

SEBI'S VIGILANCE IN REGULATING FINFLUENCERS: ENSURING TRUST IN INVESTORS PROTECTION

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INTRODUCTION

The recent news of SEBI's stepping in the realm of banning finance influencers such as P.R Sunder, Md. Nasir Ansari, Arshad Warsi etc, who spreads advice, opinion, suggestion related to capital market transactions through their social media channels and accounts has been widespread in the Securities market. The securities market which encompasses the act of buying, selling and trading of securities which heavily deals with money, is also not exempt from the risks, scams, and other illicit activities that permeate other markets. Consequently, making it susceptible to market manipulations, which involve artificially influencing the price of securities through fraudulent schemes, inducement, or the dissemination of false information.

The market manipulation though not nascent but has intensified significantly since the COVID-19 pandemic, with the proliferation of financial influencers commonly known as "finfluencers"- who have amassed considerable public reach through social media platforms like YouTube, Telegram, Instagram, and X (formerly Twitter). Some of these influencers, wielding their substantial influence, are controlling and swinging the investment decisions of mainly retail investors, potentially exposing their hard-earned money to undue risks and diminishing returns and trust in the securities market and ultimately posing threat to the Indian economy.

Not all the finfluencers are market manipulators as finfluencers can also include those people who create informative content and provides financial knowledge solely for investors education but the other category of finance influencers which imposes risks to the investor's money is one that has direct connection with investment advice and market decision which includes trading influencers who are self proclaimed experts giving financial advice with vested interests and the type of influencers.

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Securities and Exchange Board of India (hereinafter referred to as SEBI) being the market regulator formed with its clear objective to protect interest of the investors and to develop and regulate the Indian securities market. SEBI has now tightened its grip and expanded its claw to stop these market manipulations and made its decision clear to regulate the finfluencers and sanctions in the form of penalty and debarring access against the unregistered finfluencers. SEBI recently shook hands with the Advertising Standards Council of India to ensure the unbiased and equitable distribution of financial advice and knowledge to the investors.

SEBI'S PROPOSED CONSULTATION PAPER AND CRACKING DOWN OF FINFLUENCERS

This digital era has revolutionized the communication process where people consume a lot of information including financial advice. SEBI recently has come up with a consultation paper, where SEBI proposed a certain sweeping changes including foremost complete disconnection of SEBI regulated entities with any entities including finfluencers who chose not to get registered with SEBI and limiting the association of SEBI registered intermediaries/regulated entities and their agents/representatives with unregistered entities (including finfluencers)¹.

The consultation paper highlights the business model of them as that many of these unregistered or unregulated finance influencers promote financial products and services in exchange for various forms of compensation, including referral fees, non-cash benefits, direct compensation from social media platforms, and profit sharing arrangements.²

SEBI is concerned that the registered intermediaries might give leverage to these unregistered finance influencers to promote their product and services, potentially misleading investors and compromising market integrity.

Also, the paper suggest that the registered entities shall limit their association with these unregistered entities including finfluencers and can take necessary steps including filing case

¹ Securities and Exchange Board of India, 'Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers)' [August 25, 2023]. ("ConsultationPaper"). <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>

² Securities and Exchange Board of India, 'Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers)' [August 25, 2023], ("ConsultationPaper") clause 3.5.

under section 420 of Indian Penal Code³ for any fraud and impersonation which may be applicable on a case to case basis.

Moreover as according to the Guidelines for Influencer Advertising in Digital Media⁴ (ASCI) which defines influencers as ‘*someone who has access to an audience and the power to affect their 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*’, has issued guidelines for influencers advertising in the digital media platforms mainly through their channel in different forums in context of advertisement and personal views including advice, opinions and thoughts.

EXISTING LEGAL FRAMEWORKS AND SEBI'S ACTION

Whosoever has dealt with the securities market in a manipulative, deceptive, fraudulent way has come under the ambit of SEBI Act, 1992 and within the regulations formed through the power conferred under section 30 of the Act.⁵

Clause c of Section 12A of the SEBI Act clearly states that No person shall directly or indirectly Engage in any fraudulent or deceptive act, practice, or course of business related to the issuance or trading of securities in transaction in the market.⁶ The most important regulation in this regard is SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) (PFUTP) Regulations of 2003⁷ which covers issues of dealing in the securities market with fraudulent, deceive, inducement, falsely disseminating information, planting false and misleading news etc. Regulation 2 which includes the definition of '*dealing in Securities*' which covers the act of buying, selling, subscribing of any securities and tractions in securities market but now in the amended definition a person need not have to be 'transacted', mere 'Inducement' also made covered under the above definition⁸ thus making the ambit to cover finance influencer or finfluencer crystal clear in this direction.

³ Indian Penal Code, 1860, s. 420.

⁴ Advertising Standards Council of India, Guidelines for Influencers Advertising in Digital Media [May 27, 2021] (“Advertising Guidelines”).

⁵ Securities and Exchange Board of India Act, 1992, Act (15 of 1992).

⁶ Securities and Exchange Board of India Act, 1992, Act 15 of 1992, s. 12-A(c).

⁷ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [Last amended on January 25, 2022] (“SEBI (PFUTP) Regulations, 2003”)

⁸ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [Last amended on January 25, 2022], reg. 2(1)(b) (“SEBI (PFUTP) Regulations, 2003”).

PFUTP Regulations, 2003 exhaustively provides that spreading false or misleading information or recommendations through any media, whether physical or digital, with reckless disregard for its accuracy, with the intent to influence the investment decisions of securities traders shall be deemed to be a "manipulative fraudulent or unfair trade practice"⁹. In addition the regulation prohibits the dissemination of information or advice in a careless or negligent manner which is likely to influence the judgment of investors trading in securities.¹⁰

Furthermore, the department of consumer affairs has issued endorsement know-hows in April that when there is a material connection between an advertiser and celebrity/influencer that may affect the weight or credibility of the representation made by the celebrity/influencer it has to be disclosed to the target audience in a manner that it should guide the consumer thereby safeguarding their interest.¹¹

SEBI's "Advertisement code for Registered Investment Advisers (RIA) and Research Analysts (RA)" mandates that registered IAs and RAs obtain SEBI approval prior to disseminating any form of communication or advertising material, including those on social media platforms.¹² Nevertheless, it is important to note that this particular code solely pertains to RIAs and RAs, and does not encompass influencers.

As of March 2023, the number of IAs registered with SEBI stands at 1,301.¹³ In response to instances of unscrupulous agents misusing their licenses, SEBI has implemented stricter regulations for IAs and RAs. As RIAs and RAs possess professional qualifications that enable them to provide financial advice, they are bound by various regulatory frameworks. Additionally, they are obligated to disclose any potential conflicts of interest however, it is worth mentioning that SEBI has yet to establish regulations for unregistered financial influencers.

⁹ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [Last amended on January 25, 2022], reg. 2(2)(k) ("SEBI (PFUTP) Regulations, 2003").

¹⁰ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [Last amended on January 25, 2022], reg. 2(1)(c)(5) ("SEBI (PFUTP) Regulations, 2003").

¹¹ Department of Consumer Affairs, Endorsements Know-hows! (20-1-2023) [Online]. Available from: https://consumeraffairs.nic.in/sites/default/files/filefield_paths/Endorsement_K. [Accessed 27 November 2023].

¹² Securities and Exchange Board of India (SEBI), Advertisement Code for Investment Advisers(IA) and Research Analysts (RA) [April 5, 2023].

¹³ Securities and Exchange Board of India (SEBI), List of Investment Advisers [Online]. Available from: <https://www.sebi.gov.in/sebiweb/other/OtherAction.do?doRecognisedFpi=yes&intmId=13> [Accessed 27 November 2023].

RECENT SEBI'S ACTION AGAINST FINANCE INFLUENCERS OR FINFLUENCERS

The Securities Exchange Board of India being the watchdog of the Indian Securities has always strived for the investors protection thereby ensuring effective and efficient development of the Securities market and has consistently taken note of the impact of social media finance influencers on the investors who are looking for opinions or views in order to gain advantage. As we all have come across of various advertisement in our day to day life where these social media influencers giving tips, attract through lucrative charts and motivational speech and appealing to follow them through telegram to Youtube.

SEBI recently in the month of October, 2023 banned and imposed penalty of around 17 crore illegal gains to Finfluencer *Mohammad Nasiruddin Ansari*¹⁴ and others who was providing the recommendations of buy/sell through social media in the name of “*Baap of Charts*” related to securities market in the garb of providing financial education by selling of different courses to the gullible investors and also offering investment advice without having SEBI registration violating SEBI (Investment Advisers regulation, 2013).

In another leading order SEBI has banned Finfluencer P.R. Sundar and fined for regulatory violations in the matter of *Mansun Consultancy Pvt. Ltd.*¹⁵ as P.R. Sundar was providing financial advisory services through a site named “www.prsundar.blogspot.com” without having the required registration from the SEBI and collecting fees in lieu of the services provided in the form of various packages.

In much highlighted case of *Sadhana Broadcast Limited*¹⁶ and in the case of Stock Recommendations using YouTube in the scrip of *Sharpline Broadcast Limited*¹⁷ the promoter group of these companies in collusion with the youtube content creators and influencers marketed the false facts and figure thereby misleading to lure investors by creation of false interest to the scrips including the actor Arshad Hussain Warsi and Once these unsuspecting

¹⁴ Securities and Exchange Board of India, Interim Order cum SCN in the matter of unregistered investment advisory activities of Mohammad Nasiruddin Ansari/ Baap of Chart, 25 Oct, 2023.

¹⁵ Securities and Exchange Board of India, In the matter of Mansun Consultancy Pvt. Ltd, May 25, 2023.

¹⁶ Securities and Exchange Board of India (SEBI), Interim Order in the Matter of Stock Recommendations using Youtube in the scrip of Sadhna Broadcast Limited, [March 2, 2023].

¹⁷ Securities and Exchange Board of India (SEBI), Comfirmatory Order in the Matter of Stock Recommendations using Youtube in the scrip of Sharpline Broadcast Limited, November 2, 2023].

investors entered the scrip, it is claimed that the aforementioned entities sold their shares at an exaggerated price violating SEBI Act, 1992 and SEBI (PFUTP) Regulations, 2003.

Also, in a recent order of SEBI in the matter of *Stock Recommendation using Social media Channel (Telegram)*¹⁸ the board has impounded INR 2,84,29,948 and restrained the concerned finfluencer providing financial advice through research and data accessing the securities market until further order who was the running telegram channel 'bullrun2017' and were not registered neither as registered Investment advisor nor research analyst and unfairly charging fees to their subscriber. The person involved in violating SEBI(Prevention of Fraudulent and Unfair Trade Practises) Regulations, 2003 as taking positions in small cap companies in bulk quantities and instigating other to take position to other and sending messages in the group to others that this position will have the price rise and when prices went up they make the other contrary position thereby making profits.

Thus, these orders and actions of SEBI are leading steps of the regulators in safeguarding the interest of the investors against these Finfluencers who have vested interest with profit making and befooling the gullible investors. The more stringent provision with adherence for the online community in this age is the need of the hour.

CONCLUSION

The Indian Securities Market is the backbone of the Indian Economy and therefore it is of utmost priority of the regulators to preserve the interest of investors from market manipulation with its regulatory vigilance where SEBI's necessity in the regulation of finfluencers is undeniable. Everyone from Finance Minister Smt. Nirmala Sitharaman to SEBI Chairperson Madhabi Puri Buch are bewareing investors from the influence of Unregistered finfluencers without having any credentials and trying ways empowering investors through investor education and financial literacy to the citizens. Lastly, the size of the social media influencer large which is expected to grow in the coming years and the proposed regulation of financial influencers by SEBI is a great step ensuring the market integrity and development of the market to encounter the challenges in the near future. To conclude, we have to understand before investing that it is our hard earned money which has to be invested wisely as no one is better

¹⁸ Securities and Exchange Board of India, Interim Order in the matter of Stock Recommendations using Social Media channel Telegram, Jan 12, 2022.

or no one is worse, just trust no one in the securities market blindly and have to be mindful in our approach before investing.

