proposed to clarify that the persons providing investment advice in any electronic or broadcasting or telecommunications medium such as newspaper, magazines, etc. which is available to the public in general shall have to comply with provisions pertaining to recommendations in public media as specified in Regulation 21 of SEBI (Research Analysts) Regulations, 2014.

4.4.5 Advising the clients after enrolling/getting the clients registered/subscribed on any public media platform, shall be considered as engaging in providing investment advisory services and accordingly shall be required to comply with the IA Regulations.

4.5 Restriction on providing trading tips

4.5.1 It is observed that, many persons are engaged in providing/sending the trading tips/securities specific recommendations, etc., using various electronic modes such as bulk short message services (SMSs), e-mails, blogs, internet or through

any other social networking media such as WhatsApp, ChatOn, WeChat, Twitter, Facebook, etc. The general public is getting attracted or lured by such trading tips, securities specific recommendations and their investment decisions are being influenced by such messages which solicit investments and/or promise unrealistic returns in the securities market.

4.5.2 In order to curb such practice of providing trading tips/messages containing buy/sell/hold recommendations on securities, it is proposed that:

- a) No person shall be allowed to provide trading tips, stock specific recommendations to the general public through short message services (SMSs), email, telephonic calls, etc. unless such persons obtain registration as an Investment Adviser or are specifically exempted from obtaining registration.
- b) No person shall be allowed to provide trading tips, stock specific recommendations to the general public through any other social networking media such as WhatsApp, ChatOn, WeChat, Twitter, Facebook, etc. unless such persons obtain registration as an Investment Adviser or are specifically exempted from obtaining registration.
- c) A provision or clause shall be added in the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 {PFUTP Regulations} to restrict such activities by making necessary amendments to PFTUP Regulations.

4.6 Restriction on offering or organising schemes/competitions/games related to securities market:

4.6.1 It is observed that various entities are offering schemes/competitions/games/leagues, etc. related to securities market through various modes and/or soliciting public participation thereon. Such schemes/competitions/games/leagues, etc. are generally based on predicting the price movement of securities and are neither approved nor endorsed by SEBI. There is no recourse available to investors from SEBI with regard to loss in competition, etc.

4.6.2 The entities offering such schemes may have vested interest and there is no regulatory obligation on them. In absence of transparency and authenticity in the process being followed, there is a scope for general public getting attracted or lured by such schemes/competitions/games/leagues, etc. The general public may also follow such offerings presuming that entities/ participants possess expertise in predicting securities market or in securities. Further, there is no obligation on the organizer :

- i. to disclose the actual or potential conflicts of interest to the general public, including any material information or facts that might compromise its objectivity or independence.
- ii. to ensure that the general public has necessary experience and knowledge to understand the nature and risks involved in the offering.
- iii. to ensure that the offering is based on the risk tolerance of the general public.
- iv. to ensure the suitability of the offerings to the general public.

- v. to take responsibility of any loss to the general public and for the results obtained.

4.6.3 In order to protect the interest of the investors in the securities market and to curb such practice of offering schemes/competitions/games/leagues, etc, it is proposed that:

- a) No person shall organize or offer any scheme/competition/game/league on securities or related to securities market.
- b) A provision or clause shall be added in the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 {PFUTP Regulations}, to restrict such activities by making necessary amendments to PFTUP Regulations.

4.7 Clarification in respect of receipt of consideration:

4.7.1 In terms of IA Regulations, “investment adviser” means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

4.7.2 The term consideration is being misinterpreted. The persons engaged in providing investment advisory services without obtaining consideration from the clients directly are of the view that their activity does not fall under the purview of IA Regulations, as they are not taking any consideration from the client being advised.

4.7.3 It is proposed to clarify that consideration covers all forms of remuneration or compensation including the receipt of any economic benefit, whether in the form of an advisory fee, some other fee relating to the total services rendered, commission received or receivable by an investment adviser or any of its associates or subsidiaries either directly or indirectly in respect of the underlying products or securities for which advice is being provided.

4.8 Clarity between the activities of investment adviser and research analyst:

4.8.1 SEBI (Research Analysts) Regulations, 2014 (“RA Regulations”) were notified on September 01, 2014 and came into effect from December 01, 2014.

4.8.2 In terms of RA Regulations, “research analyst” means a person who is primarily responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation and/or publication of substance of research report or who provides research report or who makes 'buy/sell/hold' recommendation of a security or give price target of a security or offers an opinion concerning public offer or securities that are listed or to be listed and are traded or to be traded in a Indian stock exchange whether or not any such person has the job title of "research analyst" and includes any other entities engaged in issuance of research reports or research analysis.

4.8.3 The RA Regulations aimed at specifying the requirements to foster objectivity and transparency in research so that investors get more reliable and useful information for taking informed decisions and promoting reliable research that reflects the independent and unbiased view of research analysts.

4.8.4 It is observed that many persons are getting themselves registered as research analyst instead of investment adviser in order to avoid various compliance requirements specified in IA Regulations such as suitability of the recommendation, risk profiling, etc. They are providing stock specific recommendations and/or research services to investors through different subscription packages such as mid cap, small cap, sector specific research. In such cases, they are sending recommendations only through SMSs or e-mails and are not sending the research report with disclosures as specified in RA Regulations to the clients. The responsibility to choose the appropriate package lies with the subscriber/client. It is difficult for retail investors to understand whether the said subscription package is suitable for them and whether it is in their best interest.

4.8.5 In order to provide clarity with regard to the research services provided by research analyst or research entity, it is proposed that:

- a) Research Analysts or research entity shall provide the research report to all class of clients at the same time. A research report shall not be made available selectively to internal trading personnel or a particular client or class of clients in advance of other clients.
- b) Investors, either directly or with the help of registered investment adviser, can take an informed decision whether the recommendations given in the research report are suitable for his/her risk profile.

- c) Research Analysts providing research services to retail clients for a separate fee through various packages shall act in the best interests of the clients and shall also ensure that the research service offered to the investor is based on overall financial situation and investment objectives of the client. They shall act in fiduciary capacity and shall comply with the requirements specified in Chapter III of IA Regulations.
- d) The research services offered by registered research entities shall be considered as incidental to their primary activity when there is no separate fee or consideration being charged from client.
- e) Making 'buy/sell/hold' recommendation on a security by providing entire research report, shall continue to be regulated under RA Regulations.

4.9 Applicability of risk profiling and suitability requirement for non-individual investors:

4.9.1 In terms of IA Regulations, it is mandatory to conduct risk profiling for all category of clients. The current provisions do not differentiate between retail individual investors and non-individual investors such as corporate, institutional, etc. It is difficult to comply with risk profiling requirements in case of non-individual investors, because of the following reasons:

- i. Some of the prescribed factors for risk profiling may not be applicable to non-individual investors
- ii. Assessment of a non-individual investor's ability to accept the risk of loss and ability to absorb such loss requires specialized skills beyond the

core skills of Investment Advisors and accordingly may not be implemented with the rigour desired. Moreover such assessment is typically undertaken by the management of non-individual entity.

- iii. A non-individual client cannot be administered a psychometric assessment of risk tolerance.

4.9.2 It is, therefore, proposed that assessment of risk profile and suitability of the advice being provided is mandatory for individual investors. For non-individual investors such as institutional/corporate clients, risk profiling and suitability of the advice being provided shall be mandatory only when the investment advice is related to complex financial products such as investment in derivatives, complex structured products, etc.

4.10 Clarity on the compliance audit requirement

4.10.1 In terms of Regulation 19 (3) of IA Regulations, an investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

4.10.2 In order to provide clarity in respect of compliance audit requirement, it is proposed that the compliance audit shall be completed within 3 months after the end of financial year and adverse observances or comments, if any, shall be brought to the notice of SEBI.

4.11 Clarity on mode of acceptance of fee:

4.11.1 In terms of IA Regulations, investment adviser shall ensure that fees charged to the clients is fair and reasonable. IA Regulations do not specify the mode of payment of fee. It is observed that many investment advisers are receiving advisory fee in the form of cash deposit.

4.11.2 It is, therefore, proposed that an investment adviser shall accept fees strictly by account payee crossed cheque / demand draft or by way of direct credit into the bank account through NEFT/ RTGS/IMPS or any other mode allowed by RBI.

4.12 Requirement of providing 'Rights and Obligations' document to the clients

4.11.1 Under the existing framework, investment advisers are required to maintain copies of agreements with clients, if any. However, entering into agreement or providing any document clearly specifying the terms and conditions of the advisory services offered is not mandatory.

4.11.2 In order to clearly define the terms and conditions of the service, it is proposed that an investment adviser shall, at least two days prior to onboarding the clients, provide 'Rights and Obligations' document to the clients stating the interse relationship and terms and conditions of investment advisory services offered, which shall be binding on investment adviser and its clients. The 'Rights and Obligations' document shall, inter alia, contain the following:

a. General Obligations of the Investment Adviser:

- i. The investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise;
- ii. The investment adviser shall provide suitable investment advice to the client which is in best interest of the client after assessing risk profile of the client;
- iii. The investment adviser shall disclose the following information /details to the client before accepting advisory fee from the client:
 - a. Scope of services to be provided by the investment adviser subject to the activities permitted under IA Regulations;
 - b. type of instruments for which advice is proposed to be provided;
 - c. tenure of the services;
 - d. fees payable to the investment adviser and the quantum and manner thereof;
 - e. Disclosure on performance fee, if any;
 - f. risks involved;
 - g. liabilities and obligations relating to advisory services;
 - h. Disciplinary history;
 - i. Settlement of grievances/disputes and provision for arbitration;
 - j. any other information relevant to IA Regulations.
- iv. The investment adviser shall clearly and concisely state the terms and conditions of investment advisory services being provided for easy understanding of the potential client.

- v. The investment adviser shall charge an agreed fee from the clients for rendering investment advisory services without guaranteeing or assuring, either directly or indirectly, any return.
- vi. The 'Rights and Obligations' document shall contain the following risk factors:
 - a. investments in securities are subject to market risks and there is no assurance or guarantee that the objective of the investments will be achieved.
 - b. past performance of the investment adviser does not indicate its future performance.
- vii. The investment adviser shall obtain an acknowledgement from the client that he has read and understood the terms and conditions of the advisory services and fee structure.

b. Dispute Resolution

- i. The investment adviser shall provide the client with the relevant contact details of the designated person who is responsible for dispute resolution including the name, telephone number and e-mail id.
- ii. Details of the SCORES URL may also be provided for lodging complaint with SEBI.
- iii. The investment adviser shall co-operate in redressing grievances of the client in respect of advisory services.
- iv. The client and the investment adviser shall refer any claims and/or disputes, to arbitration in accordance with the Arbitration and Conciliation Act, 1996.

c. Termination of Relationship

- i. The relationship between the investment adviser and the client shall be terminated if the registration as an investment adviser is cancelled by SEBI for any reason including voluntary surrender of registration, death, expulsion, etc.
- ii. The investment adviser and the client shall be entitled to terminate the relationship between them after giving notice in writing of not less than one month to the other party. Notwithstanding any such termination, all rights, liabilities and obligations of the parties arising out of or in respect of transactions entered into prior to the termination of this relationship shall continue to subsist and vest in/be binding on the respective parties or his/its respective heirs, executors, administrators, legal representatives or successors, as the case may be.
- iii. In case the clients are not satisfied with the services being provided by the investment adviser and want to terminate/ stop the advisory services or the investor adviser is unable to provide the advisory services, either party shall have a right to terminate the advisory relationship at any time subject to refund of the proportionate advisory fee.

The investment adviser can add additional clauses in the 'Rights and Obligations' document which are not in contravention with the aforesaid clauses and provisions and circulars issued under IA regulations.

4.13 Advertisement Code:

4.13.1 Under the existing framework, there are no guidelines to be followed by any person including investment advisors while issuing advertisements. The advertisements, generally, solicit investments and/ or promise unrealistic returns in the securities market and may attract the general public and/or influence their investment decisions.

4.13.2 It is proposed that the following advertisement code shall be followed by any person including investment adviser:

- a. An advertisement issued for investor solicitation and/or motivating investors to trade or invest in the securities or in securities related market shall not contain any untrue statement of a material fact or is otherwise false or misleading.
- b. An advertisement shall be truthful, fair and clear and shall not contain any statement, promise or forecast which is untrue or misleading. An advertisement shall be considered to be misleading, if it contains:-
 - i. Statements made about the performance or activities of the advertiser in the absence of necessary explanatory or qualifying statements, which may give an exaggerated picture of the performance or activities, than what it really is.
 - ii. An inaccurate portrayal of the past performance or portrayal in a manner which implies that past gains or income will be repeated in future.
- c. No person shall circulate or distribute an advertisement that:
 - i. Refers to any kind of performance assurance or guarantee.

- ii. Refers to any testimonial about the services;
 - iii. Refers to past specific recommendations, which were or would have been profitable to any person, except under specified circumstances;
 - iv. Represents that any graph, chart, formula or other device can, in and of itself, be used to determine which securities to buy or sell or when to buy or sell them, without disclosing the limitations thereof and the difficulties with respect to its use; or
 - v. Refers to any report, analysis, or service as free, unless it actually is free and without condition or obligation.
 - vi. Contains information, the accuracy of which is dependent on assumptions.
- d. The advertisement shall not be so designed in content and format or in print as to be likely to be misunderstood, or likely to disguise the significance of any statement. Advertisement shall not contain statements which directly or by implication or by omission mislead the investor.
- e. As the investors may not be sophisticated in legal or financial matters, care shall be taken that the advertisement is set forth in a clear, concise and understandable manner. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may detract the investors shall be avoided.
- f. No person shall be allowed to provide trading tips, stock specific recommendations to the general public through short message services (SMSs), email, telephonic calls, etc. unless such persons obtain registration

- as an Investment Adviser or is specifically exempted from obtaining registration.
- g. No person shall be allowed to provide trading tips, stock specific recommendations to the general public through any other social networking media such as WhatsApp, ChatOn, WeChat, Twitter, Facebook, etc. unless such persons obtain registration as an Investment Adviser or is specifically exempted from obtaining registration.
- h. No person shall organize or offer any scheme/competition/game/league on securities or related to securities market.
- i. The copy of advertisement shall be retained for a period of five years.

4.14 Display of details on website

- 4.14.1 It is observed that many investment advisers are providing investment advisory services through websites without disclosing their details in a proper manner and thereby creating confusion to the investors with regard to authenticity of their registration.
- 4.14.2 It is, therefore, proposed that all investment advisers shall display more prominently their name as registered with SEBI, registration number, validity of registration, own logo, if any, and complete address with telephone numbers on its portal /web site, if any, notice / display boards, advertisements, publications, know your client forms, client agreements and correspondences with the clients.

4.15 Restriction on providing free trial trading tips.

4.15.1 It is observed that many investment advisers are engaged in providing free trial trading trips for two to three days to prospective clients without considering whether such advice is suitable to them.

4.15.2 Such free trial services are being provided to the prospective clients without any thorough analysis of their needs and without considering the risk profile of the client and suitability of the product and the same may not be in their best interest.

4.15.3 In order to curb the practice of providing free trial trading tips, it is proposed that investment adviser shall not be allowed to provide free trial of trading tips to prospective clients.

4.16 Online Investment Advisory Services and Use of Automated Tools

4.16.1 Robo advisors are essentially wealth management companies providing an automated support for all financial advisory services without any human intervention. Be it trading, investment, portfolio rebalancing or tax saving, the robo advisors can help investors without any human interference. It works with a pre-defined algorithm and analytics, and calculates the best returns and plans for each individual as per his requirements and preferences.

4.16.2 In the United States of America, they are regulated just like independent advisers who set up offices and meet clients on a regular basis - they typically register with the U.S. Securities and Exchange Commission and are deemed

"fiduciaries" who must put their clients' interests above their own. In India, automated financial advisory services are provided by some companies mainly assisting mutual fund investors in designing their portfolio.

4.16.3 Further, IOSCO has published a report on the IOSCO Social Media and Automation of Advice Tools Surveys. It is inter alia stated in the said report that:

- i. From an intermediary's perspective, providing customers advice through an automated means presents an opportunity to formulate and deliver advice in a cost effective way.
- ii. There is a spectrum of Internet-based automated investment selection tools being used today. At a basic level, there are simple financial planning models that are offered on intermediaries' web-sites. A second level of tools provides a list of securities, investment funds or model portfolios that may be considered low, medium, or high risk for investors to choose from based on the customer's risk appetite but without detailed information about the individual customer. A third level of tools allows an intermediary or customer to indicate an investment goal and input personalized investor information such as age, financial condition, and risk tolerance and run simulations to estimate the probability the customer will meet his/her objective with their current portfolio. Many of these tools then produce a recommended asset allocation (e.g., 50% large cap, 25% small cap, 25% bonds) to address investment allocations. More sophisticated tools may then generate either a more general or specific list of securities or model

portfolios that a market intermediary could recommend or that the investor could choose to buy to meet his/her investment goal. In summary, there are a wide variety of automated tools available today, and it is reasonable to expect more in the future.

- iii. Some intermediaries generally use automated tools to assess a customer's profile before making investment recommendations, including assisting with suitability and know your customer requirements. Accordingly, a firm's automated tools typically take into account a wide variety of factors including a customer's age, income, educational level, time horizon, investing experience, risk tolerance, investment objectives and current assets. Some intermediaries use automated tools for, among other things, portfolio margining, surveillance and monitoring of intermediaries' interactions with customers, and providing an objective and consistent approach to customer interactions.

4.16.4 Under IA Regulations, there is no express prohibition for use of automated advice tools by SEBI registered investment advisers. The risk profiling of the investor is mandatory and all investments on which investment advice is provided shall be appropriate to the risk profile of the client. IA regulations have also specified that where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated. The records pertaining to risk profiling and risk assessment of the client and suitability

assessment of the advice being provided shall have to be maintained by the investment adviser for a period of five years.

4.16.5 It is proposed that the investment advisers providing online investment advisory services using automated tools, shall ensure the following compliance requirements in addition to the compliance with the existing provisions of IA Regulations:

- i. ensuring that the automated tools used are fit for the purpose;
- ii. robust systems and controls to be in place to ensure that any advice made using the tool is in the best interest of the client and suitable for the clients;
- iii. automated tool is to be used only for the target clients, for which it is designed;
- iv. disclosure to the clients in relation to how the tool works and its limitations of the outputs it generates;
- v. comprehensive system audit requirements are put in place;
- vi. Investment adviser using the tool shall be held responsible for the advice;
- vii. The automated tools used by the advisers shall also be subject to audit and inspection.

4.17 Recognition to Chartered Financial Analyst Charter Program from CFA

Institute:

4.17.1 In terms of Regulation 7 (1) of IA regulations, an individual registered as an investment adviser under IA Regulations and partners and representatives of

an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:

- (a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association.
- (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.

4.17.2 In terms of Regulation 7 (2) of IA regulations, an individual registered as an investment adviser and partners and representatives of investment advisers registered under IA Regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

- (a) from NISM; or
- (b) from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.

4.17.3 In this regard, NISM has launched the following certification examinations:

- i. NISM- Series-X-A: Investment Adviser (Level 1) Certification Examination
- ii. NISM-Series-X-B: Investment Adviser (Level 2) Certification Examination

4.17.4 Further, NISM has accredited the following certification examinations:

- i. Chartered Wealth Manager (CWM) by American Academy of Financial Management India Pvt. Ltd.
- ii. Certified Financial Planner (CFP) by Financial Planning Standards Board India
- iii. International Certificate in Wealth & Investment Management (India) Certification by Chartered Institute for Securities and Investment.
- iv. Wealth Management Certification (Advance Level) by Centre for Investment Education and Learning Pvt. Ltd.

4.17.5 CFA Institute has requested SEBI to recognize its Chartered Financial Analyst (CFA) certification program as professional qualification under IA Regulations. It is, inter alia, stated that, Chartered Financial Analyst (CFA) program has global recognition. CFA institute is a global association of investment professionals. Further, CFA program has been recognised by many regulators across the world including The United States of America, Australia, Canada, Hongkong, etc.

4.17.6 It is proposed that:

- a) CFA Institute's CFA charter program shall be considered as professional qualification under Regulation 7(1) (a) of IA regulations.
- b) The individuals and representatives of firms who hold Chartered Financial Analyst charter from CFA Institute shall not be required to obtain certification from either NISM or from its accredited institutions.

5. Public Comments

In light of the above, public comments are invited on the proposals contained in the consultation paper. Comments/suggestions may be provided in the format given below:

Name of entity / person / intermediary/ Organization*			
Sr. No.	Pertains to Point No	Suggestions	Rationale

** In order to have a consolidated view, mutual fund distributors are requested to send their suggestions on the proposals only through their association/ representative body.*

The comments may either be forwarded by email to sebiria@sebi.gov.in or may be sent by post to the following address latest by November 04, 2016.

Shri Naveen Sharma

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Issued On: **October 07, 2016**