



## SEBI disrupting the Finfluencer Industry: proposes reforms to curb unethical practices

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### Introduction

With the world becoming increasingly digital and the advent of the social media revolution, influencer-led marketing has emerged as one of the most important means of brand and product promotion. Finfluencers, i.e., influencers who are (in some cases self-proclaimed) financial experts and provide information and/ or advice on topics such as investing in securities, personal finance, banking products, insurance, real estate etc., gained immense following as retail investors rushed into the stock markets during the COVID-19 lockdown and looked to trusted voices for investment advice.

### Need for a regulatory framework

While there are Finfluencers who provide sound financial advice, there have been several instances where Finfluencers who are not registered with the Securities and Exchange Board of India (**SEBI**) have been found to have indulged in unethical practices that endangered the financial position of their followers such as:

- (i) providing falsified/ fake trading records which inflated the performance of their portfolio to gain credibility and followers;
- (ii) indulged in 'pump-and-dump' schemes which led to their enrichment to the detriment of their followers;

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- (iii) recommended products and schemes to their followers (which were subsequently found to be risky or fraudulent) for which they receive fees, commissions or other compensation based on such recommendations, without disclosing such commercial arrangements to the followers; and
- (iv) tying up/ renting Investment Advisers or Research Analysts to evade the purview of SEBI and to comply with guidelines on influencer advertising prescribed by the Advertising Standards Council of India (**ASCI**)<sup>i</sup>.

Despite SEBI having taken action against certain errant Finfluencers and ASCI having prescribed guidelines on influencer advertising, in light of the proliferation of Finfluencers and the increasing reliance placed by SEBI registered intermediaries/ regulated entities (**RI/RE**) on Finfluencers for promoting their products and services, the need was felt for putting together a framework to address the inherent conflict of interest in the business practices adopted by the Finfluencers and to create an eco-system which does not incentivise malpractices such as those listed above.

### **Proposed guidelines for limiting unregistered Finfluencers' activity**

Accordingly, SEBI released a consultation paper on 25 August 2023 titled "Consultation Paper on Association of SEBI Registered Intermediaries/ Regulated Entities with Unregistered Entities (including Finfluencers)" (**Consultation Paper**)<sup>ii</sup>, seeking public comments on its proposal to restrict the association of RI/REs with unregistered Finfluencers.

SEBI has also released another consultation paper on 25 August 2023 titled "Consultation Paper on Mechanism for Fee Collection by SEBI Registered Investment Advisers and Research Analysts"<sup>iii</sup>, which proposes to set out a closed ecosystem for fee collection by SEBI Registered Investment Advisers and Research Analysts which is intended to ensure payments made by investors reach only the registered Investment Advisers/ Research Analysts and help identify, isolate and avoid unregistered entities who would be unable to access this closed ecosystem. For the purpose of this note, we have focussed on the Consultation Paper.

The Consultation Paper sets out several reforms aimed at regulating Finfluencers and ensuring greater transparency and accountability. Some of the key proposed regulations include:

#### 1. Restrictions on RI/REs associating with unregistered Finfluencers

The Consultation Paper provides that RI/REs should comply with the following:

- (a) not have, directly or indirectly, any association/ relationship (monetary or non-monetary) with unregistered Finfluencers for the promotion or advertisement of their products or services;
- (b) not share any confidential information of their clients with any unregistered Finfluencers;
- (c) not pay to any unregistered Finfluencers any trailing commission based on the number of referrals as referral fee; and
- (d) take active measures to dissociate themselves from any unregistered entity using their name, product or service and take necessary action to bring it to the notice of the concerned enforcement agency.

## 2. Compliance by registered Finfluencers

The Consultation Paper provides that Finfluencers who are registered with SEBI or stock exchanges or the Association of Mutual Funds of India should comply with the following:

- (a) display their registration number, contact details, investor grievance redressal helpline, and make appropriate disclosure and disclaimer on any posts;
- (b) fully adhere to the code of conduct under the terms of their relevant registration; and
- (c) comply with the advertisement guidelines issued by SEBI, stock exchanges and SEBI-recognised supervisory body from time to time.

## **Conclusion**

The framework SEBI is proposing to put in place to curb the disingenuous practices adopted by unregistered Finfluencers should create a safer and more transparent environment for both Finfluencers and their followers. The framework should help maintain the integrity of financial advice and the financial markets as a whole, even though its enforcement will continue to be an ongoing task for SEBI. Further, as technology develops at an ever-increasing pace, it will be important for SEBI to keep track of the developments and evolve the framework to suit the needs of the time. At the same time, SEBI will also need to walk a tightrope between ensuring accountability and at the same time not suppressing financial literacy in which Finfluencers can play an important role.

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<sup>i</sup> Guidelines for Influencers Advertising in Digital Media issued by the Advertising Standards Council of India on 27 May 2021, as amended

<sup>ii</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-\\_75932.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html)

<sup>iii</sup> [https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-mechanism-for-fee-collection-by-sebi-registered-investment-advisers-and-research-analysts\\_75933.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-mechanism-for-fee-collection-by-sebi-registered-investment-advisers-and-research-analysts_75933.html)