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Specified Digital Platforms: SEBI's New Playbook for Finfluencers

On 22 October 2024, the Securities and Exchange Board of India (SEBI) issued a Consultation Paper (Consultation Paper) on recognition of Specified Digital Platforms (SDP) through which entities regulated by the SEBI (REs) may associate with individuals offering insights relating to the securities market (Finfluencers). The Consultation Paper contains a Draft Circular (Draft Circular) which, *inter alia*, introduces an enabling framework for Finfluencers to work with REs.

BACKGROUND

The Finfluencer industry has grown rapidly and garnered a lot of audience in the recent past primarily due to the ease with which they break down complex financial advice and structures for consumers. Such growth is also attributable to the recent surge in the Indian stock market and increase in the extent of retail demat accounts which has widened the audience base for Finfluencers.

SEBI took note of such unregulated growth along with the alarming trend of Finfluencers enticing followers to purchase products, services or securities in return for undisclosed compensation from REs, and came out with a Consultation Paper on 25 August 2023. To achieve the proposals outlined in this consultation paper and with a view to restrict the association of REs with unregistered Finfluencers, SEBI notified: (a) the SEBI (Intermediaries) (Amendment) Regulations, 2024; (b) the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024; and (c) the SEBI (Depositories and Participants) (Second Amendment) Regulations, 2024 on 29 August 2024 (together, the "Amendments").

The Amendments restricted any association between REs and unregistered Finfluencers who engage in or may engage in activities such as offering of investment advice or making a claim of return or performance in relation to a security (Regulated Activities).

However, to accommodate association of REs with Finfluencers who share genuine investor education content or who have otherwise obtained relevant registration with

SEBI, a carve-out was made in the Amendments permitting such association through SDPs.

WHAT IS AN SDP?

SEBI has defined SDPs as a digital platform which enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services, and which has a mechanism in place to ensure preventive and curative measures if any unregistered Finfluencer engages in Regulated Activities or undertakes any activity which can only be performed upon obtaining relevant registration with SEBI. In other words, the SDP would be responsible to ensure that the financial content offered by Finfluencers is within the purview of the prescribed framework.

Through the SDP, Finfluencers would be able to share content related to the securities market and provide education material. However, they will only be allowed to engage in Regulated Activities if they have obtained the relevant registration with SEBI. For instance, claims regarding performance or returns of a security or a basket of securities can only be provided by a registered Research Analyst or any other intermediary permitted to do so.

The Draft Circular, *inter alia*, outlines a list of preventive and curative measures which an SDP must have in place.

PREVENTIVE MEASURES

SDPs are required to implement preventive measures as a pre-requisite to be recognised by SEBI. These measures are pre-emptive steps to prevent fraud and impersonation by individuals onboarded on the SDP.

We have outlined the prescribed preventive measures below:

#	PARTICULARS	ACTIONABLE
1	Policy on collaboration with SEBI.	Establish a policy for sharing information related to the securities market with SEBI, if required, and for acting on the basis of information and inputs received from SEBI.
2	Ability to identify and analyse content and/or advertisement.	Utilise technology solutions (including artificial intelligence (AI) and machine learning (ML) tools) to identify and analyse whether the content / advertisement: <ul style="list-style-type: none"> a. pertains to the securities market; b. is published by a SEBI-registered intermediary / entity or its agents; c. is in the nature of Regulated Activities; if so, it must be ensured that the entity providing such recommendation or advice is permitted by SEBI to do so; d. is solely intended to provide for investor education related to the securities market; and e. redirects to other platforms (e.g., Telegram, WhatsApp) thereby functioning as an advertisement with a call to action.
3	Policy on violations related to securities market.	Adopt a policy to take action against violations relating to the securities market (such as unregistered Finfluencers engaging in Regulated Activities).
4	Policy on impersonation related to securities market.	Adopt a policy to enforce strict measures against impersonation of SEBI, its officials, REs and their agents. Existing impersonation policy can be used if it meets the requirements.
5	Policy on allowing the entities that provide securities market related content and/or advertisement to operate on the platform.	Adopt a policy to allow content / advertisement related to the securities market only when offered by the following entities: <ul style="list-style-type: none"> a. SEBI-registered or recognized intermediaries, entities, or their agents; or b. Entities exempt under the regulatory framework. <p>However, if the content / advertisement is solely for the purpose of investor education, with no direct or implied advice, performance claims, or promotions of securities-related products or services, it may be offered by unregistered entities as well.</p>
6	Verified label / badge system for REs and their agents.	Implement a system to provide a verified badge to REs and their agents, helping users distinguish them from unregistered entities and enabling flagging of unregistered content for review.
7	Effective action based on the policies to the satisfaction of the SEBI.	A policy to ensure action against persons involved in fraud, impersonation, unregistered activities, and unauthorised claims related to the securities market.

#	PARTICULARS	ACTIONABLE
8	Policy on transparency and accountability.	The policy should provide for submission of periodic and ad-hoc reports to SEBI, detailing actions taken on fraud, impersonation, unregistered activities, and unauthorised claims related to the securities market.

CURATIVE MEASURES

Given that the majority of preventive measures are based on AI and ML, such measures cannot be considered as fully effective. In such cases, where the preventive measures have failed to effectively prevent fraud or impersonation or restrict unregistered Finfluencers from engaging in Regulated Activities, SDPs are required to implement specific curative actions / measures which we have listed below.

#	PARTICULARS	ACTIONABLE
1	Ability to analyse the content and/or advertisement on the platform.	Implement a policy and system to analyse and address violative content and entities on an ongoing basis, using advanced artificial intelligence and machine learning tools.
2	Mechanism for escalation of unlawful content / advertisement and entities.	<p>a. <u>Escalation by SEBI and REs.</u></p> <p>Implement mechanism for SEBI and REs to report unauthorised content / advertisement on the SDP and unregistered players engaging in Regulated Activities.</p> <p>b. <u>Reporting / escalation by platform users.</u></p> <p>Allow SDP platform users to report or flag misleading content and unauthorised entities, generating intelligence for further examination.</p>
3	Action on reported content / advertisement.	<p>Have a policy to promptly verify reported content / entities and act within a specified turnaround time such reported content, advertisement / entities. Such actions include:</p> <p>a. Removing the reported content / advertisement, post or chat.</p> <p>b. Blocking the content, advertisement, handle, post, profile or chat.</p> <p>c. Preventing the sharing of the reported content / advertisement.</p> <p>d. Deactivating or disabling reported links, videos, etc.</p> <p>e. Blacklisting entities which are repeat offenders.</p>

OTHER ASPECTS

The Draft Circular also provides for the type of actions to be taken by SDPs, turnaround time, dispute resolution measures and implementation timelines.

a. Type of action.

The SDP must have the capability to deal with the violations with the specified measures as mentioned below:

#	MEDIUM	TYPE OF ACTION
1	Advertisement / Content	Preventive and curative
2	Channel	Removal of channel on three instances of violation (with respect to content)
3	Entity	Blacklisting of entity on three instances of violation (with respect to channel)

b. Turn-around-time (TAT).

SDPs must have the following policy on TAT to take action for violations:

#	MEASURES	ADVERTISEMENT	CONTENT / CHANNEL / ENTITY
1	Preventive	Before the advertisement goes live on the platform	24 hours
2	Curative	24 hours	72 hours

c. Dispute resolution.

(i) *Between SDP and entities.* Either party may approach SEBI for disputes over content / advertisement, with the decision of SEBI being considered as final.

(ii) *Between SDP and SEBI.* The SDP may appeal to the Securities Appellate Tribunal for disputes with SEBI.

d. Recognition as an SDP.

Digital platform operators who are willing to comply with the aforesaid framework are required to apply for recognition as an SDP within three months from issuance of the Draft Circular.

COMMENTS

The proposed recognition of SDPs by SEBI marks a significant regulatory milestone in the rapidly expanding Finfluencer industry. SEBI has struck a balance by allowing investor education content to be shared by Finfluencers without entering the domain of unregistered investment advisory activities. The Draft Circular serves as an enabler for unregistered Finfluencers to associate with REs via SDPs which was otherwise not permitted by the Amendments. If implemented, REs will be comfortable in associating with Finfluencers since SDPs will bear the responsibility of ensuring that Finfluencers remain within the regulatory boundaries prescribed by SEBI. Such measures are expected to enhance awareness amongst investors, who often rely on information provided by Finfluencers on social media platforms.

However, the Draft Circular places significant reliance on AI and ML tools to distinguish between investment advice / recommendations / claims on one hand and investor education content on the other. Given the fine line separating the two, questions can be raised about how effectively such technologies can interpret nuanced content in real-time. While AI can assist in identifying patterns, practical monitoring of all content may be an ambitious goal and it remains to be seen whether SDPs can consistently enforce this distinction, especially as / when Finfluencers adopt creative ways to frame advice / recommendations as educational content.

Further, while the Draft Circular establishes a clear compliance requirement on SDPs, it

leaves open questions regarding the potential liability for REs if the SDP's preventive and curative measures prove inadequate. For example, if an unregistered Finfluencer manages to engage in providing investment advice or recommendation due to a lapse in oversight by the SDP, it is unclear on whether REs could face regulatory action for associating with such Finfluencer. This could pose a challenge for REs which may look to ringfence their liabilities in case of any non-compliance by SDPs.

Lastly, the Draft Circular is silent on the operational aspects such as fee structure for SDP services resulting in uncertainties on the

cost implications on REs. It is not clear if SDPs will charge Finfluencers or REs directly or introduce a hybrid fee-sharing arrangement. Further, the Draft Circular does not address whether SEBI will regulate or cap such fees with an intent to prevent fee exploitation. Thus, clarity on these aspects may be required for REs and digital platforms who wish to seek recognition as an SDP.

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