

SECURITIES AND EXCHANGE BOARD OF INDIA
Memorandum to the Board

DRAFT REGULATIONS ON INVESTMENT ADVISORS

1. Objective

1.1. This memorandum proposes the SEBI (Investment Advisors) Regulations, 2012 and seeks consideration and approval of the Board for the same.

2. Background

(The details have been excised for reasons of confidentiality)

2.1. Subsequently, the concept paper on Regulation of Investment Advisors was also placed on SEBI website on September 26, 2011 for seeking public comments.

(The details have been excised for reasons of confidentiality)

2.2. A copy of the concept paper and an analysis of public comments are given in **Annexure D and E** respectively.

3. Power to Regulate Investment Advisor

3.1. Section 11 (2) (b) of SEBI Act empowers SEBI to register and regulate working of investment advisors and such other intermediaries who may be associated with securities market in any manner.

3.2. Section 12 (1) of SEBI Act provides that investment advisor and such other intermediaries which may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the condition of a certificate of registration obtained from SEBI in accordance with regulations made under SEBI Act.

4. Scope of the Regulation

4.1. It is proposed to register and regulate individuals, body corporate and partnership firms who for consideration, are engaged in the business of providing personal investment advice to investors or other persons or group of persons including any person who holds himself as an investment advisor, by whatever name called. A body corporate offering Investment Advisory services

shall ensure that such activity is segregated from other activities through a separately identifiable department or division.

- 4.2. Advice exclusively on non-securities market which is regulated by sectoral regulators through registration etc. shall be outside the scope of these regulations. However, advice on the portfolio which contains securities or investment products shall be covered within the scope of these regulations.
- 4.3. Financial Planning Service is covered.
- 4.4. The Representatives of Investment Advisor which are body corporate and the Fund Managers who are employees or advisors of Mutual Funds or Asset Management Company or Alternative Investment funds are also required to register.
- 4.5. A Bank which has been permitted by RBI to undertake investment advisory services through a subsidiary or a separately identifiable department or division of a Bank shall seek registration under these regulations.
- 4.6. A body corporate which offers investment advisory services through a separately identifiable department or division shall segregate such activity from their other activities in a manner as may be specified.
- 4.7. The act of giving advice will be regulated under this regulation, whereas the regulation of selling and mis-selling of products, if any, would be solely under the purview of the product regulators as the Investment Advisor would not be selling products. The regulation covers only the “act of advising” and therefore issue of suitability & appropriateness of advice has been covered.

5. Exemption from Regulation

- 5.1. The following have been exempted from the purview of the Regulation:
 - 5.1.1. Any person giving general comments in good faith in regard to trends in the financial or securities market or the economic situation and where such comments do not specify any particular securities or investment product.
 - 5.1.2. Investment advice given without any consideration through newspaper, magazines, any electronic medium, or a broadcasting medium, which is widely available to the public.

- 5.1.3. Any insurance agent or broker offering investment advice solely in insurance products and are registered with IRDA for such activity.
- 5.1.4. Any pension advisors offering investment advice on pension products and are registered with PFRDA for such activity.
- 5.1.5. Distributors registered with AMFI who receive fees from investors under the SEBI (Mutual Fund), 1996 Regulations and Circulars.
- 5.1.6. Advocates, solicitors and law firms who provide any investment advice to their clients solely incidental to their legal practice.
- 5.1.7. Members of ICAI, ICSI, ICWAI, ICFA and Actuarial Society of India who provide investment advice to their clients solely incidental to their professional service.
- 5.1.8. Stock Brokers, Sub-brokers, Portfolio Managers and Merchant Bankers registered under respective Regulations, who provide any investment advice to their clients solely incidental to their primary activity.

Such intermediaries shall nonetheless comply with obligations in respect of Investment Advisor specified under these Regulations.

- 5.1.9. Any other persons or entities as may be specified by the Board.

6. Eligibility Criteria

- 6.1. An individual or a partner or a Representative of a body corporate offering investment advice shall;
 - 6.1.1. have a post graduate degree or diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial or be a graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or fund or asset or portfolio management.
 - 6.1.2. Obtain a certification on Financial Planning or fund or asset management or investment advisor if provided by NISM or FPSB, or any such certification from an institution accredited by NISM.

Existing investment advisors will be given two years time to obtain such certification.

6.2. Investment Advisors who are body corporate shall have a net worth of not less than Rupees twenty five lakhs.

6.3. Investment Advisors who are individuals or partnership firms shall have net tangible assets of not less than rupees five lakhs.

6.4. The applicant needs to be a fit and proper person.

7. Obligations and Responsibilities

7.1. An Investment Advisor shall inter alia;

7.1.1. act in a fiduciary capacity and the interest of its clients.

7.1.2. not divulge any confidential information about its clients.

7.1.3. abide by Code of Conduct as specified in Third Schedule.

7.1.4. conduct risks profiling and risk assessment of the investor.

7.1.5. ensure that all investments on which investment advice is provided should be suitable and appropriate to the risk profile of the client.

7.1.6. maintain written records relating to investment advisory services for a period of 5 years.

7.1.7. conduct yearly audit in respect of compliance with regulation.

7.1.8. maintain proper system and procedure for redressing grievances of clients.

7.1.9. not employ any device or scheme to defraud any client or prospective client.

8. Conflict Resolution

8.1. To address the conflict, the investment advisors are required to;

8.1.1. segregate their other specified activities from their activity as an investment advisor in a manner as specified.

8.1.2. disclose all consideration that they will receive if the client chooses the recommended security or investment.

- 8.1.3. Investment Advisors may charge fee subject to the ceiling specified by the Board, if any.
- 8.1.4. disclose any actual or potential conflicts of interest arising from any connection to or association with any product provider including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.
- 8.1.5. disclose all commission and rewards, if any, that it will receive if the client chooses to avail the services of an intermediary recommended by the investment advisor.
- 8.1.6. disclose to the investor its holding or position, if any, in the financial product which is subject matter of recommendation.
- 8.1.7. not engage in front- running.
- 8.1.8. avoid conflicts of interest, and when they cannot be avoided, should ensure that its clients are fairly treated.

9. Inter Regulatory Issues

- 9.1. The inter-regulatory issues with reference to IRDA, PFRDA, RBI are sought to be addressed as under;

IRDA

- 9.1.1. Insurance Agents shall be regulated by IRDA only.
- 9.1.2. Insurance Brokers who provide advice in various insurance products across manufacturers shall be regulated by IRDA only.
- 9.1.3. If IRDA registered Insurance Brokers expand their activities to include investment advice on other financial products, then they may be registered and regulated under Investment Advisor Regulations for such other financial products other than insurance products.

PFRDA

- 9.1.4. The PFRDA bill envisages presence of financial Advisors in the pension sector (referred as pension Advisors) and also contains provisions for their regulation. Such Pension Advisors will be registered and regulated by PFRDA.

9.1.5. If such advisors seek to expand the scope of their advice to other products, they may be subjected to regulation under Investment Advisors Regulations for their conduct relating to advice of financial products other than pension.

RBI

9.1.6. Banks may be permitted to undertake Investment Advisory Services only through a separately identifiable department or division (SIDD) or a subsidiary for which bank will need to obtain specific approval of RBI.

9.1.7. While SEBI or the SRO could register/regulate/supervise the SIDD/Subsidiary, in respect of their financial advisory services, the RBI could prescribe additional guidelines. Whether this entity would charge a fee or not should be left to the bank/subsidiary to decide.

9.2. The following will not come under the purview of regulation, but will be dealt by the respective sectoral regulator;

9.2.1. Issues relating to product design, remuneration structure in distribution model etc.

9.2.2. Any instance of mis-selling of a financial product.

9.3. Grievances of clients pertaining to financial products in which investments have been made based on investment advice shall fall under the purview of the regulator of such financial product.

10. Administration

10.1. At the initial stages till recognition of a SRO, SEBI will directly register and regulate Investment Advisors.

10.2. SEBI may appoint an SRO for the purpose of regulating Investment Advisors, Representatives or Fund Managers.

10.3. SEBI may specify that no person shall act as an investment advisor unless he is a member of a recognized SRO.

11. Fees and Cost

11.1. Where the applicant is an individual or partnership firm, they shall pay an application fees of Rs.5,000/- and registration fee of Rs.10,000/-.

11.2. Where the applicant is a body corporate, it shall pay an application fees of Rs.5,000/- and registration fee of Rs.1,00,000/-.

12. Proposal

The Board is requested to consider and:-

12.1. approve the above policy proposed in this memorandum and the draft Investment Advisor Regulations enclosed as **Annexure A** and approve the same with such modification, if any, as may be deemed appropriate and authorize the Chairman to make/approve consequential, incidental or any drafting changes therein.

12.2. authorize the Chairman to make such necessary or consequential changes in any other regulations or order of delegation of power etc., as may be deemed appropriate.

12.3. authorize the Chairman to take necessary actions to notify the regulations in official gazette and to take other steps as may be deemed appropriate to implement the decision.

(The Board Memorandum must be read in conjunction with the minutes of the meeting, the press release issued on August 16, 2012 and the regulations, as may be notified.)

THE GAZETTE OF INDIA

EXTRAORDINARY

PART – III – SECTION 4

PUBLISHED BY AUTHORITY

NEW DELHI, AUGUST , 2012

SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the th August, 2012

SECURITIES AND EXCHANGE BOARD OF INDIA

(INVESTMENT ADVISORS) REGULATIONS, 2012

In exercise of the powers conferred by sub-section (1) of Section 30 read clause (b) of sub-section (2) of Section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby, makes the following regulations, namely, —

CHAPTER I

PRELIMINARY

- Short title and commencement** 1. (1) These regulations may be called the Securities and Exchange Board of India (Investment Advisors) Regulations, 2012.
- (2) These regulations shall come into force on the date of their notification in the Gazette of India.
- Definitions** 2. (1) In these regulations, unless the context otherwise

requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,—

- (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (b) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;
- (c) "body corporate" shall have the meaning assigned to it in or under clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);
- (d) "certificate" means a certificate of registration granted under these regulations;
- (e) "change in control" in relation to a company or a body corporate, means:
 - (i) if its shares are listed on any recognized stock exchange, change in control within the meaning of clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
 - (ii) in any other case, change in the controlling interest or change in legal form;
 - Explanation.— For the purpose of sub-clause (ii), the expression
"controlling interest" means an interest, whether direct or indirect, to the extent of more than fifty percent of voting rights or interest;
- (f) "company" means a company incorporated under the Companies Act, 1956.
- (g) "consideration" means any form of economic benefit including non-cash benefit, received or receivable from the investor for providing investment advisory services;
- (h) "financial planning" shall include analysis of investors' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realize such goals;
- (i) "firm" means a partnership firm registered under Indian Partnership Act, 1930 (9 of 1932);
- (j) "FPSB" means Financial Planning Standards Board

India, a public-private and professional standards setting body;

(k) "form" means any of the forms set out in the First Schedule.

(l) 'fund manager' means an employee or an advisor of a mutual fund or asset management company who decides or advises on investment of fund or portfolios of a scheme of such mutual fund, or asset management company or employee or partner of "Manager" as defined in the SEBI (Alternative Investment Fund) Regulations, 2012 who decides or advises on investment of fund.

(m) "inspecting authority" means any one or more person appointed by the Board to exercise powers conferred under regulation 20;

(n) "investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the investor and shall include financial planning;

Provided that investment advice, given without any consideration, through newspaper, magazines, any electronic medium, or a broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

(o) "investment advisor" means any person, who for consideration, is engaged in the business of providing personal investment advice to investors or other persons or group of persons and includes any person who holds himself as an investment advisor, by whatever name called;

(p) "NISM" means National Institute of Securities Market established by the Board;

(q) "representative" means an employee or an agent of the person registered as investment advisor, who is qualified and certified to render investment advice on behalf of a body corporate or a firm, as the case may be;

(r) "SRO", means any self regulatory organisation which

is recognised by the Board under Regulation 5 of the Securities and Exchange Board of India (Self Regulatory Organisations) Regulations, 2004.

- (2) The words and expressions used and not defined in these regulations but defined in the Act, the Securities Contracts (Regulation) Act, 1956, (42 of 1956), the Companies Act, 1956 (1 of 1956), or any rules or regulation made there under shall have the same meanings respectively assigned to them in those Acts, rules or regulations made there under or any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II

REGISTRATION OF INVESTMENT ADVISORS

Registration of 3 Investment Advisor

- (1) On and from the commencement of these regulations, no person shall act as an investment advisor or hold itself out as an investment advisor unless it has obtained a certificate of registration from the Board:

Provided that a person acting as an investment advisor immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub-regulation(2) within the said period of six months, till the disposal of such application.

- (2) An application for grant of certificate of registration under sub-regulation (1) shall be made in Form A as specified in the Schedule I to these regulations and shall be accompanied by a non-refundable application fee as specified in Part A of the Schedule II to these regulations, to be paid in the manner specified in Part B thereof.
- (3) Representative of an investment advisor shall make an application in Form B of schedule I for registration as Representative of Investment Advisor through their employer under these regulations.
- (4) The Fund Manager shall make application in Form B of schedule I for registration as an Investment Advisor in the category of Fund Manager, through their employer

under these regulations.

(5) A Bank which has been permitted by Reserve Bank of India to undertake investment advisory services through a subsidiary or separately identifiable department or division, shall make an application in Form A of schedule I for registration as Investment Advisor under these regulations.

(6) A body corporate which offers investment advisory services through a separately identifiable department or division, shall make an application in Form A of schedule I for registration as Investment Advisor under these regulations:

Provided that the activity of investment advice provided through such department or division shall be segregated from their other specified activities in manner as specified.

(7) The Board shall take into account requirements as specified in these regulations for the purpose of considering grant of registration.

(8) Without prejudice to the powers of the Board to take any action under the Act or regulations made there under, the certificate of registration shall be valid for a period of five years.

(9) The Board may, in order to protect the interests of investors, appoint any person to take charge of records, documents, and for this purpose, also determine the terms and conditions of such an appointment.

(10) On or before expiry of five years, the investment advisor shall make application for renewal of registration and in such event provisions of regulation 3 shall be applicable mutatis mutandis.

(11) Investment Advisors who appoint Representative(s) already registered with the Board shall intimate the Board of upon such appointment.

(12) Investment Advisors shall intimate the Board when Representative(s) employed with them cease to be

Representative(s) of the Investment Advisor.

- (13) Fresh registration will be required for Representatives and Fund Managers who cease to be Representatives or Fund Managers and want to act as Investment Advisor.

**Exemption
from
registration**

4 Notwithstanding anything contained in these Regulation, the following persons or entities shall be exempted from registration under these regulations;

- (a) Any person who gives general comment in good faith in regard to trends in the financial or securities market or the economic situation and such comment does not specify any particular securities or investment product.
- (b) Any insurance agent or broker who offers investment advice solely in insurance products and is registered with Insurance Regulatory and Development Authority for such activity.
- (c) Any pension advisor who offers investment advice on pension products and is registered with Pension Fund Regulatory and Development Authority for such activity.
- (d) Distributors registered with AMFI who receive fees from investors under the terms specified in the circulars issued by SEBI under SEBI (Mutual Funds) Regulations, 1996.
- (e) Advocates, solicitors and law firms who provide any investment advice to their clients solely incidental to their legal practice.
- (f) Members of ICAI, ICSI, ICWAI, Institute of CFA, Actuarial Society of India or any other professional body as may be specified by the Board who provide investment advice to their clients solely incidental to their professional service.
- (g) Stock Brokers and Sub-brokers registered under SEBI (Stock Broker and Sub-Broker) Regulations, 1992, Portfolio Managers registered under SEBI (Portfolio Managers) Regulations, 1993 and Merchant Bankers

registered under SEBI (Merchant Bankers) Regulations, 1992 who provide any investment advice to their clients solely incidental to their primary activity:

Provided that such intermediaries shall comply with the general obligation and responsibilities provisions under Chapter III of these Regulations.

(h) Any other persons or entities as may be specified by the Board.

**Eligibility
Criteria.**

5 For the purpose of the grant of certificate to an applicant, the Board shall consider the following conditions for eligibility, namely, —

- (a) In case the applicant is an individual, whether the individual is appropriately qualified and certified as specified in Regulation 7;
- (b) In case the applicant is a body corporate, whether at least two Representatives of the applicant providing investment advice are appropriately qualified and certified as specified in Regulation 7 and has applied for registration under sub-regulation (2) of Regulation 3;
- (c) In case the applicant is a partnership firm, whether all partners who are engaged in giving investment advice are qualified and certified as in the case of an individual.
- (d) Whether the applicant fulfills the capital adequacy requirement as specified in Regulation 8;
- (e) Whether the applicant is a fit and proper person based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;
- (f) Whether the applicant has the necessary infrastructure to effectively discharge the activities of an investment advisor;
- (g) Whether any previous application for grant of certificate made by any person directly or indirectly connected with the applicant has been rejected by the

Board;

- (h) Whether any disciplinary action was taken or is contemplated by Board against any person directly or indirectly connected with the applicant under the Act or the Regulations made there under.

**Furnishing of 6
further
information,
clarification and
personal
representation**

- (1) The Board may require the applicant to furnish further information or clarification regarding matters relevant to his activity of investment advice for the purpose of disposal of the application.
- (2) The investment advisor, or its representative, if so required, shall appear before the Board for personal representation.

**Qualification and
certification
requirement 7**

- (1) An individual or a partner or a Representative offering investment advice shall have the following minimum qualifications:
- (a) A Professional Qualification or Post-Graduate Degree or diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association; or
- (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or fund or asset or portfolio management.
- (2) An Investment Advisor or Representative offering investment advice shall have the following Certifications:-
- (a) Certification on Financial Planning or fund or asset management or investment advisory services if provided by NISM or FPSB, or
- (b) Any such certification from an institution accredited by NISM.

Provided that an existing investment advisor seeking registration will be given a period of two years to

obtain such certification.

Provided further that the provision of sub-regulation (1) and (2) shall not be applicable to the Fund Manager.

Capital Adequacy

- 8** (1) Investment Advisors who are body corporate shall have a net worth of not be less than Rupees twenty five lakhs:

Explanation.— For the purposes of this regulation, "networth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off.

- (2) Investment Advisors who are individuals or a partnership firms shall have net tangible assets of not less than rupees five lakhs:

Provided that such requirement shall not be applicable to Representatives and Fund Managers.

Procedure for grant of certificate

- 9** (1) The Board, on being satisfied that the applicant fulfils the requirements specified in Regulation 5, shall send intimation to the applicant and on receipt of the payment of registration fees as specified in Schedule II, grant certificate of registration.

- (2) The Board shall, on receipt of the registration fee, grant a certificate of registration in Form C under Schedule I.

- (3) The registration may be granted with such conditions as may be deemed appropriate by the Board.

Conditions of certificate

- 10** (1) The certificate granted under regulation 9 shall, inter-alia, be subject to the following conditions:-

(a) the Investment Advisor shall abide by the provisions of the Act and these regulations;

(b) the Investment Advisor shall forthwith inform the Board in writing if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any

material change in the information already submitted;

- (c) the Investment Advisor shall include the words 'Investment Advisor' in its name:

Provided that the Representatives or Fund Managers shall not include such words in their name.

- (d) in case of a body corporate, investment advice shall only be given by the registered Representative, as the case may be, who is registered under these regulations;

- (e) in case of a firm, the investment advice shall be given by the partner who is duly qualified and certified.

Procedure where registration is refused

- 11** (1) Where the Board is of the prima facie opinion that a certificate ought not to be granted to the applicant, it shall afford an opportunity of hearing to the applicant before taking a final decision.

- (2) Where an application for a certificate is rejected by the Board, the order of rejection shall be communicated to the applicant as soon as may be.

- (3) Where an application for a certificate is rejected by the Board, the applicant shall forthwith cease to act as an investment advisor:

Provided that nothing contained in this regulation shall affect the liability of the applicant towards its existing clients under law.

SRO

- 12** (1) The Board may appoint an SRO for the purpose of regulating Investment Advisors.

- (2) The Board may, at the time of appointment of SRO, delegate administration or supervision of Investment Advisors, Representatives or Fund Managers to a recognized SRO on such condition as may be specified by the Board.

- (3) The Board may specify that no person shall act as an investment advisor unless he is a member of a recognized SRO and in such event, provision of these regulations and byelaws of such SRO shall be mutatis mutandis applicable to such investment advisors.

CHAPTER III

GENERAL OBLIGATIONS AND RESPONSIBILITIES

General Responsibility

- 13 (1) An investment advisor shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise or seem likely.
- (2) An investment advisor shall not divulge to anybody, either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge without taking prior permission of its clients except where such disclosures are required to be made in compliance with any law for the time being in force.
- (3) An investment advisor shall not engage in front running or insider trading or any other such unethical practices.
- (4) An Investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients.
- Provided that if the situation changes, the Investment Advisor shall give revised assessment to the client at least 24 hours in advance, prior to the entering into such transaction on its own account.
- (5) An Investment Advisor other than Fund Manager or Representative shall follow Know Your Client procedure as specified by the Board from time to time.
- (6) An Investment Advisor shall abide by Code of Conduct as specified in Schedule III.
- (7) An Investment Advisor shall not;
- (a) employ any device or scheme to defraud any client or prospective client.
 - (b) engage in any transaction practice, or course of business which operates as a fraud or deceit upon any client or prospective client.
 - (c) act as principal for its own account, knowingly to sell any security or investment product to or purchase

any security or investment product from a client.

- (8) In case of change in control of the Investment Advisor, which is a body corporate or in case of change of majority partners, if Investment Advisor is a partnership firm, prior approval from the Board shall be taken.
- (9) Investment Advisors shall furnish to the Board information and reports as may be specified by the Board from time to time.

Risk Profiling

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- (1) Investment Advisors shall ensure that
 - (a) they obtain from the investor such information as is necessary to understand the essential facts about them including the following:-
 - (i) age;
 - (ii) investment objectives including length of time for which they wish to stay invested, the purposes of the investment ;
 - (iii) income details;
 - (iv) existing investments/ assets;
 - (v) risk appetite/ tolerance;
 - (vi) liability/borrowing details.
 - (b) they have a robust process for assessing the risk a investor is willing and able to take, including:
 - (i) assessing an investor's capacity for loss;
 - (ii) identifying whether investor is unwilling or unable to accept the risk of loss of capital;
 - (iii) appropriately interpreting investor responses to questions and not attributing inappropriate weight to certain answers.
 - (c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are recognised and mitigated;
 - (d) any questions and answers that are used to establish the risk a investor is willing and able to take and descriptions used to check this are fair, clear and not misleading; and ensure that ;
 - (i) questionnaire is not vague or use double negatives or in a complex language that the investor may not

understand;

(ii) the questionnaire is not structured in a way that it contains leading questions.

(e) risk profile of the investor is communicated to the investor after risk assessment is done.

(f) information provided by investors and their risk assessment is updated periodically.

(2) Sub-regulation (1) shall not be applicable to a Fund Manager.

Suitability

15 Investment Advisors shall ensure that

(a) All investments on which investment advice is provided should be suitable and appropriate to the risk profile of the client.

(b) They have a robust and flexible process for selecting investments based on investor's investment objectives and financial situation.

(c) They understand the nature and risks of products or assets selected for clients;

(d) They have a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with their investment objectives and risk tolerance

(iii) is such that the investor has the necessary experience and knowledge in order to understand the risks involved in the transaction.

(e) They engage in a suitability assessment process based on risk-profiling which acts in the best interests of those investors.

(f) Whenever an investment advisor recommends to a client purchase of a particular complex financial product, it shall ensure that such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for loss.

(g) When making an investment advice, an investment advisor shall make adequate disclosure of all material facts relating

to the key features of the product, particularly, performance track records.

(h) An investment advisor shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product it is recommending to the client.

Disclosures to 16 clients

(1) An investment advisor shall disclose to a prospective client all material information about itself, its business, its disciplinary history, the terms and conditions on which it offers advisory services, its affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether to avail its services.

(2) An investment advisor shall disclose all consideration and rewards that it will receive if the client chooses the recommended security or investment.

(3) Before recommending the services of a stock broker or other intermediary to a client, an investment advisor shall disclose all consideration and rewards, if any, that it will receive if the client chooses to avail the services of such intermediary.

(4) The investment advisor shall disclose to the investor its holding or position, if any, in the financial product which is subject matter of recommendation.

(5) An Investment Advisor shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any product provider, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

Maintenance of 17 Records

(1) An Investment advisor shall maintain written records of:

(a) Know Your Client records of the investor

(b) risk profiling and risk assessment of the client

(c) suitability assessment of the advice being provided

(d) Copies of agreements with investors, if any

(e) investment advice provided whether written or oral.

(f) rationale for arriving at investment advice duly signed and dated.

(g) A register or record or list of the clients, the date of advice, and the product in which advice was rendered and fee, if any charged for such advice.

(2) Representative or the Fund Manager shall maintain records of documents as mentioned in clause (e) and (f) of sub-regulation (1).

(3) All written records shall be maintained either in paper form or electronic form.

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

(4) All written records shall be maintained and preserved for at least five years.

(5) An Investment Advisor other than Representative or Fund Manager shall conduct yearly audit in respect of compliance with regulation from a member of ICAI or ICSI and a copy thereof shall be filed with the Board.

(6) An Investment Advisor which is a body corporate shall appoint a compliance officer.

**Investor
Grievances**

18 (1) An Investment Advisor shall address all client grievances to the best of its ability.

(2) An Investment Advisor other than Representative or Fund Manger shall have in place adequate procedures and processes for speedy handling complaints relating to its investing advisory business.

(3) Investor grievances pertaining to financial products in which investments have been made based on investment advice, shall fall under the purview of the regulator of such financial product.

(4) Any dispute between the investment advisor and his client may be resolved through arbitration.

Execution

19 (1) An Investment Advisor shall not provide execution services including for broking, custody services or depository

Services

services:

Provided that such services can be offered by a department or division or a partner of an investment advisor which has been granted registration as Investment Advisor under regulation 3 through a separate subsidiary or division subject to the following;

- (a) The client shall not be under any obligation to avail the execution services offered by the investment advisor.
- (b) The investment advisor shall maintain arms length relationship between its activities as investment advisor and offering assistance in execution services.
- (c) All fees and charges paid to execution service providers shall be paid directly to execution service providers and not through investment advisor.

CHAPTER IV

INSPECTION

Boards right to inspect 20

- (1) The Board may suo motu or upon receipt of information or complaint appoint one or more persons as inspecting officer to undertake inspection of the books of accounts, records and documents relating to investment advisors for any of the following reasons, namely: -
 - a) to ensure that the books of account, records and documents are being maintained by the investment advisor in the manner specified in these regulations;
 - b) to inspect into complaints received from investors, clients or any other person, on any matter having a bearing on the activities of the investment advisor;
 - c) to ascertain whether the provisions of the Act and these regulations are being complied with by the investment advisor; and
 - d) To inspect suo motu into the affairs of an investment advisor, in the interest of the securities market or in the interest of investors.

Notice before inspection 21

- (1) Before ordering an inspection under regulation 20, the Board shall give not less than ten days notice to the

investment advisor.

- (2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing direct that the inspection of the affairs of the investment advisor be taken up without such notice.
- (3) During the course of an inspection, the investment advisor against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 22.

**Obligation
investment
advisor
inspection**

**of 22
on**

- (1) It shall be the duty of every investment advisor in respect of whom an inspection has been ordered under the regulation 20 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment advisor including representative of Investment Advisor, if any, to produce to the Inspecting Officer such books, accounts and other documents in his custody or control and furnish him with such statements and information as the said Officer may require for the purposes of inspection.
- (2) It shall be the duty of every Investment advisor and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment advisor to give to the Inspecting Officer all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information sought by the inspecting officer in connection with the inspection.
- (3) The Inspecting Officer shall, for the purposes of inspection, have power to examine on oath and record the statement of any employees, directors or person responsible for or connected with the activities of investment advisor or any other associate person having relevant information pertaining to such Investment advisor.
- (4) The Inspecting Officer shall, for the purposes of

inspection, have power to obtain authenticated copies of documents, books, accounts of Investment advisor, from any person having control or custody of such documents, books or accounts.

Submission of Report to the Board 23

The inspecting officer shall, as soon as possible, on completion of the inspection submit an inspection report to the Board.

Provided that if directed to do so by the Board, he may submit an interim report.

Communication of findings etc. to the Investment Advisor 24

- (1) The Board may after consideration of the inspection report and after giving reasonable opportunity of hearing to the investment advisors or its representatives, issue such direction as it deems fit in the interest of securities market or the investors in the nature of;
- a) requiring an investment advisor not to provide investment advice for a particular period;
 - b) prohibiting the investment advisor from disposing of any of the investments made in violation of these regulations;
 - c) requiring the investment advisor to dispose of the investments in a manner as may be specified in the directions;
 - d) requiring the investment advisor to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected as fees charges or commissions;
 - e) Prohibiting the investment advisor from operating in the capital market or from accessing the capital market for a specified period.

CHAPTER V

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of 25

- (1) An investment advisor who -
- (a) contravenes any of the provisions of the Act,

default.

regulations; or

(b) contravenes any provision of the bye-laws of the self-regulatory organization of which it is a member

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediary) Regulations, 2008.

(2) Sub-regulation (1) shall not prejudice the operation of sections 11, 11B, 11D or 24 or Chapter VIA of the Act or of any other law for the time being in force.

CHAPTER VI

MISCELLANEOUS

Power of the Board to issue clarifications. 26 In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications and guidelines in the form of circulars.

Delegation of powers 27 The powers exercisable by the Board under these regulations shall also be exercisable by any officer of the Board to whom such powers are delegated by the Board by means of an order made under section 19 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

Power of the Board over SRO 28 The Board reserves the right to alter, modify and overrule any decision, action taken, penalties imposed by the SRO on Investment Advisors.

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

SCHEDULE I

[See Regulation 3(2) and 9(2)]

FORMS

FORM A

Securities and Exchange Board of India (Investment Advisors) Regulations, 2012

Application for grant of certificate/renewal of certificate

Name of Applicant:

Contact Person Name and Designation:

Telephone No and E-mail ID of Contact Person:

Instruction:

1. Applicants must submit a completed application form together with appropriate supporting documents to the Board.
2. It is important that this application form should be filled in accordance with the regulations.
3. Application for registration will be considered provided it is complete in all respects.
4. Answers must be typed/ printed.
5. Information which needs to be supplied in more details may be given on separate sheets which should be attached to the application form.
6. All the pages should be signed and stamped/ or be on the letter head.

1 PARTICULARS OF THE APPLICANT

1.1 Name of the Applicant:

1.2 Address - Principal place of business/registered office:

Pin code: Telephone No:

Fax No: E-mail

1.3 Address for Correspondence:

Pin code: Telephone No:

Fax No: E-mail

1.4 Address of Branch Offices (in India & Abroad):

1.5 Application to Board for any other intermediary activity:

2 ORGANISATION STRUCTURE

2.1 For Body Corporate Only

2.1.1 Objectives: In brief (Memorandum and Articles of Association to be enclosed).

2.1.2 Particulars of all Directors and key management personnel's [Name; Qualification; Experience; (General and Intermediaries specific activity); Ownership details in Applicant; Directorship in other Companies (Name & Date of Appointment)]

2.1.3 List of major shareholders (holding 5% or more voting shares)

2.1.4 Date and Place of Incorporation/Establishment:

2.1.5 Number of employees (General and for Investment Advisory Activity)

2.1.6 Organization Chart: General Organization chart & specific chart for Investment Advisory Activity. Also state functional responsibilities.

2.1.7 Status of the Applicant: (e.g. limited company- Private /Public, others. If listed, names of the stock exchanges and latest share price: to be given.)

2.2 For Individuals Only

2.2.1 Objectives: In brief.

2.2.2 Particulars of Individual [Name; Qualification; Ownership details; directorship in any other Companies (Name, Designation & Date of Appointment)];

2.2.3 Self Certified copy of the Professional Qualification/ Experience details in activities related to advice in financial product or fund or asset or portfolio

management.

2.2.4 Number of employees, if any

2.3 Name and activities of associate companies/ directors/ Individuals concerns

Name of company /firm/directors/ Individual	Type of activity handled	Registration details with SEBI and other Regulators	Ownership details in applicant
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3 DETAILS OF INFRASTRUCTURE FACILITIES

3.1 Office Space

3.2 Office Equipment

3.3 Furniture & Fixtures

3.4 Communication Facilities

3.5 Data Processing Capacity

3.5.1 In-house

3.5.2 Others:

3.6 Computer facility:

3.6.1 Hardware configuration

3.6.2 Details of Software's

4 BUSINESS PLAN (FOR THREE YEARS)

4.1 History, Major events and present activities

4.2 Proposed business plan & means of achieving the same.

4.3 Projected Profitability (Next three years)

(Physical targets, modus operandi to achieve targets, Resultant Income)

4.4 Indicate type of activity carried on/ proposed to be carried on.

4.5 Indicate the facilities for making decision on Investment Advisors.

4.6 Indicate various research & database facilities provided.

5 EXPERIENCE

5.1 Experience in Investment Advisory activity. Indicate period also.

5.2 Experience in other financial services rendered: (Period, Area and date of commencement of activity).

5.3 List of the clients (in case of renewal)

6 FINANCIAL INFORMATION

6.1 For Body Corporate Only

6.1.1 Capital Structure (Rs. in lakhs)

	Year prior to the preceding year of current year	Preceding year	Current year
(a) Paid-up capital			
(b) Free reserves (excluding evaluation reserves)			
(c) Total (a) + (b)			

6.1.2 Major Sources of Income: (Rs. in lakhs)

Year prior to the preceding year of current year	Preceding year	current year
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6.1.3 Net Profit (Rs. in lakhs)

Year prior to the preceding year of current year	Preceding year	current year
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6.2 For individuals only

6.2.1 Copy of Income Tax return/ Copy of Form 16 of last 2 years

6.2.2 Copy of asset and liability statements (not more than three months old at the time of filing of application)

7 OTHER INFORMATION

- 7.1 Details of all settled and pending disputes
- 7.2 Details of indictment/involvement of applicant/directors/promoters in any economic offence in the last three years.
- 7.3 Indicate dealing/ trading with any Intermediary who has defaulted with or suspended by any stock exchange authorities or any other authorities.
- 7.4 Any other information considered relevant to the nature of services to be rendered by the company.
- 7.5 Names of two references from bankers (For applicants other than financial institutions & banking companies)

8 DECLARATIONS

- 8.1 'Fit and Proper' person declaration as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008.
- 8.2 Net worth certificate/ asset and liability statements certified by chartered accountant regarding Capital adequacy requirement as specified in regulations 8 of SEBI (Investment Advisors) Regulations, 2012.

9 DECLARATION STATEMENT (TO BE GIVEN AS BELOW)

We hereby agree and declare that the information supplied in the application, including the attachment sheets, is complete and true.

AND we further agree that, we shall notify the Securities and Exchange Board of India immediately any change in the information provided in the application.

We further agree that we shall comply with, and be bound by the Securities and Exchange Board of India Act, 1992, and the Securities and Exchange Board of India (Investment Advisor) Regulations, 2012, guidelines/instructions as may be announced by the Securities and Exchange Board of India from time to time.

We further agree that as a condition of registration, we shall abide by such operational instructions/directives as may be issued by the Securities and Exchange Board of India from time to time.

For and on behalf of _____

(Name of the applicant)

Authorized signatory/ Applicant

(Signature)

FORM B

(For Representative and Fund Manager)

(Application to be forwarded through Investment Advisor/AMC/Mutual Fund registered with SEBI)

Application for grant of certificate/renewal of certificate

Name of Applicant: -----

Telephone No and E-mail ID of Contact Person: -----

Instruction:

1. Applicants must submit a completed application form together with appropriate supporting documents to the Board.
2. It is important that this application form should be filled in accordance with the regulations.
3. Application for registration will be considered provided it is complete in all respects.
4. Answers must be typed/ printed.
5. Information which needs to be supplied in more details may be given on separate sheets which should be attached to the application form.
6. All signatures must be original.

1.0 PARTICULARS OF THE APPLICANT

1.1 Name of the Applicant:

1.2 Name of the Employer/Principal:

1.3 Address of the Employer/Principal:

Pin code:

Telephone No:

Telex No:

Fax No:

E-mail

1.4 Address for Correspondence:

Pin code:

Telephone No:

Telex No:

Fax No:

E-mail

1.5 Application to Board for any other intermediary activity:

1.6 Certified Copy of the Professional Qualification/ Required Experience details in activities related to advice in financial product or fund or asset or portfolio management.

1.7 Copy of Certification as required in Regulation 7(2)

1.8 Copy of Income Tax return/ Copy of Form 16

2.0 OTHER INFORMATION

2.1 Indictment of involvement in any economic offences in the last three years.

2.2 Names, address and contact details of any two references.

3.0 Declarations

3.1 Declaration by Representative/ Fund Manager under regulation 5 of SEBI (Investment Advisors) Regulations, 2012 along with date and place.

3.2 'Fit and Proper' person declaration as specified in Schedule II of SEBI (Intermediaries) Regulations, 2008.

4. DECLARATION STATEMENT (TO BE GIVEN AS BELOW)

We hereby agree and declare that the information supplied in the application, including the attachment sheets, is complete and true.

AND we further agree that, we shall notify the Securities and Exchange Board of India immediately any change in the information provided in the application.

We further agree that we shall comply with, and be bound by the Securities and Exchange Board of India Act, 1992, and the Securities and Exchange Board of India (Investment Advisor) Regulations, 2012, guidelines/instructions as may be announced by the Securities and Exchange Board of India from time to time.

We further agree that as a condition of registration, we shall abide by such operational instructions/directives as may be issued by the Securities and Exchange Board of India from time to time.

For and on behalf of _____

(Name of the applicant)

Authorized signatory/ Applicant

(Signature)

FORM C

**Securities and Exchange Board of India
(Investment Advisor) Regulations, 2012**

[See regulation 9(2)]

Certificate of registration as Investment Advisor

I. In exercise of the powers conferred by sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), read with the regulations made there under, the Board hereby grants a certificate of registration to

as an Investment Advisor subject to the conditions specified in the Act and in the regulations made thereunder.

II. The Registration Number of the Investment Advisor is

IN/IA/_____.

Date :

Place : MUMBAI

By Order

Sd/-

**For and on behalf of
Securities and Exchange Board of India**

SCHEDULE II

Securities and Exchange Board of India (Investment Advisors) Regulations, 2012

[Regulation 3(2) and 9(1)]

FEES

[For individuals, firms and body corporate]

1. Every individual applicant/firm/body corporate shall pay non-refundable application fee of five thousand rupees along with the application for grant or renewal of certificate of registration.
2. An individual or a firm shall pay a sum of ten thousand rupees as registration/ renewal fee at the time of the grant or renewal of certificate by the Board.
3. A body corporate shall pay a sum of one lakh rupees as registration/ renewal fee at the time of the grant or renewal of certificate by the Board.
4. The fee referred to in paragraph 1, 2, and 3, shall be paid by the applicant within fifteen days from the date of receipt of intimation from the Board.
5. The fees specified in paragraph 1, 2, and 3 shall be payable by the applicant by a demand draft in favor of 'Securities and Exchange Board of India' payable at Mumbai or at respective regional or local office.

[Regulation 3(3) and 9(2)]

FEES

[Applicable only for Representatives and Fund Managers]

1. Every Representative/ Fund Manager shall pay non-refundable application fess of one thousand rupees along with the application for grant or renewal of certificate of registration.
2. Representative/ Fund Manager shall pay a sum of five thousand rupees as registration/ renewal fee at the time of the grant or renewal of certificate by the Board.
3. The fee referred to in paragraph 1, 2, and 3, shall be paid by the applicant within fifteen days from the date of receipt of intimation from the Board.
4. The fees specified in paragraph 1, 2, and 3 shall be payable by the applicant by a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or at respective regional or local office.

SCHEDULE III

[See with Regulation 13(6)]

CODE OF CONDUCT FOR INVESTMENT ADVISOR

1. Honesty and fairness

An Investment Advisor shall act honestly, fairly, and in the best interests of its clients and the integrity of the market.

2. Diligence

An Investment Advisor shall act with due skill, care and diligence, in the best interests of its clients and in providing the advice it shall ensure that its advice is based on thorough analysis and after taking into account available alternatives.

3. Capabilities

An Investment Advisor shall have and employ effectively the resources and procedures which are needed for the proper performance of its business activities.

4. Information about clients

An Investment Advisor shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

5. Information for clients

An Investment Advisor shall make adequate disclosure of relevant material information in its dealings with its clients.

6. Fair and reasonable charges

An Investment Advisor advising a client may charge fee, subject to the ceiling specified by the Board, if any, which shall be fair and reasonable in the

circumstances and be characterized by good faith and shall not exceed the ceiling as may be specified.

7. Conflicts of interest

An Investment Advisor shall try to avoid conflicts of interest, and when they cannot be avoided, should ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.

8. Compliance

An Investment Advisor including its Representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

9. Responsibility of senior management

The senior management of a Body Corporate which is registered as Investment Advisor shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Annexure D

The concept paper on Investment Advisors is already available on SEBI website.

Annexure E

Comments (Names of the entities providing comments have been excised for reasons of confidentiality)

Para	a	important comments with the name of the person/entity
2	Tackling Conflict of interest in Distribution of financial Products	<ul style="list-style-type: none">• The Concept Paper assumes that the dual role played by the Mutual Fund Distributor gives rise to a conflict of interest. We believe that this is not the case. The roles and responsibilities are completely different and hence this does not provide any scope for the conflict of interest.• It is not viable to have -Advisor-Agent approach.• To ensure that the clients' interest is protected, a new category of Professional Advisors will have to be created. It was recommended that the Mutual Fund Distributors should collect fees from the investors who should pay the service tax. This would make them serve in the investors' interest. The distinction between "Advisors" and "Sellers" would be well established. In addition to enhancing the levels of Financial literacy, attempt should be made to ensure that the "Advisors" are the service providers to the clients whom they represent in addition to the disclosures as prescribed.• An entity should be allowed to have multiple categorizations for different set of customers, who could be classified clearly for the purpose. For eg. : Agents for retail or execution only customers, and Financial Advisors for customers who seek advice. Large distributors with the capability and reach must also strive towards spreading awareness by the way of investment campaigns/ drives. It's a very valid moot point that whether distributors are agents of the manufacturers or the customers. The income to be earned in all form on that investment be disclosed to customer, and payment should be made via the AMC. A brief Key Risk Documents can be signed in addition to KIM/OD. The customers can be given discretion to pay a certain % of investment as advisory fees.

		<ul style="list-style-type: none">• Trail commission should be allowed for Advisors as well. This will help in building a viable advisory business. Whether an agent can appoint sub agents?• Too early for segregating an Agent and an Advisor. More thrust to be given to Financial Literacy .The dual function of a intermediary helps the investor to complete his transaction without any hitch.• To compel an either/or structure will not help the cause as time will prove.• Distributors may be allowed to act as agents to set of investors and also an advisor to another set of investors• Why SEBI is comparing the AMC's as Manufacturer. It is not proper.• It is very essential that reasonable lead time be provided to the participants in the industry to adapt to the changes. Innovative programmes to educate the investor on a continuous basis can be a strong safeguard against malpractices sought to be perpetrated upon them.• There are many ARN holders who work as an advisor and as an agent for the clients. What will happen to the whole business which had been built for so many years?• To expect that the client will go to two people, one for advice and the other for execution seems very impractical. To provide a time period of at least 5 years for the distributors to make the transition.• Make it compulsory that every product is sold only in consultation with the financial Planner.• There could be a small percentage of distributors who would be churning, but to tackle that SEBI should bring effective regulation and penalties for mis-selling. Most effective solution to bring in transparency in the industry by enhancing disclosures. The concept paper talks about banning the loads and therefore upfront commissions, but still continuing with the
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		<p>trail commissions.</p> <ul style="list-style-type: none">• Since the level of financial literacy is low, the concept of paying fees to the advisor is also rarely accepted. The proposed regulation will in all likelihood kill the industry.• To support the smooth transition to a fee based advisory services, a period of two years of financial literacy programs for the consumers and the financial planners, along with education on value of fee based, unbiased and client oriented advice be highlighted.• Since wealth management clients are generally sophisticated and knowledgeable clients, we suggest that SEBI should permit Advisory & Distribution services within a single entity. SEBI may define classification of clients considering that different clients have different levels of knowledge, experience, income, skill, expertise, investment objective and risk appetite and those changes to any regulations should take these criteria into consideration.• We strongly believe that only a miniscule proportion of distributors will opt to become advisors under the stipulations envisaged in this concept paper. Bring in regulations that mandate only trail based commissions and do away with upfront commissions.• Most people prefer a single window concept in financial advisory and implementation. The reason again being 'intangible, conceptually difficult to understand products' and time consuming paper-work required for execution.• Investment advisory and distributive service in respect of sale and purchase of mutual fund products should be allowed to be carried out exclusively by independent Investment Advisors and/or by Investment Advisory entities which may either be a partnership firm or a private limited company who are registered with SEBI and have their necessary certification. With a view to availing of Investment Advisory Services on mutual funds as registered with SEBI, all mutual fund managements should be required to pay a Retention Fee to the independent Investment Advisors/ Investment Advisory entities.
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		<ul style="list-style-type: none"> • The disclosures can also be prescribed for oral communication with the client in prescribed format to standardize the same. Product suitability questionnaires should be used as a tool to identify the suitability in case of complex, structured or alternate products. Adequate disclosures of cost can also play an important role in ensuring transparency.
3	Structure of proposed Regulations	<ul style="list-style-type: none"> • The proposed nature of SRO may be specified. The share holding pattern may be prescribed by SEBI. The SEBI (SRO) Regulations, 2004 and SEBI (Investment Advisors Regulations) 2007 may be modified with certain amendments. This should eventually cover across all financial products. In addition, sufficient scope should be given to incorporate professionals who are offering holistic Financial Planning like CFCPM. • All the Financial Services like Equity, Commodities, Debts, Real Estate, Insurance, Annuities, Financing, Banking, Broking, Advising etc. need to be brought under one umbrella and has to be governed with similar business practices and rules. • SEBI are proposing an IA across the three regulators i.e. SEBI, RBI and IRDA. How these IA will be regulated across these regulators and what would be the role of the Asset Management Companies in this regard. • It seems advisors are supposed to be of better quality and should be regulated properly and stringently but not the agents.
4	Definition of Investment Advisor & Investment Advice:	<ul style="list-style-type: none"> • How the oral advice will be considered to be the “Investment Advice”? Whether it may be looked upon as a feedback / comment only. Further, whether the advice will fall under Indian Contract Act, 1872? • The term ‘indirectly’ is not clear. The term should therefore clarify what kind of non-cash consideration is permissible. The definition of the term “investment advice” should also include restructuring an existing portfolio which does not necessarily involve any funds. The term financial advice / financial planning services should be appropriately defined. The product basket can differ based on the research capability.

		<p>The regulations may envisage the concept of self directed investment which should be exempted from various elements and obligations of investment advisory proposition. SEBI has been empowered under SCRA to only regulate “securities”. Therefore, if the proposed regulations desire to regulate other financial products, then it should be properly defined.</p> <ul style="list-style-type: none"> • Whether the proposed regulations will be applicable to those persons or entities, residing outside India. • Even an employee of a distributor would be considered an investment advisor. However, if the distributor code being used is of a group or associate entity the investment advisor can book the advisory income and the group/associate entity registered as a broker/distributor could book the fees payable from the product manufacturer as an agent.
5	<p>Coverage: Individuals & Non Individuals</p>	<ul style="list-style-type: none"> • Certification and Rating by professional organizations like Financial Planning Corporation (India) Private Limited [FPCIL] and ISO should be encouraged as well. • The regulations should apply only when a person/entity offers the service to the public or holds himself in public as “investment advisor” not to the arrangement between private individuals consenting to the terms of the arrangement. • What would be the status of banks? Are they compulsorily to convert to advisor? • There have always been more complaints of mis-selling and churning from Institutional Distributors rather than individual distributors mainly because of target driven selling and constant change in relationship managers. • Recognition of the actuarial profession, as represented by the IAI, in educating and regulating its members in the subjects and their application which have substantial bearing upon the concept, roles and responsibilities of Investment Advisors. • The following set of individuals and non-individuals would need to get registered (i) Independent Investment Advisor (ii) Representatives of investment advisors (iii) banks & (iv) any other entity.

6	Persons Exempt from Regulations	<p><u>Who should be exempted:</u></p> <ul style="list-style-type: none"> • All online website service providers, Stock brokers and Authorized Person of the stock broker brokers providing investment advice as part of the broking activities . • Company Secretary & Cost Accountants. • Actuarial professionals. • Financial Planners <p><u>Views against Exemption:</u></p> <ul style="list-style-type: none"> • Exemption not required. • Exemption creates a loop hole which can be used by interested parties for malafide intent. • Chartered Accountants and Stock brokers / Sub brokers should also be brought under the ambit of the regulations as well. • Exempting stock brokers and insurance brokers mean keeping loopholes open. • How does SEBI know that the person who publishes the magazine /newspapers is not getting any compensation whether in cash or kind through such advice?
7	Registration Requirements	<ul style="list-style-type: none"> • All are required to qualify a certification standard. All of them should also undergo an approved Continuous Education program. • CA/CS/CWA to be included as prescribed qualification apart from CFP. • There has to be a single certification like CA, ICWA etc. for the Financial Advisors. • To ensure the quality of advisor, the education & examination have to be continuously revised and upgraded. • MBA (Finance) & CA hardly touch anything on personal finance. • A graduate with adequate experience should also be considered for registration as an Advisor. • Include “CFP” as one of the qualifications eligible for registering as an “Advisor”.

	<ul style="list-style-type: none"> • Need to recognize the Intermediaries who have already spent time, efforts, resources & passed Stringent Examination. Others need to be encouraged in Scaling Up their Skills through Certifications recognized by the Industry/Regulators.: • Only a single course like CPFA mandatory should be made mandatory. • CFPs should be one of the qualifications. <p><u>On criterion of 10 years experience:</u></p> <ul style="list-style-type: none"> • A CFP should be one of the qualifications. 10 years of experience should be relaxed. • The reduction of 10 years financial sector experience to 5 years. • The minimum requirement should be graduation with 10 years of experience in the relevant field. CFP or any other certification course by NISM as added criterion. • Reduce the relevant experience to 5 years. CFP and CFA qualifications may be taken as criteria for registration • The criteria of having 10 years of experience should not be permitted. <p><u>On Capital Adequacy & Key Personnel :</u></p> <ul style="list-style-type: none"> • Capital Adequacy & Key Personnel could be decided by the SRO. • Details are required for capital adequacy norms and net worth requirements . • There is no need to Prescribe no. of personnel and net worth requirements. Advisory business needs only intellectual capital. • No need to have capital adequacy requirement either in form of net worth or otherwise. Further, the requirement having at least 2 person as key personnel to be NISM certified may be dispense if at least one of the directors of the company is professionally qualified like a CA or MBA (finance) or CFP (Grandfathering). SRO should decide the norms relating to registration etc. after consulting the industry and relevant market intermediaries. <p><u>Concerns:</u></p> <ul style="list-style-type: none"> • How will this impact current set of distributors, particularly IFAs
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		: are they required to be either CA, MBA or 10 yrs experience.
8	Obligation of an Investment Advisor	<ul style="list-style-type: none"> • Audio Records should be prescribed only in lieu of written advice. • A standard directive should be provided in the regulations itself to arrive at a matrix / category of the client's investment profile / financial need. A standard code of advertisement to be notified along with the regulations like mutual fund or stock brokers. IA once registered required to comply with Prevention of Money Laundering Act, 2002. The manner of charging fee should be left between advisor and client completely. Apart from the terms and conditions, which is to be signed by the client, standard set of documents containing detailed information as suggested should be made available on the website of the company. • Unbundling of the fee received from manufacturer for rendering advisory, execution service and service fees. Additionally, the advisory related fee for each product or asset class must be made standard to avoid any further conflict of interest. • The fee payable by the IAs should be reasonable so that they can have a sustainable business. • Manufacturers must mandatorily be required to issue load free class of products so that the financial system as a whole benefits from the introduction of Financial Advisors. • Advisors should work for the interest of the Client and not the Manufacturer and hence charging the client is the way forward. • SEBI should permit fees received from investments to be offset against fees charged for advice; or to be paid back to the client - if so agreed mutually by the investor and advisor. • There should be no payment directly from the AMC to the agent other than the prescribed transaction fee. Transaction fee, thus prescribed, should be deducted from the application amount. • Make it mandatory for investors to pay fees by separate

		<p>cheques.</p> <ul style="list-style-type: none"> • Then SRO should not also charge any annual fees from us. • It is impossible to record every oral advise . • The fees for the advisors should also be fixed. • It would be practically difficult to record calls made from mobile phones of advisors. • Scientific third party risk profiling can be made mandatory. Risk profiling is one of the pillars of investment advisory along with asset allocation and product selection.
9.	Execution Services	<ul style="list-style-type: none"> • The Individual Investment Advisor must also make appropriate disclosures and clarify that the investor is under no obligation to use their other services. Accordingly, the choice of opting for the execution services offered by Investment Advisor should be left open to the investors . • The proposal that entity offering investment advisory services should not offer execution services and vice-versa should be reconsidered in light of Indian context and investment scenario. • Execution services to be offered by institutions having "Chinese" walls is being openly unfair to the genuine independent financial advisor.
10	Outsourcing.	<ul style="list-style-type: none"> • Activities like Marketing / PR etc may be permitted to be outsourced as well. • Investment advisors should be permitted to hire / avail the services of expert's advice / advisory model. • Quantitative research can be outsourced while the qualitative exercise like market views, rationale, fund manager meetings and opinions can be done in-house. • Outsourcing to another Registered Advisor must be permissible. • Outsourcing all activities other than core advisory activity may be allowed .#

11	Liability	<ul style="list-style-type: none"> • Advisable for the Investment Advisors to seek professional Indemnity Cover. The authority to judge whether the advice given is “negligent” or “malafide” under law may be specified. • Any dispute between the IA and his client should be resolved through grievance redressal mechanism or arbitration created by the SRO and not by SEBI. Further, as regards proving negligence / mala-fide of an investment advisor, the matter could be settled through an ombudsman for dealing such matters.
	Others:	<ul style="list-style-type: none"> • The small investor may not be entertained by the advisor and he may not get proper advice to invest in products best suited for him. Further, It is not clear whether an agent is allowed to represent any number of manufacturers or are restricted to represent only one manufacturer. • Emphasised the need for compulsory common financial literacy and education. • Changing the regulations every now and then impacts my business very much. • Better to have a single Financial Investments Regulator. • Educate Investors that there is no free lunch. • Implementation of proposed Investment Advisors Regulation will be a death knell to the already ailing investment advisory services industry. • There is no standard available to determine risk profiling in India. How do you define ‘adequate risk profiling’? • When regulatory bodies come with so many regulations with “immediate effects” that also put advisors / agents in dilemma about how to convince their clients to pay them their fees out of their pocket.