

Amendment to SEBI (Investment Advisers) Regulations, 2013

1. Objective

1.1 The objective of this memorandum is to inform the Board regarding grant of recognition to a body under Regulation 14 of SEBI (Investment Advisers) Regulations, 2013 (hereinafter, referred to as "IA Regulations") for administration and supervision of Investment Advisers (hereinafter, referred to as "IA") and to seek approval for amendment to the IA Regulations with respect to payment of fees in this regard.

2. Background

2.1 IA Regulations were notified on January 21, 2013 and came into force on the ninetieth day from the said date. The number of registered IAs has grown from 129 as on March 31, 2014 to 1249 as on March 31, 2020. As on November 25, 2020, 1347 IAs are registered with SEBI.

2.2 SEBI has been receiving numerous investor complaints against IAs. Nature of complaints includes assured returns being offered by IAs, charging of exorbitant fees from client with false promises of handsome returns, mis-selling by IAs without adhering to the risk profile of the client, non-disclosure of complete service fees/charges and, extracting money in the name of various charges. Such conduct of these entities is against the interest of investors and SEBI has issued various orders u/s 11B of SEBI Act, 1992 in the recent past wherein the entities were observed violating the provisions of IA Regulations and SEBI (PFUTP) Regulations, 2003. In order to strengthen the regulatory framework for IAs, pursuant to Board approval, SEBI notified amendments to IA Regulations on July 03, 2020, and the same came into force on September 30, 2020.

2.3 As per Regulation 14 of the IA Regulations, SEBI can recognize any body/body corporate for the purpose of regulating IAs. It further provides that SEBI may, at the time of recognition of such body or body corporate,

delegate administration and supervision of IAs to such body or body corporate on such terms and conditions as may be specified.

2.4 As per the second proviso to Regulation 38 (2) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, a recognized stock exchange may engage in activities, whether involving deployment of funds or otherwise that are unrelated or not incidental to its activity as a stock exchange, through a separate legal entity and subject to approval of the Board.

2.5 Further, IAs, in terms of the SEBI Circular SEBI/HO/MRD/DSA/CIR/P/2016/113 dated October 19, 2016, can purchase and redeem mutual fund units directly from Asset Management Companies on behalf of their clients on the platforms provided by recognised Stock Exchanges.

2.6 To recognize a body to administer and supervise IAs registered with SEBI, in terms of Regulation 14 of the IA Regulations, detailed proposals were sought from Stock Exchanges vide Circular dated August 06, 2020 (hereinafter, referred to as "Circular") As envisaged in the Circular, the Stock Exchanges need to set up a subsidiary or designate an existing subsidiary for the purpose of regulating IAs. The Circular also specified the eligibility conditions to be fulfilled by the stock exchanges and the responsibilities of such subsidiary set up by the stock exchange.

2.7 The Circular specified the following eligibility criteria for stock exchanges to apply for grant of recognition to their subsidiary:

- i. Number of years of existence- Minimum 15 years
- ii. Stock exchanges having a minimum networth of INR 200 crores
- iii. Stock exchanges having nation-wide terminals
- iv. Investor grievance redressal mechanism including Arbitration
- v. Capacity for investor service management gauged through reach of Investor Service Centres (ISCs)- Stock exchanges having ISCs in at least 20 cities

2.8 The Circular specified the following responsibilities of a subsidiary of the stock exchange to administer and supervise IAs:

- i. Supervision of IAs including both on-site and offsite
- ii. Grievance redressal of clients and IAs
- iii. Administrative action including issuing warning and referring to SEBI for enforcement action
- iv. Monitoring activities of IAs by obtaining periodical reports
- v. Submission of periodical reports to SEBI
- vi. Maintenance of database of IAs

3. Consideration of applications received

3.1 (The details have been excised for reasons of confidentiality)

3.2 (The details have been excised for reasons of confidentiality)

3.3 (The details have been excised for reasons of confidentiality)

3.4 (The details have been excised for reasons of confidentiality)

4. Proposed amendments to IA Regulations

4.1 Consideration of application and eligibility criteria

4.1.1 Regulation 6 of the IA Regulations specifies the eligibility criteria which shall be taken into account by SEBI for the purpose of grant of certificate of registration.

4.1.2 Regulation 14 (3) of the IA Regulations states, inter alia, that SEBI may mandate that IAs become member of a recognised body or body corporate. Accordingly, it is proposed that a new sub-regulation may be inserted under Regulation 6 of the IA Regulations as under to mandate that existing as well as new IAs become members of an IAASB¹:

¹ Investment Adviser Administration and Supervisory Body

“(n) Whether the applicant is a member of a recognized body or body corporate as specified under regulation 14:

Provided that the existing investment advisers shall comply with the requirement under this clause in such manner as may be specified by the Board.”

4.2 Payment of fees by IAs

4.2.1 Regulatory provisions with respect to payment of fees by IAs:

- i. Currently, as per IA Regulations, the fee structure is as under:
 - a. Application fee (Payable at the time of filing application for registration)-
For individuals and firms- Rs.5,000
For body corporates including LLP- Rs.25,000
 - b. Registration fee/ Renewal fee (valid for a period of 5 years)
For individuals and firms- Rs.10,000
For body corporates including LLP- Rs.5,00,000
- ii. Regulation 9 of the IA Regulations currently provides that SEBI, on being satisfied that the applicant complies with the requirements specified in Regulation 6 (Consideration of application and eligibility criteria) sends intimation to the applicant and on receipt of the payment of registration fees, grants certificate of registration.

4.2.2 Quantum and manner of payment of fees under the proposed framework

A. New IAs

- i. SEBI will continue to register IAs as per the mandate given under the SEBI Act, 1992 and will continue to charge application and registration fees from new IAs. While administration and supervision of IAs shall be done concurrently by SEBI and IAASB, significant responsibilities as stated at paragraph 2.8, have been

cast upon IAASB. Further, IAASB is required to arrange/ have necessary infrastructure, systems, manpower etc. in order to perform the said responsibilities. In view of the same, it is proposed that IAASB may charge an administrative fee from new IAs, as stated at paragraph 3.2, while granting membership in terms of Regulation 14 of the IA Regulations.

- ii. In order to ensure that the revenue sources of IAASB do not entail any significant added burden on the IAs, it is proposed that application fees as specified in the present IA Regulations be split into application fees and registration fees, and the renewal fees payable every five years may be reduced. The revised fee structure is proposed to be as under:

Type of fees	Legal Structure of IA	Present Fees (Rs.)	Proposed Fees (Rs.)
Application fees (payable one-time and non-refundable)	Individuals and firms	5,000	2,000
	Body corporates including LLP	25,000	10,000
Registration fees (Valid for 5 years)	Individuals and firms	10,000	3,000
	Body corporates including LLP	5,00,000	15,000
Renewal fees (Valid for 5 years)	Individuals and firms	10,000	1,000
	Body corporates including LLP	5,00,000	5,000

- iii. With the revised fees payable to SEBI proposed in paragraph (ii) above and the administrative fees payable to IAASB as proposed in paragraph (i) above, the total amount payable by IAs at the time of registration to SEBI and IAASB will remain same as that payable

to SEBI currently. Hence, it will not entail any added financial burden on the IAs.

B. Existing IAs

- i. In respect of existing SEBI registered IAs, SEBI collects registration fees for five years at the time of grant of registration, and collects renewal fees for five years at the time of renewal. Hence, any obligation to pay administrative fees to IAASB, as stated at paragraph 3.2, from the effective date of the proposed framework will increase the financial burden on IAs. It is proposed that administrative fees shall be payable to IAASB only at the expiry of block of five years for which fees is already paid to SEBI. In the process, while IAASB would start administering and supervising IAs with effect from a particular date, as proposed in subsequent paragraph, the administrative fees will be received by it much later. This issue needs to be addressed in order to enable IAASB to discharge the responsibilities entrusted to it, as under.
- ii. In terms of Section 14 of the Securities and Exchange Board of India Act, 1992 (hereinafter, referred to as “SEBI Act”), all grants, fees and charges received by SEBI under the SEBI Act are credited into the SEBI General Fund (hereinafter, referred to as “Fund”). Accordingly, it is proposed that such registration/ renewal fees (which is valid for a period of 5 years) received by SEBI and credited to the Fund which pertains to the remaining period, may be transferred to IAASB from the Fund on the basis as decided by SEBI.

4.3 The framework is proposed to be effective from April 01, 2021.

4.4 The proposal at paragraph nos. 4.1 and 4.2.2 (A) shall require amendment to the IA Regulations. Accordingly, necessary draft amendments in the IA Regulations are placed at **Annexure A**. Further, Draft Notification to be issued is placed at **Annexure B**.

5. Proposal

5.1 The Board may consider and approve the proposals made under paragraphs 4.1, 4.2 and 4.3 and approve the draft amendments at paragraph 4.4.

5.2 The Board may authorize the Chairman to take steps to implement the proposal by amending the IA Regulations, with consequential and appropriate changes, as may be required, and to notify the necessary regulations and/ or issue circular/(s) in this regard.

Annexure A

This has been excised.

Annexure B

Amendment to SEBI (Investment Advisers) Regulations, 2013 shall be notified after following the due process.