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Analysing developments impacting business

FINFLUENCERS, BEWARE!

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Defining 'finfluencers'

The buzz word 'finfluencers' has reportedly been making the rounds in the hallways of Securities and Exchange Board of India (SEBI) since early 2022.

'Finfluencers' is a term which is colloquially used for financial influencers and content creators, who by virtue of their popular status, the number of followers / subscribers and their reach on various social media platforms, are in a reasonable position to influence the decisions in relation to securities of large number of people through promotions or recommendations. They create content on all kinds of financial information, viz., investment strategies, personal finance, analysis of sophisticated financial products, among others.

Through their content curation and engagement skills, finfluencers tend to acquire large number of targeted followers / subscribers, thereby enabling the creation of several monetary opportunities for them. In other words, due to their ability to influence and their high reach, such influencers start promoting their own products and services or partner with various financial brands for the promotion of third-party products and services. Consequently, such business opportunities and material benefits may lead the finfluencers to misuse their status.

Why do they need to be regulated?

The 'non-expert' financial advice provided by finfluencers on social media platforms is often in the form of a short and easily digestible written post or a quick reel, among others. These posts do not generally present all the nuances involved in a particular investment strategy, personal finance strategy, or financial product, among others. Such financial advice, if taken by the consumers (especially the financially illiterate consumers) on an as-is basis, may potentially cause significant financial and non-financial harm to them. Accordingly, appropriate regulations must govern the finfluencer community.

Current regulatory regime

➤ **Investment adviser regulations.**

Under the SEBI (Investment Advisers) Regulations, 2013 (IA Regulations), SEBI presently [regulates](#) 'investment advisers' or individuals engaged in the business of providing 'investment advice' for consideration to clients. Under the aforesaid regulations, 'investment advice' is defined as any advice (oral or written) in relation to investing in or dealing in securities and investment for the benefit of the client.

However, such 'investment advice' does not include investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public. The IA Regulations impose registration requirements upon investment advisers. Additionally, while the net-worth requirements are not very taxing, individuals are required to meet the stringent criteria in relation to academics and professional experience to be able to obtain the investment adviser certification.

Given that investment advisers charge a certain fee for their advice and that investment advice provided through any electronic medium available to the general public is not governed by the IA Regulations, many influencers may not fall within the ambit of these regulations. However, in May 2023, SEBI [fined](#) more than INR 6 crore on a influencer, P R Sundar (along with his firm and his co-promoter) and prohibited them from conducting his business for one year. P R Sundar had a blog through which he offered various customised packages for their investment advisory services. SEBI noted that P R Sundar, through his firm, was recommending purchasing, selling and dealing in securities to various investors, viz., providing investment advice as per IA Regulations, without being registered as an investment adviser with SEBI. It must be noted that the order does not discuss the regulatory outlook of SEBI in relation to influencers.

➤ **Regulations governing fraudulent and unfair trade practices in the securities market**

The SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations) were [framed](#) to counter the manipulative, fraudulent and unfair trade practices within the securities market in India.

In January 2022, through the '*Interim Order in the matter of Svarnim Trade Udyog Limited*', SEBI [observed](#) that there has been a market abuse through stock recommendations using the social media channel, Telegram. Further, in March 2022, through the '*Interim Order in the matter of Stock Recommendations using YouTube in the scrip of [Sadhna Broadcast Limited](#)*' and the '*Interim Order in the matter of Stock Recommendations using YouTube in the scrip of [Sharpie Broadcast Limited](#)*', SEBI observed that several noticees had engaged in manipulative and unfair trade practices, through paid promotions on their YouTube channel. In both these orders, SEBI observed that the PFUTP Regulations, among others, had been violated. It must be noted that the aforesaid orders too do not discuss the regulatory outlook of SEBI in relation to influencers.

➤ **Consumer protection regulations**

Influencers promoting investment products and services of their own or those of third parties can be viewed to be providing a 'service' under the Consumer Protection Act, 2019 (CPA). CPA and the rules and regulations thereunder prohibit false and misleading advertisements. Further, the guide on 'Endorsements Know-hows! - for celebrities, influencers and virtual influencers on social media platforms' (Endorsements Guide) [issued](#) under the CPA recently seeks to prevent misleading advertisements on social media platforms led by celebrities, influencers and virtual influencers. The Endorsements Guide is addressed to celebrities and influencers endorsing various products and services on the internet, where there is a material connection between the endorser and the advertiser of such products or services. The guide broadly imposes two types of restrictions upon the influencers, viz., transparency and disclosure requirements as well as due diligence requirements.

It must be noted that while the aforesaid consumer protection regulations largely cover influencers promoting investment products and services of their own or those of third parties, they may not cover all kinds of influencers.

The way forward

In light of the above, the present regulatory regime does not adequately address the finfluencer phenomenon. While finfluencers undertaking the business of an investment adviser, or promoting investment products and services, or undertaking activities that amount to manipulation of the securities market may be covered under the aforesaid laws, there is a need for a tailor-made framework for the finfluencer industry as a whole.

In a consultation paper on 'draft SEBI (Prohibition of Unexplained Suspicious Trading Activities in the Securities Market) Regulations, 2023' [released](#) in May 2023 (May Consultation Paper), SEBI has defined the term 'influencer' for the first time to mean any person who is reasonably in a position to influence the investment decision, in securities, of a reasonably large number of persons. While the scope of the May Consultation Paper does not include regulations for finfluencers, recent reports [suggest](#) that SEBI will soon publish another consultation paper to address the same. Among others, the upcoming consultation paper is [expected](#) to restrict SEBI-regulated entities from maintaining any transactional relationship (such as, advertising or equity or profit sharing or referral fees, etc.) with unregistered entities.

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