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NAVIGATING THE DIGITAL FRONTIER: SEBI REGULATIONS AND LEGAL FRAMEWORKS FOR FINANCIAL INFLUENCERS IN INDIA

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SEBI REGULATIONS ON FINANCIAL INFLUENCERS

It is possible to conduct research on how digital spaces are fundamentally altering not only traditionally dominant institutions like financial authorities, but also how the relations that are created through social media are changing the ways in which people interact with and perceive these authorities in the first place. This new avenue of research is presented by the growth of Indian influencers.

The recent laws that were proposed by the Securities and Exchange Board of India (SEBI) in November 2022, which were intended to strictly monitor and execute standards for finfluencers, provide more evidence for the necessity of doing closely examined research on this phenomena. The Securities and Exchange Board of India (SEBI) also suggested that social media influencers who are gaining popularity should be obliged to register themselves. This would allow SEBI to keep a close eye on any potential instances of fraud or scams.[2]

A new form of interaction between the state and social media influencers is indicated by the planned regulations and guidelines that have been implemented by SEBI. As a result of the fact that the central authorities in India have a vested interest in the behaviour of finfluencers, it is undeniable that digital spaces actively modify the sociopolitical and economic landscapes of the country. In addition, these choices indicate a lack of confidence between the state and specific digital platforms, particularly with regard to matters of finance. It is reasonable to exercise some degree of caution in light of the fact that fresh financial frauds and scams are

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[1] Students at Amity University, Noida

[2] Bhandari, K. S. (2023, January 11). "The rise of finfluencers: Why is Sebi monitoring them?"

brought to the attention of the general public on a daily basis.[3] However, despite the fact that there is a lack of trust on the part of the state, the expansion in the number of persons who are considered to be influential is evidence of the trust that a significant number of people have in these individuals.

It is clear that microfinance influencers are not merely "supplementing" or adding to the existing financial systems, as seen by the expansion of these influencers and the increased attention that state financial regulators are placing on them.[4] The fact that finfluencers use digital platforms in inventive ways to not only present themselves in a particular light but also to interact differently with their audiences demonstrates that the finfluencing field is gradually but unquestionably altering the way in which we conceive of who the authorities in the financial sector are, as well as the manner in which we ourselves can access and are positioned within the financial hierarchy.

Understanding the Relationship between Expertise and the State and Finfluencers

Considering that financial domains are spaces in which only "qualified" individuals should be giving advice, one of the fundamental reasons for the proposed regulations on finfluencers that have been recommended by SEBI is that these domains are spaces. In a comparison of the fields of banking and health, Nehal Mota made the observation that the knowledge gap between specialists and laypeople is so great in both of these fields that external rules are required to ensure that the general public does not receive misleading advice, get scammed, or other similar situations. When it comes to the establishment of regulatory authorities to provide these checks and balances on finfluencers, the Securities and Exchange Board of India (SEBI) has concentrated on the utilisation of professional and educational qualifications as a technique to guarantee that only persons who fulfil this basic requirement would be permitted to disseminate financial advice.

To begin, one could argue that the educational and professional standards that are being set up creates a barrier for those who wish to enter these places based on their own personal experiences with finance. This is especially pertinent in light of the fact that influencers have gained popularity as a result of their capacity to communicate complicated financial language

[3] Das, V. (2022, November 24). "SEBI to issue regulations for finfluencers. How do the steps come into play?" Mint. https://www.livemint.com/market/stock-market-news/sebi-toissue-regulations-for-finfluencers-how-do-the-step-come-into-play11669306683823.html, Last visited 1st April 2024.

[4] Cornelio, G. S., & Roig, A. (2020). "Mixed methods on Instagram research: Methodological challenges in data analysis and visualization." Convergence, 26 (5–6), 1125–1143.

to huge audiences that have no prior knowledge of their financial situation. Additionally, these restrictions run the risk of reinforcing existing hegemonic forces in financial sectors, which in India tend to be dominated mostly by men from higher castes, upper classes, and urban areas. Despite the fact that the existing finfluencer environment in India is not even close to being "inclusive," it does have the capacity to facilitate the development of knowledge in novel ways. A few of well-known female influencers, such as Shreyaa Kapoor, Anushka Rathod, and Neha Nagar, have garnered a significant amount of attention and possess a substantial number of followers.

Furthermore, the absence of formal qualifications and credentials has made it possible for individuals who do not come from traditional financial backgrounds to build their reputation through the utilisation of the features of social media. These features include the capability of digital platforms to posit the creation of a particular self, develop parasocial relations, and construct narratives that are streamlined. In India, a significant number of influential people do not have professional credentials in finance; rather, they have transitioned from disciplines that are closely related to finance, such as corporate consulting and MBA degrees. As an illustration, Ankur Warikoo maintains a consistent level of engagement with his fans by use of Instagram stories and comment sections. Despite the fact that his material is today more focused on lifestyle and motivation, a significant portion of his early content was derived from his experiences as an investor, an entrepreneur, and how to be more financially savvy.

In addition, he places a much greater focus on his personal path with finance than he does on his financial qualifications. This is done in response to the concerns and fears that individuals have over their financial literacy. Warikoo's attractiveness to audiences lies much more in his style and charm, as well as the "drive" that is so frequently linked with financial independence, than in his financial qualifications. He does this by drawing on his personal experiences of beginning a financial journey later in life. Parallel to this, Neha Nagar, who is considered to be one of the most influential producers in the field of finfluencers, discusses the challenges and difficulties she encountered on her path to financial success. Interviews and her web content frequently touch on aspects of her life, such as the fact that she was unsuccessful in passing the Certified Public Accountant exam and that she overcame gender discrimination. Aside from Nagar's professional trajectory in wealth management and taxation, it is evident from the engagement on her social media profiles that people follow and trust her because of her apparent honesty about her problems and "failures," as well as how to recover from them. This confidence is a direct result of her ability to share her experiences with others.

4.2 LAWS GOVERNING FINANCIAL INFLUENCERS AND THEIR IMPACT

An individual's personal finances are distinct from those of other people, and there is no one formula that is suitable for all investors. The Securities and Exchange Board of India (SEBI) recognized the need to regulate the functioning of the financial advisory system. As a result, it enacted the SEBI (Investment Advisers) Regulations, 2013 (Investment Adviser Regulations), which required investment advisers to register with the government. As part of the rules, a registered investment advisor (RIA) is required to comply with a number of requirements. One of these requirements is to undertake a risk profile of the investors in order to determine whether or not the investment advice that is provided to them is appropriate.[5] As an additional point of interest, Registered Investment Advisors (RIAs) are professionals who have expertise in the field of finance and have professional qualifications as well as a minimum of five years of experience in activities related to the management of funds, assets, or portfolios.3) In light of these principles, one might conclude that the Investment Adviser Regulations are a positive step towards the goal of providing investors with better and more safe financial advice. However, the number of registered investment advisers in India is just 13314, which is a statistic that is extremely discouraging.

There are a variety of factors that could be responsible for this, and there are a lot of reasons why this is the case. To begin, licenced real estate agents are needed to make an initial payment in order to obtain their licencing. They are obligated to comply with the rules and regulations that are issued by the SEBI, which are subject to regular changes. An example of this would be the Securities and Exchange Board of India (SEBI) releasing the Advertisement Code in April 2023. This code prohibited investment advisers from using superlative adjectives in their advertising, such as "best" and "leading."5. In addition, the Advertisement Code made it obligatory for the RIAs to acquire prior approval from SEBI for each advertisement that they publish within their organisation. In light of this, the weight of stringent compliances and unnecessary permissions is deterring prospective advisers from entering the profession, and it is also prohibiting existing investment advisers from growing their businesses. In addition, none of the investors would be interested in paying for financial

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[5]SEBI, Investment Adviser, https://www.scconline.com/blog/post/2023/08/30/power-of-influence-regulating-the-financial-influencers-in-india/, Last visited 1st April 2024.

advice when there is a wealth of knowledge that is available online for free that is related to finance advisory services. The Investment Adviser Regulations, on the other hand, exempt any advice that is provided by any electronic or broadcasting medium that is under their scope.

Due to this, social media influencers have unrestricted flexibility to share content without facing any consequences. This freedom includes the ability to publish information that is both deceptive and false regarding the various solutions available for managing finances. It is essential to take into consideration the fact that India is a nation in which the majority of the people is in a state of severe desperation due to problems such as unemployment, inflation, non-performing loans, and famine. If someone in our country were to fall for titles like "what investments will make you rich," it would be unjust to expect them to take responsibility for their actions. Nithin Kamath, who is affiliated with Zerodha, has recently voiced his concern with the existence of such unregulated actions carried out by finfluencers.

As a result of the majority of these finfluencers, who fail to mention the risks that are associated with such investments, it will be inappropriate for investors to enter the stock market with the erroneous assumption of earning money quickly and easily. Under these conditions, it is absolutely necessary for the Securities and Exchange Board of India (SEBI) to step in and regulate financial influencers in order to reduce the potential risks that are associated with the unregulated dissemination of financial advice online. This would not only protect the interests of rookie investors who are just beginning their adventure into the world of investment, but it will also ensure that they are not mislead by titles that promise immediate wealth.

Finfluencers are not specifically governed by any laws at this time. Finfluencers, on the other hand, are obligated to comply with general restrictions such as Section 12-A of the Securities and Exchange Board of India Act of 1992 and regulation 4 of the Securities and Exchange Board of India (SEBI) (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) restrictions of 2003 (also known as the "PFUTP Regulations"). No person shall directly or indirectly engage in any act, practice, or course of business that is fraudulent, misleading, or manipulative with respect to transactions on the stock exchange, as stipulated by Section 12A of the SEBI Act. Furthermore, regulation 4 of the PFUTP Regulations stipulates that any statement that is knowingly false or misleading and is made with the intention of influencing the investment decisions of investors will be considered "manipulative fraudulent or an unfair trad This law also forbids the publication of information or advice in a reckless or careless manner that is likely to affect the decision of investors dealing in securities. This regulation was created to prevent investors from being misled.[6]

It is important to note that the SEBI (Investment Advisors) Regulations, 2013 (also known as the "IA Regulations") in India oversee investment advisers (also known as "RIA"), however finfluencers are not included in this regulatory framework. In accordance with the aforementioned Investment Advisor Regulations, the word "investment adviser" refers to an individual who, "for consideration," offers financial advice to individuals or groups of individuals. Considering that finfluencers often do not charge their audience members and that their recommendations are accessible to the general public, they do not fit under the category of "investment advisors."

In a similar manner, the SEBI (Research Analysts) Regulations, 2014 (also known as the "RA Regulations") control Research Analysts (also known as "RAs") in India respectively. There are a number of strict compliance requirements that are mandated for RAs under the aforementioned RA Regulations. These requirements include disclosure of conflicts of interest, requirements for qualifications and certificates, and more. Unregistered finfluencers, on the other hand, are not required to comply with the RA Regulations.[7]

Even the "Advertisement code for Investment Advisers (IA) and Research Analysts (RA)" that was issued by the Securities and Exchange Board of India (SEBI) on April 5, 2023, which mandated that registered IAs and RAs must seek prior permission from SEBI before disseminating any form of communication or advertisement material, including on social media platforms or any other form over the internet, is only intended to regulate RIAs and RAs and not finfluencers, is intended to regulate only RIAs and RAs and not influences.

In contrast to finfluencers, registered investment advisors (RIAs) and registered sales associates (RAs) are subject to a number of regulatory compliances and possess the professional qualifications necessary to provide financial advice on securities or investment products. In addition, registered investment advisors and registered financial advisors are required to disclose any potential conflicts of interest that may exist in any of the financial

[6]*Regulation 4(2)(k), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [July 17, 2003]. ("PFUTP Regulations")*

[7]*Securities and Exchange Board of India, Advertisement Code for Investment Advisers(IA) and Research Analysts (RA) [April 5, 2023].*

instruments that fall under the purview of their guidance. As of March 2023, there are only 1,328 investment advisors registered with the Securities and Exchange Board of India (SEBI). Out of them, around 840 RIAs have individual licences, and approximately 488 RIAs have corporate licences.For the time being, the Securities and Exchange Board of India (SEBI) has not been able to regulate the operations of unregistered financial influencers, despite the fact that it has tightened the rollouts of IAs licencing due to a few fraudulent agents who exploited the licence.[8]

Several times, the Securities and Exchange Board of India (SEBI) has resorted to the rules mentioned above in order to take action against such finfluencers who engage in "pump and dump schemes" in order to mislead investors.

In the case of *Sadhna Broadcast Limited and Sharpline Broadcast Limited*, the promoters of these firms, in conjunction with the providers of content on YouTube, spread content that was both fraudulent and misleading, which resulted in the creation of a fake interest in the scrip. The videos conveyed the message that the company in issue will see exponential development and urged viewers to instantly purchase shares of the company. Immediately after the investors made their initial investment in the stock, the entities who were responsible for the videos sold their holdings at an inflated price. In its interim order, SEBI expressed its opinion that such fraudulent behaviour resulted in an artificial increase in the price of the scrip, which enabled major shareholders, as well as the promoters and several key individuals, to record huge profits.[9]

In an instance that was very similar to this one, a Telegram channel was utilised on a regular basis to deliberately spread false information and influence the market in order to generate illegal profits. First, they would purchase shares of a firm, and then they would persuade subscribers of the Telegram channel to invest in the company in question. This was their standard operating procedure. Following the escalation of the stock price, the finfluencers sold their shares in order to generate a profit. The Securities and Exchange Board of India (SEBI) issued an interim ruling exempting the entities concerned from the securities market and imposing a fine of 5.68 crore Indian Rupees.

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[8]*Shipra Singh, Where are India's Missing Investment Advisers?,LiveMint [May 17, 2023]*.https://www.livemint.com/money/personal-finance/sebi-regulations-force-registered-investment-advisers-to-give-up-licences-while-finfluencers-mislead-investors-11684262776684.html, *Last visited 2nd April 2024.*

[9]*Interim Order in the Matter of Stock Recommendations using Youtube in the scrip of Sadhna Broadcast Limited, WTM/AN/ISD/ISD-SEC-1/24333/2022-23 [March 2, 2023].*

Recent events have brought Mr. P.R. Sundar and his firm, Mansun Consultancy Private Limited, under the scrutiny of the Securities and Exchange Board of India (SEBI) for the provision of advisory services in exchange for advisory fees, without first acquiring the necessary registration requirement from SEBI. As a result of Mr. PR Sundar and his company's actions that were in breach of the IA Regulations, SEBI imposed penalties.[10]SEBI ultimately reached a settlement for regulatory infractions, which included a settlement value of approximately 46.80 lakh Indian rupees and a disgorgement amount of approximately 6.07 crore Indian rupees. Additionally, Mr. PR Sundar and his company agreed to refrain from purchasing, selling, or dealing in securities for a period of one year beginning on the date of the settlement order. This was one of the provisions of the settlement order.

The only purpose of the regulatory system that is currently in place is to address unfair and fraudulent business activities. It does not possess the resources necessary to address the myriad of difficulties that are linked with unregistered and unregulated finfluencers who are working in a grey environment. It is of the utmost need to modify the regulatory framework that is now in place in order to save investors from the dangers and risks associated with finfluencing.

Criteria for determining eligibility for finfluencers

An individual who wishes to become a registered investment adviser in India is required to possess a minimum educational qualification consisting of a graduate degree in finance, economics, or business, or a professional certification such as a Chartered Accountant (CA), Chartered Financial Analyst (CFA), or Master of Business Administration (MBA). They are required to have a minimum of five years of experience working in activities that are related to providing advise in the realm of financial goods or securities. When it comes to investment advice that is provided through online platforms by finfluencers, SEBI needs to make sure that identical qualifying standards are incorporated. The social media platform has evolved into a medium through which regular people can achieve fame; nevertheless, it is vital to distinguish between the content that is made merely for the purpose of gaining more likes and

[10]*Settlement Order in the Matter of Mansun Consultancy Pvt. Ltd., SO/AA/EFD2/2023-24/7081 [May 25, 2023].*

follows and the content that is created with the intention of providing investors with benefits.[11]

When compared to an amateur influencer, an investment adviser is distinguished by a minimum qualification that is established by SEBI and a certain amount of expertise in the financial industry. This type of investment adviser will have knowledge and experience in a variety of financial products, as well as a deeper comprehension of the risks that are involved with such products. As a result, they will be able to guide their clients in making decisions that are well-informed regarding their investments.

When an investment adviser is registered with SEBI, the interests of investors will be effectively protected, and the investment adviser will have a higher level of credibility. In addition, the system for the resolution of disputes that is provided by SEBI would offer investors a more effective and dependable solution in the event that any issue arises.

The requirements of disclosure

Through their cooperation with brands, social media has become a central location for influencers to earn considerable amounts of money. It is a highly frequent practice for businesses to interact with influential people in order to market their products by making use of the huge reach that these individuals possess. There is a possibility that financial influencers will mislead their followers into purchasing a specific financial product simply due to the fact that they are collecting a substantial amount of commission for marketing that product. Regulating operations of this nature becomes essential in order to safeguard investors from the severe losses that may be incurred in the event that the financial company that is being marketed turns out to be a fraud. Following the implementation of standards for social media influencers by the Advertising Standards Council of India, it is now mandatory for these individuals to add a disclosure label on any content that is related to financial service firms and is considered to be an advertisement. However, there is a requirement for more stringent regulations and inspection to be placed on the finfluencers in order to effectively monitor the content that they produce and to impose severe consequences for any violation that may occur.

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[11] Bhumika Indulia, "Power of Influence: Regulating the Financial Influencers in India | SCC Times" (SCC Times, August 29, 2023) https://www.scconline.com/blog/post/2023/08/30/power-of-influence-regulating-the-financial-influencers-in-india/, Last visited 1st April 2024.

One particularly noteworthy instance can be seen in Germany, where it is required that financial influencers reveal their link with the company they are affiliated with. Under the Investment Adviser Regulations, registered investment advisors (RIAs) in India are required to disclose their holdings or positions, if any, in the financial instruments or securities that are the subject of advice to investors.[12] In addition, they are required to fulfil a number of disclosure duties themselves. When it comes to the proposed regulations for finfluencers, it is imperative that the disclosure and punishment provision that are included in the Investment Adviser Regulations are applied to them with the same level of rigour as they are applied to existing RIAs.

POLICY RECOMMENDATIONS

The Framework That SEBI Is Considering Using to Regulate Finfluencers

The Advertising Standards Council of India (ASCI) recently made some changes to the "Guidelines for Influencer Advertising in Digital Media" (also known as the "Guidelines") in an effort to make finfluencers more accountable.

In accordance with the updated Guidelines, individuals who have influence in the fields of banking, financial services, and insurance (collectively referred to as "BFSI") are required to demonstrate that they are registered with SEBI and that they have the requisite qualifications before they may provide advice concerning investments. It is Additionally, they are required to effectively explain their practitioner credentials or recognized expert status in an open and honest manner. Every time they offer guidance, promote, or remark on the benefits or drawbacks of the items or services, they are obligated to fulfil this commitment.

Finfluencers are resorting to renting their SEBI Registration numbers from RIAs in order to comply with the ASCI standards and avoid being monitored by SEBI. This is a practice that has evolved in recent times. A consultation document titled "2023 Consultation Paper" was published by SEBI on August 25, 2023, with the intention of addressing these malpractices. The aforementioned Consultation Paper from 2023 stipulates that:

- It is not permitted for unregistered entities, also known as "finfluencers," to collaborate with registered intermediaries or regulated entities, as well as their agents or representatives, in order to promote or advertise their services or products.

[12]Advertising Standards Council of India, Guidelines for Influencer Advertising in Digital Media (14-6-2021), https://www.scconline.com/blog/post/2023/08/30/power-of-influence-regulating-the-financial-influencers-in-india/, Last visited 4th April 2024.

Furthermore, influencers who are registered with the Securities and Exchange Board of India (SEBI) or stock exchanges or the Association of Mutual Funds in India (AMFI) in any capacity are required to include their registration number, contact information, contact number, investor grievance redressal helpline, and a disclaimer on any posts; they must adhere to the code of conduct outlined in terms of their relevant registration, as well as any advertisement guidelines issued by SEBI, stock exchanges, or other SEBI-recognisedregulatory authorities; they must not pay any trailing commissions based on the number of posts they make. Stockbrokers, on the other hand, will be allowed to receive and pay referral fees for restricted referrals from retail consumers.[13] Companies that are registered or regulated by SEBI or stock exchanges or AMFI will not share sensitive client information with any companies that are not registered.

- A Consultation Paper that proposed revisions to the IA Regulations was made available by SEBI earlier in the year 2016. The attempt made by SEBI to broaden the definition of "investment advice" to encompass all forms of communication was the aspect of the 2016 Consultation Paper that stood out the most. By revising the PFUTP Regulations, the paper suggested that those who are not registered investment advisors (RIAs) should be prohibited from providing trading tips and stock recommendations to the general public through various mediums such as text message, email, WhatsApp, and so on. This strategy was given a great deal of criticism and was referred to be regulatory overreach. After taking into consideration the feedback, SEBI made the decision to forego the implementation of such a stringent rule.
- As a result, the Securities and Exchange Board of India (SEBI) still has a long way to go before it can strike a balance between allowing free speech and ensuring that influencers offer information that is factual and objective.

Analysis Utilising Multiple Jurisdictions

[13] "CFA Institute Outlines Policy Recommendations for "Finfluencer" Social Media Content" (January 25, 2024) https://www.prnewswire.com/news-releases/cfa-institute-outlines-policy-recommendations-for-finfluencer-social-media-content-302044268.html, Last visited 2nd April 2024.

Globally, financial regulators have begun taking action against finfluencers who are causing disruptions in the markets. A number of nations, including France, have made it illegal for influencers to promote financial items, including cryptocurrencies, through paid content. France is one of the first countries to do so. A sentence of up to two years in prison and fines of up to 300,000 Euros might be handed down to influencers who fall into violation of this.

Carrying on an unregistered financial services business is considered a criminal crime in Australia, which carries penalties that can range from a prison sentence of up to five years for an individual to fines that can reach into the millions of dollars for a corporation. A criterion that is objective has been established by the Advertising Standards Council of India (also known as "ASIC") in order to assess whether or not the counsel of a financial influencer would be considered to be financial advice. If the income or other benefits of the finfluencer are contingent on the actions of its customers, then there is a high probability of a conflict of interest, and such advice would be equivalent to the counsel of a financial product.

As a result, the ASIC will determine whether or not an AFS license is required after completing a comprehensive examination of the entire image that the finfluencer has left. A code of conduct for finfluencers is also included in the Information Sheet 269 (commonly known as "INFO 269") that was released by Advertising Standards Council of India (ASIC). This document also emphasizes disclosure methods, complete due diligence, and prudence when providing advice.

The European Securities and Markets Authority (also known as "ESMA") has included digital influencers in the category of businesses that engage in unfair business practices. According to the Unfair Commercial Practices Directive (also known as "UCPD"), concealed marketing is not allowed, and influencers who fail to designate sponsored content will be subject to both administrative and civil penalties. It is required by the Market Abuse Regulations that any financial advice or investment ideas be objective, and that any potential conflicts of interest be disclosed in the appropriate manner. In addition, in order to avoid sanctions, those who have influence through social media should make certain that "facts are clearly distinguishable from interpretations, estimates, opinions, and other types of non-factual information."[14]

[14] Namita Shetty, "End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers | India Corporate Law" (*India Corporate Law*, September 13, 2023) https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/, Last visited 2nd april 2024.

Because of this, authorities in a variety of jurisdictions have developed sophisticated methods to govern finfluencers within their countries. An additional layer of protection has been offered by the implementation of self-regulation, which has been accomplished through the dissemination of warnings to consumers and the development of advertising guides, particularly for influencers.

The proposed laws that are presented in the consultation paper appear to be a welcome start in the direction of addressing the negative repercussions that may arise as a result of unregistered finfluencers providing their followers with advice that is biassed and maybe financially motivated. On the other hand, there are a few essential problems concerning the actual execution of these regulations that have not been adequately addressed.

The lack of clarity on the manner in which content that is published by unregistered finfluencers, which is in violation of any current or planned regulations on this topic, will be dealt with is the first significant question that pertains to the implementation of the proposed regulations. Using a variety of social media and content-hosting platforms, such as Instagram, Facebook, and YouTube, today's finfluencers provide investing advice to their audiences. The Information Technology Act of 2000, in conjunction with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021 and the Information Technology (Procedure and Safeguards for Blocking of Access to Information by the Public) Rules of 2009, governs the issues that are currently being discussed in relation to the removal of content from the internet. The processes for the same are laborious and time-consuming; blocking content that violates the statutory framework through this way would be unrealistic and could impede the proper execution of the proposed laws at the same time. By the time the requisite procedures and formalities are finished, it is highly possible that irreparable damage will have been done in terms of influencing retail investors.

It would be good for the securities watchdog to evaluate the applicability of the proposed regulations on non-resident unregistered finfluencers who provide advise to Indian residents. This is a second key point that could be of interest to the watchdog. In the case Securities and Exchange Board of India v. Pan Asia Advisors Ltd., the Supreme Court of India ruled that the jurisdiction of SEBI extends to any individual, even "citizens abroad" and those who are not "corporally present" in India, who commit an act that "affects the legitimate interest of this country." In light of this, it could be desirable to have more clarification regarding the application of the proposed restrictions to such influencers. Additionally, in order to provide investment advice, jurisdictions such as the United States and Hong Kong require investment advisors (or their domestic equivalents) to be registered with regulatory authorities or to get the necessary licences from such authorities. Therefore, it is possible to investigate the possibility of recognising certain finfluencers who are registered in their respective jurisdictions.[15]

On the other hand, the Securities and Exchange Board of India (SEBI) has stated that it intends to take enforcement action against any and all finfluencers who violate the regulations that are already in place. This is despite the fact that the proposed regulations intend to address the threat that is posed by finfluencers by regulating registered intermediaries. Therefore, the question of whether or not the IA and RA Regulations are applicable to finfluencers is an important one that has not been answered for the time being. Finfluencers are described as "effectively unregistered and unauthorised Investment Advisers (IAs) or Research Analysts (RAs)" in the consultation document created by the Securities and Exchange Board of India (SEBI). However, the proviso to Regulation 2(l) of the IA Regulations, which defines "investment advice," expressly excludes "advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public" from the scope of investment advice. This is included in the definition of "investment advice." It would appear that this gives rise to a dilemma regarding the degree to which the legislation pertaining to finfluencers are applicable.

What the Future Holds for India

Since the Securities and Exchange Board of India (SEBI) is still in the early stages of its efforts to demand accountability from influencers, it should seriously consider drawing inspiration from the Australian model.

Given that Indian law places a significant emphasis on registration, SEBI has the ability to establish two categories. The first one is aimed at registered investment advisors (RIAs), which are subject to more stringent qualification criteria, while the second one is working

[15] Guest, "SEBI's Proposed Regulations on Finfluencers: Navigating Unresolved Practicalities - IndiaCorpLaw" (*IndiaCorpLaw*, September 11, 2023) https://indiacorplaw.in/2023/09/sebis-proposed-regulations-on-finfluencers-navigating-unresolved-practicalities.html, last visited 2nd April 2024.

with unregistered financial advisors, who are only need to comply with basic disclosure and due diligence requirements. In order to put this into action, the definition of "investment advisor" will need to be modified such that it encompasses those who offer advice without taking any consideration into account. In addition, it should include any anyone who provides financial advice and receives any form of compensation that is contingent on the actions of consumers. Under the definition of intermediary, the Securities and Exchange Board of India (SEBI) has the authority to establish a new category of finfluencers, as stipulated by Section 11 of the SEBI Act.

RIAs are strongly discouraged from engaging in any kind of association with finfluencers, as stated in the 2023 Consultation document. It is possible that this blanket ban would out to be counterproductive because it will restrict the access that the average person has to investing advice. The AFS licensees in Australia have the ability to engage finfluencers, provided that they not only train them but also monitor and audit the content that finfluencers produce. Once they are employed, finfluencers take on the role of authorised representatives of AFS licensees and are consequently subject to the same regulatory requirements as all other licensees.[16]Due to the fact that AFS licensees are responsible for the behaviour of finfluencers, such a system guarantees that an opportunistic alliance may be maintained while simultaneously protecting the interests of investors. A comparable strategy must to be taken into consideration by SEBI.

There are a number of finfluencers who are purely concerned with the production of instructional videos that are associated with the fundamentals of finance, rather than providing financial advice. According to the Investment Advisory Regulations, the definition of "investment advice" does not differentiate between investment advice that is meant to influence clients and investment advice that is only educational in nature. For the purpose of ensuring that finfluencers are able to teach their audience about financial products without the risk of being held liable, SEBI ought to work towards adopting a definition that is more comprehensive.[17]

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[16]*Michael Chaaya, Arvind Dixit and Simon Johnson, Australia: The rise and regulation of financial influencers, Mondaq [October 26, 2022].*

[17] Anushka Sharma, "'Guidelines for Regulating Finfluencers under Consideration,' SEBI Chief Says" (*CNBCTV18*, March 11, 2024) https://www.cnbctv18.com/personal-finance/sebi-chief-says-guidelines-to-regulate-finfluencers-under-consideration-19243151.htm, Last visited 2nd April 2024.

Introducing fundamental qualification standards is something that SEBI may do in order to guarantee that investors receive competent advice. Finfluencers are individuals who have understanding of the markets, but they may not be licenced professionals such as lawyers, certified financial analysts, or MBAs, as is required for RIAs. Therefore, the only requirement that should be placed on finfluencers is that they meet a minimum qualification criterion.

It is nearly hard for the Securities and Exchange Board of India (SEBI) to monitor the activities of finfluencers on digital platforms, given the complexity of the Indian market, the rapid improvements in technology, and the increased sophistication of privacy measures. For this reason, it is absolutely necessary for SEBI to work along with ASCI in order to establish criteria for the uploading of content that is relevant to finance. It is possible that these standards might be patterned after the INFO 269 and the FTC Disclosures 101 for Social Media influencers. Increasing awareness among finfluencers and establishing a self-check system could be accomplished through the utilisationof examples and case studies.

Both domestically and internationally, the Securities and Exchange Board of India (SEBI) will continue to face challenges such as the ever-changing environment of digital media and the global character of financial markets, which will require agility, vigilance, and coordination.

CONCLUSION AND SUGGESTIONS

SUGGESTIONS

Before taking into consideration any recommendation made by influential people, you should always perform primary due diligence and take into consideration the following elements in order to reduce the possibility of losing your money:

- Conducting research Historical Context of the Influencer: Conduct research on their history and qualifications, such as a website or a LinkedIn page that highlights their skills, experience, and accomplishments. In order to determine whether or not they have knowledge in financial matters, it is important to look for professional qualifications or schooling.

- Always look for independent sources that can validate the claims made by an influencer. This is because independent sources are always reliable. Experts in the financial sector, publications in the business, or government bodies could fall into this category. Seek out a variety of perspectives and conduct research on reputable sources in order to acquire a more in-depth comprehension of the subject matter.
- Take Into Account Your Needs Before putting any financial advise into action, you should take into account your needs and ambitions. It is necessary to take a tailored approach because solutions that are successful for one individual might not be successful for another. You should look for recommendations that are targeted to your goals and circumstances about money.
- Ensure that you have a thorough understanding of the potential risks and advantages associated with any financial decision you make. Make sure you are aware of the potential benefits and drawbacks of any investment before you make it. Conduct research on the financial product or service, and take into consideration the potential impact it could have on your other financial circumstances.
- Seek the Advice of Professionals: If you are unsure about a decision that pertains to your finances, you should seek the advice of a specialist. The knowledge and experience that financial advisors possess enables them to deliver individualised guidance that is customised to your specific circumstances.
- Invest Through Regulated Platforms: Always be sure to invest through regulated and transparent online investing platforms in order to guarantee that your investment decisions are intelligent and based on trustworthy facts.

CONCLUSION

When it comes to the accounting and finance industry, the landscape of influencer marketing is constantly evolving and changing. In this industry, digital savvy and financial expertise are brought together, and it is a field in which instructional content has the ability to have a real and deep impact on the financial health and decision-making of an audience. In other words, the sector is one in which digital savvy and financial expertise are brought together. This revolution is being led by financial influencers, who are at the vanguard of the change that is taking place in the method in which financial knowledge is shared and consumed.

They are taking the initiative in a variety of endeavours, including the management of legislative changes, the utilisation of social media platforms, the collaboration with existing institutions, and the comprehension of global marketplaces. When it comes to the world of finance, which is growing increasingly sophisticated and globalised, financial influencers are more than just conduits for marketing; they are also educators, trend-setters, and trusted advisors. Both the strategies and the effects of influencer marketing within the business will continue to evolve in tandem with the industry's ongoing development. Specifically, this is due to the fact that the sector is always adapting in order to fulfil the wants of a large and sophisticated internet audience.

The act of seeking financial guidance from powerful individuals may appear to be a straightforward process; nevertheless, doing so is not without the inherent risks that are associated with it. The insights that certified financial influencers are able to provide are substantial, and they have the potential to augment the advise that is typically provided. On the other hand, individuals should conduct comprehensive due diligence before acting on any advice offered by influencers. This makes certain that the recommendations are in accordance with the individual's current financial status as well as their goals.

When it comes to making educated judgements about investments that are in accordance with one's own financial objectives, it is essential to take personal responsibility for financial planning and to seek the advice of professionals when it is necessary to do so. As a consequence of this, individuals ought to take an active role in their investment journey and choose opportunities with great care that are in tune with their aims.

The likelihood of investment advisers engaging in activities that are more productive will increase as a consequence of an effective regulation that includes severe penalties. Nevertheless, regardless matter how successful the legislation may be, there will always be a smaller number of people who will break it. This is something that cannot be avoided. This is something that cannot be avoided in any way. In spite of the fact that these criminals might be subject to consequences for their acts, the investors are the ones who end up losing the money that they have laboured so diligently to acquire. In spite of the fact that it has been fourteen years since the Sahara fraud was brought to light, it is asserted that more than one lakh crore of funds that belong to about thirteen crores of investors have not been reimbursed.

The awful reality is that there is no straightforward solution to this issue because of the unfortunate nature of the circumstance. This is the unfortunate fact.

It is possible that the Securities and Exchange Board of India (SEBI) may undertake a comprehensive and strong awareness campaign with the purpose of educating investors and warning them against receiving financial advice that is not correct. This would be an alternative. Because this will provide a huge reach and ease for the investors, online awareness efforts, such as podcasts, videos, or online discussion forums that are licenced by the Securities and Exchange Board of India (SEBI), would be a more effective method. Additionally, this will ensure that the investors will have an easier time understanding the information. In addition, social media platforms are not going anywhere, and neither are fraudulent financial schemes; hence, it is essential to make the most of the opportunities that these platforms provide.

When it comes to the rise of financial influencers in India, there have been both opportunities and issues that have emerged as a result. In order to ensure that the acts of finfluencers are monitored and that malpractices such as misleading opinions or recommendations are reduced, there is an urgent need for a regulatory framework that is both stringent and rigorous. In spite of the fact that finfluencers have been instrumental in bringing about the much-required knowledge of financial matters among the general public, this phenomenon continues to persist. For the purpose of regulating the content that may be found on the internet, it is going to be a challenging endeavour. It is likely that the social media network's enormous and rapid reach could become its greatest drawback.

This is because it is feasible that any content that is regarded to be questionable could have already impacted a large number of investors before it is subjected to examination by regulatory authorities. This could be a significant disadvantage for the platform. In addition, there is the issue of jurisdiction, which refers to the question of whether or not it is possible to access the content that is uploaded to the internet from any location in the globe. Because of the rapid advancement of technology and the continual creation of new applications for social media, it is difficult to assess the level of control that regulatory authorities are able to exercise. This is because of the fact that the technology is always evolving.

It will be an interesting topic of conversation to learn about the strategies that SEBI intends to implement in order to solve these challenges. The formation of effective regulations for influencers, which is the need of the hour, is of equal importance to the establishment of efficient means for the application of these restrictions. Both of these regulations are imperative. Taking this action is done with the intention of preventing any potential loopholes from developing in the future.