

Proposal on association of persons regulated by the SEBI and the agents of such persons with persons who directly or indirectly provide advice or recommendations without being registered with SEBI or make any implicit or explicit claim of return or performance in respect of or related to a security or securities under the purview of SEBI

1. Objective

1.1. This memorandum seeks approval of the Board for the amendment to the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as 'Intermediaries Regulations'), Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred to as 'SECC Regulations') and SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as 'DP Regulations') for prohibiting the association of persons regulated by the SEBI, and their agents, with other persons who directly or indirectly provide advice or recommendations without being registered with SEBI or make any implicit or explicit claim of return or performance, in respect of or related to a security or securities under the purview of SEBI.

2. Background

2.1. As per the 'Guidelines for Influencer Advertising in Digital Media' released by Advertising Standards Council of India, 'influencer' means "someone having access to an audience and power to affect such audiences' purchasing decisions or opinions about a product, service, brand or experience, because of the influencer's authority, knowledge, position, or relationship with their audience"

2.2. The SEBI has received multiple references from the public and has noted various news articles related to activities of financial influencers ('finfluencers') with respect to securities under purview of SEBI in social and digital media platforms. The Government has also cautioned the public of the activities of finfluencers at relevant point of time, through media briefing.

- 2.3. Financial influencers, commonly called ‘finfluencers’, are persons who provide information and/or advice/recommendations on various financial topics such as investing in securities, personal finance, banking products, insurance, real estate investment, etc. through their engaging stories, messages, reels and videos on various social/digital media platforms/channels such as Instagram, Facebook, YouTube, LinkedIn, Twitter, etc., and have the ability to influence the financial decisions of their followers. The activities of finfluencers thus deal in areas regulated by multiple financial sector regulators such as SEBI, RBI, PFRDA, and IRDA.
- 2.4. These finfluencers are usually persons who are neither registered with the SEBI or other financial sector regulators nor permitted under any regulation issued by the SEBI to provide such advice or recommendation in respect of or related to a security or securities under the purview of SEBI. While some of these finfluencers may be genuine educators, many of them are effectively enticing their followers/investors/prospective investors to purchase financial products, services, or securities in return for undisclosed compensation from producers or platforms.
- 2.5. It is noted that SEBI regulated persons are also using services or are associated with such persons/finfluencers and thereby contributing to the revenue, profit etc. of these persons/finfluencers.
- 2.6. The matter of association of SEBI regulated persons with such persons/finfluencers was discussed in the meeting of the Intermediary Advisory Committee (‘IAC’) held on June 27, 2023 in the context of the association of stock brokers with such finfluencers. IAC had recommended that stock brokers may be mandated not to engage with any unregulated entity in any way such as advertising, equity, profit sharing, referral fees etc.
- 2.7. Considering the need to examine the securities market related concerns pertaining to activities of finfluencers, SEBI on July 17, 2023 formed an internal taskforce on the subject (‘the taskforce’).

3. **Public consultation:**

- 3.1. Taking into account the recommendations of IAC, the taskforce and internal deliberations, a public consultation paper on the captioned subject matter was issued on August 25, 2023 (**Annexure A**) inviting comments of the stakeholders regarding the proposals in the consultation paper.
- 3.2. In order to address the concerns related to influencers who are usually unregistered entities, it was proposed in the consultation paper to limit the association of SEBI registered intermediaries/regulated entities and their agents/representatives with unregistered entities (including influencers) inter alia through the following measures-
 - 3.2.1. No SEBI registered intermediaries/regulated entities or their agents/representatives shall, directly or indirectly, have any association/relationship in any form, whether monetary or non-monetary, for any promotion or advertisement of their services/products, with any unregistered entities (including influencers).
 - 3.2.2. Entities registered/regulated by SEBI or stock exchanges or AMFI shall not share any confidential information of their clients with any unregistered entities
 - 3.2.3. Influencers registered with SEBI or stock exchanges or AMFI in any capacity shall display their appropriate registration number, contact details, investor grievance redressal helpline, and make appropriate disclosure and disclaimer on any posts. They shall also fully adhere to the code of conduct under the terms of their relevant registration. Such entities shall comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI recognised supervisory body from time to time. Such entities shall comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI recognised supervisory body from time to time.
 - 3.2.4. SEBI registered intermediaries/regulated entities shall not pay any trailing commission based on the number of referrals as referral fee.

3.2.5. Limited referrals from retail clients, and payment of fees for such limited referrals by stockbrokers shall be allowed.

3.2.6. SEBI registered intermediaries shall take active measures to dissociate themselves from any unregistered entity using their name, product or service. They shall take necessary action to bring it to the notice of enforcement agency concerned to take appropriate action, including filing case under section 420 of the Indian Penal Code, 1860 for impersonation and fraud, etc. as may be applicable.

4. **Analysis of public comments:**

4.1. 153 responses (The brief summary of the comments received on the consultation paper is placed at **Annexure B**) to the consultation paper were received from the public, including from intermediaries and intermediary association.

4.2. It is noted that 39 comments are in favour of the proposal or are in favour with certain modifications to the proposal and include the comments from **(This has been excised for reasons of confidentiality)** which has more than 300 investment advisers as their members. Further, out of the 86 comments considered to be not in favour of the proposal, 52 comments are same and are exact replica of each other.

4.3. The concerns and suggestion received from public including the observations made in the media were deliberated internally.

4.4. The major concern received through the public comments was that the proposal restricts the association of the registered entities with all the unregistered entities/persons and does not distinguish between unregistered entities/persons who are actually involved in providing advice or recommendations on securities and those who are involved solely in providing education and services not linked to any advice or recommendations related to securities and hence the proposal may be modified to identify the persons with whom the registered entities should not have association.

- 4.5. A separate consultation was also held with the MIs (stock exchanges, clearing corporations and depositories) to seek their comments on the proposals mentioned in the consultation paper dated August 25, 2023.
- 4.6. MIs have unanimously agreed to the proposal that prohibit the association of persons regulated by the SEBI (including MIs) and their agents, directly or indirectly, with such persons who directly or indirectly provides advice or recommendation or make any implicit or explicit claim of return or performance, in respect of or related to security or securities under the purview of the SEBI unless such a person or its agent is permitted by the Board to do so.

5. **SEBI's response:**

- 5.1. It is acknowledged that there is need to clarify that the proposed policy shall not restrict the association of SEBI regulated entities or their agents with other persons who are solely involved in providing the education or services which are not linked to advice or recommendations related to security or securities under the purview of the SEBI.
- 5.2. Accordingly, it is proposed that any person regulated by the SEBI or the agents of such persons shall not have any association directly or indirectly with any other person who directly or indirectly provides advice or recommendation or make any implicit or explicit claim of return or performance, in respect of or related to security or securities under the purview of the SEBI unless such a person is permitted by the SEBI to do so. It shall be the responsibility of the person regulated by the SEBI or the agents of such persons to ensure that the person with whom it is associated does not indulge in prohibited activities. The standards for implementation in this regard shall be evolved by the respective Industry Standards Forum (ISF) in consultation with SEBI.
- 5.3. It is noted that since any association with persons who provide advice or recommendation or make claim of return or performance, in respect of or related to security or securities under the purview of the SEBI, is being addressed through the proposed amendment, the other proposed measures suggested in

consultation paper including restriction on client referrals and commissions paid for client referrals by SEBI regulated persons may not be relevant and hence may not be considered.

5.4. It is noted that the SEBI registered entities who are also incidentally considered to be finfluencers are subject to the advertisement code as specified by the SEBI, Stock exchanges or the concerned administrative and supervisory bodies and hence no further guidelines may be required for them at this juncture.

5.5. SEBI has also issued caution to the public against dealing with unregistered entities through a press release dated February 13, 2024 (**Annexure C**)

6. **(This has been excised for reasons of confidentiality)**

7. **Proposals for consideration and approval of the Board:**

7.1. With a view to safeguard interest of the investors in the securities market under the purview of SEBI and based on the comments received on public consultation, and further internal deliberations, it is proposed that persons regulated by the Board, or agents of such persons, shall not have any association directly or indirectly with any person who directly or indirectly provides advice or recommendation or make any implicit or explicit claim of return or performance, in respect of or related to security or securities under the purview of the SEBI unless such a person or its agent is permitted by the Board to do so. It shall be the responsibility of the person regulated by the Board or its agent to ensure that the person with whom it is associated does not indulge in such prohibited activities.

7.2. **(Amendments shall be notified after following the due process)**

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7.4. In order to remove any doubts, it is also proposed to clarify that the proposal shall not be applicable to any person who is engaged in investor education provided that such person is not, directly or indirectly, providing advice or recommendation or making any implicit or explicit claim of return or performance in respect of or

related to a security or securities, unless such person is otherwise permitted by the Board.

- 7.5. It is also proposed to clarify that the provisions contained in these regulations shall not apply to such person or agents of such person for their association with specified digital platform which has a mechanism in place to take preventive as well as curative action, to the satisfaction of the Board, to ensure that such a platform is not used, directly or indirectly, for providing advice or recommendation or making any implicit or explicit claim of return or performance in respect of or related to a security or securities under purview of SEBI.
- 7.6. It is proposed to implement the aforesaid proposal by making the amendments to Intermediaries Regulations, SECC Regulations and DP Regulations. Draft amendment to the Intermediaries Regulations, SECC Regulations and DP Regulations are placed at **Annexure D**.
- 7.7. The amendments to the Intermediaries Regulations, SECC Regulations and DP Regulations are proposed to be effective from the date of their publication in the official gazette.

8. **Proposal**

- 8.1. The Board is requested to consider and approve the proposals at paragraphs 7.1 to 7.7 mentioned above in the Memorandum and authorize the Chairperson to carry out suitable amendments to the regulations and to take any other consequential or incidental steps for implementation of the decisions of the Board.

Annexure A

(Consultation paper is available on SEBI website www.sebi.gov.in at Reports & Statistics » Reports » Reports for Public Comments)

Annexure B

(This has been excised for reasons of confidentiality)

Annexure C

(Press Release is available on SEBI website www.sebi.gov.in at Media & Notifications » Press Releases)

Annexure D

(Amendments shall be notified after following the due process)