8 INVESTMENT ADVISOR REGULATIONS

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LEARNING OBJECTIVE

After studying this chapter, you should be able to:

- Understand the Provisions of SEBI investment advisor regulations
- Understand the definition of investment advice
- Understand who is considered as an investment advisor
- Understand the obligations of an investment advisor
- Understand the inspecting provisions of investment advisor
- Understand the procedure of action in case of default

KEY TERMS

Investment Advice	Investment Advisor
KYC Norms	Chinese Walls
Onshore Fund Advisers	Off Shore Fund Advisors

SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013

The Securities and Exchange Board of India ("SEBI") notified the SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations") on January 21, 2013.

The IA Regulations require any person (bank, non-banking financial company, corporates, and individuals) who wants to act as an investment advisor to first obtain a certificate of registration from the SEBI. Once registered, an investment advisor must make various disclosures to the SEBI, including the fee received for advice and any conflicts of interest. To further address the issue of conflict, investment advisers will also have to separate their advisory services from other activities. An important provision of the IA Regulations is that an investment adviser cannot enter into transactions on its own account contrary to the advice given to clients for at least 15 days after the advice is given. The IA Regulations exempt a few individuals from registration including insurance agents giving investment advice solely on insurance products.

The SEBI Investment Advisers Regulations 2013 is divided into 6 Chapters

Chapter 1: Gives Definitions on the Terms used in these Regulations.

Chapter 2: Enumerates the provisions regarding Registration of Investment Advisor

- Application for grant of certificate.
- Exemption from registration.
- Furnishing of further information, clarification and personal representation.
- Consideration of application and eligibility criteria.
- Qualification and certification requirement.
- Capital adequacy.
- Grant of certificate of registration.
- Period of validity of certificate.
- Renewal of certificate.
- Procedure where registration is refused.
- Conditions of certificate.
- Recognition of body or body corporate for regulation of investment advisers.

Chapter 3: Lists down the General Obligations and Responsibilities of Investment Advisor.

- General responsibility.
- Risk profiling.
- Suitability of Advise
- Disclosures to clients.
- Maintenance of records.
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Chapter 4: Provision of INSPECTION of Investment Advisors

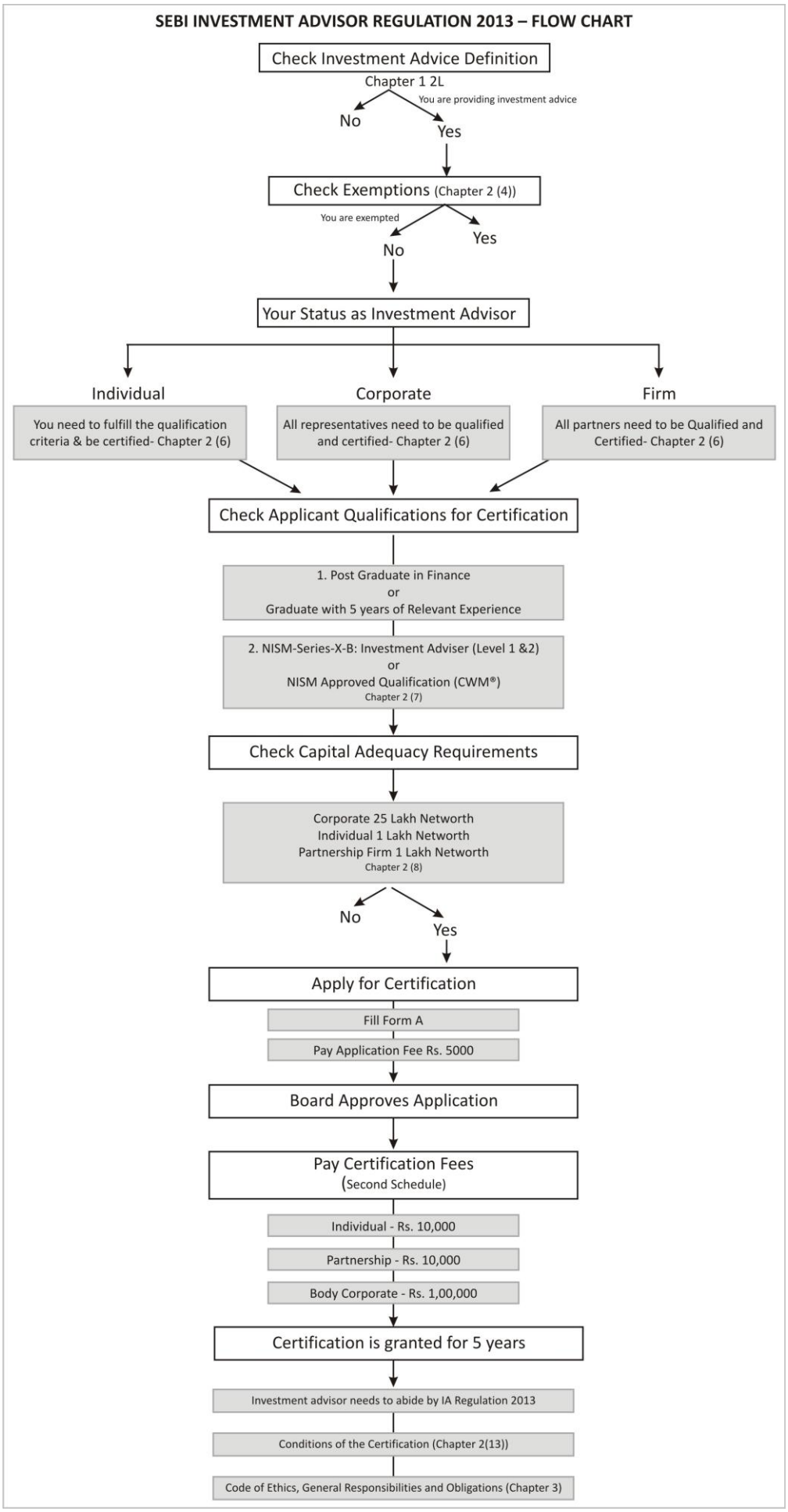
- Board's right to inspect.
- Notice before inspection.
- Obligation of investment adviser on inspection.
- Submission of report to the Board.
- Action on the inspection report.

Chapter 5: Procedure for Action In Case of Default

- Liability for action in case of default**.**

Chapter 6: Miscellaneous Provisions

- Power of the Board to issue clarifications etc.
- Power of the Board over body or body corporate recognized under regulation.



Some of the important provisions of these regulations are:

Investment Adviser

Under Regulation 3 of the IA Regulations, any person 'acting' or 'holding itself out' as an investment adviser will be required to compulsorily seek registration with SEBI. The term 'investment adviser' has been defined broadly in the IA Regulations to mean any person who is engaged in the business of providing investment advice to clients or other persons or group of persons, for a consideration, and includes any person who holds out himself as an investment adviser by whatever name.

To understand who could fall within the ambit of the above mentioned definition of 'investment adviser', it is essential to understand the definition of 'investment advice'.

Investment Advice

'Investment advice' has been defined under the IA Regulations to mean any 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 client and shall include financial planning."

While the meaning of the term 'securities' may be borrowed from Section 2(h) of the Securities Contracts (Regulation) Act, 1956, the term 'investment products' is left undefined and open to interpretation. However, knowing the mandate of SEBI, this would mean to cover products relating to securities as the SEBI Act, 1992 mandates the role of SEBI to "protect the interests of investors in securities and to promote the development of, and to regulate the securities market…"

However, what is excluded from the above mentioned definition of investment advice is any advice given through a newspaper or magazine or through any electronic, broadcasting or telecom medium as may be widely available to public at large. Also, any advice given without any consideration, in the form of economic benefit or non-cash benefit, will not be investment advice as per the IA Regulations.

Person's exempted from Registration under IA Regulations

The IA Regulations have provided a comprehensive list of persons who shall be exempted from seeking registration under Regulation 3 of the IA Regulations. This list is largely similar to the exempted person list as was provided in the Board Meeting Minutes; 3 however, certain additional categories that are exempt from falling under the net of Regulation 3 are:

Any fund manager of any intermediary or entity that is registered with SEBI – by this inclusion, the exemption has been extended to fund managers of venture capital funds registered with SEBI under the erstwhile VCF Regulations as well as collective investment management companies under the SEBI (Collective Investment Schemes) Regulations, 1999 in addition to the fund managers of alternative investment funds and mutual funds;

Any representative or partner of an investment adviser who is registered under the IA Regulations;

Any person who provides investment advice exclusively to clients based out of India (however, if clients happen to be non-resident Indians ("NRIs") or person of Indian origin ("PIOs"), then the exemption from registration under Regulation 3 does not apply);

Any other person as specified by SEBI.

Off Shore Fund Advisors

The exclusion under above means that any person, whether in India or out of India, who provides investment advice exclusively to a person 'based outside India', other than to NRIs and PIOs, would be exempted from registering under Regulation 3. This appears to have been aimed at, and is likely to provide relief to all the investment advisers in India, or even outside India, engaged in providing investment advisory services to an offshore fund manager of an offshore fund, as long as their investment advice is restricted exclusively to such offshore clients. If in addition to the offshore

clients, the investment adviser wishes to provide any advice to a client in India or to any NRIs or PIOs, it will be required to seek registration in accordance with Regulation 3 of the IA Regulations.

It may however be noted that the exemption provision provides that the client should be 'based out of India', which may be ambiguous in its interpretation, i.e., whether an investment adviser giving investment advice to any Indian resident (not being a NRI or PIO) who, at the time when the advice was being given, was based outside India for a temporary period, would be caught under the exemption or not, may be ambiguous.

Eligibility Criteria for Registration as an Investment Adviser

Regulation 6 of the IA Regulations prescribes different requirements and thresholds for registration depending on the form of the adviser, i.e. whether an applicant is a body corporate, firm, Limited Liability Partnership or an individual (all of which would result in distinct treatment relating to qualifications and certification).

Other key factors include previous disciplinary history in context of the securities market as well as any past refusal of registration by SEBI under any other regulation. Further, in case of a bank or a Non-Banking Financial Company ("NBFC"), the applicant would have to disclose if it has been granted permission by the Reserve Bank of India to provide investment advisory services, and if that is the case, whether it purports to carry out the advisory activities itself or through a separately identifiable division or department.

With regard to foreign entities seeking to register as an investment adviser, a vital determining factor that will be taken into consideration would be whether the foreign entity has a subsidiary in India, and if yes, then whether such subsidiary has sought any registration under the IA Regulations. Similarly, if a foreign individual proposes to undertake investment advisory services, whether he/she has an office in India and if yes, whether he/she proposes to undertake investment advice from such office or not would also be taken into consideration by SEBI.

When does an Investment Advisor need to register?

The IA Regulations have been notified and published in the official gazette by SEBI on January 21, 2013 and will come into force on the 90th (ninetieth) day from such date, i.e. April 20, 2013. The IA Regulations have also provided a 6 (six) month breather on the requirement to register for persons acting as investment advisers immediately prior to the commencement of the IA Regulations.

This would mean that all the investment adviser who have commenced provisioning of investment advisory services prior to April 20, 2013 would be provided a lee-way of not being required to be registered with SEBI for a period of 6 (six) months therefrom. However, any investment adviser who wishes to initiate investment advisory services after the commencement of the IA Regulations will compulsorily need to seek registration with SEBI under the IA Regulations.

Responsibilities of Investment Advisers under Investment Advisory Regulation

One of the chief strains of the IA Regulations is to ensure that investment advisers are held to the highest ethical and moral standards to protect clients. Indeed, the absence of these standards in the United States led to several cases of abuse of conflicting positions, resulting in the Global Settlement of Conflicts of Interest between Research and Investment Banking.5 SEBI seems to have taken into account the lessons learnt from experiences such as the Global Settlement and has sought to address the same through extensive (but not as far reaching as rules prescribed by the U.S. Investment Advisers Act, 1940) rules in this regard to address conflict of interest, risk profiling and risk mitigation for persons availing the services of investment advisers.

The IA Regulations mandate that investment advisers shall always act in a fiduciary capacity towards their clients and shall disclose conflicts of interests as and when they arise. This is particularly important since investment advisers may likely encounter many cases of conflicting interests arising between not just the interest of investment adviser and the client, but also between multiple clients. Further, the IA Regulations also prohibit an investment adviser from receiving any consideration by way of remuneration or compensation or in any other form from any person relating to underlying

securities or investment products other than the client being advised by the investment adviser. The objective is to prohibit investment advisers from acting as or in conjunction with distributors / marketing agents of a given financial product, which could possibly result in non-objective / biased advice being possibly provided to the client. The IA Regulations also mandate an investment adviser to require prior approval from SEBI in case of change in control of the investment adviser.

Some of the obligations are discussed in more detail below:

Chinese Walls

The IA Regulations also mandate an investment adviser to maintain arm's length relationship between its investment advisory activities and other activities. It is in furtherance of this that the IA Regulations mandate a 'Chinese wall' between the investment advisory arm and other activities of an investment adviser. However, in the event that an apparent conflict of interest becomes known to the investment adviser between its advisory activities and other activities, the investment adviser is required to disclose any such known conflicts to the client immediately.

The IA Regulations also devote special attention to the segregation of execution of investment advisory services, especially in cases of banks, NBFCs and other body corporates which also provide distribution and execution services. The IA Regulations mandate that even after segregation of such services, the provision of such execution and distribution services would be subject to the investment adviser making it clear to the client that the subscription of execution / distribution services would not be mandatory on the client. In addition, such services would have to be on an arm's length basis and any payment required to be made for the distribution and/or execution services would have to be made directly to the distributor / service provider.

Conflict of Interest

The IA Regulations set an extremely high threshold on disclosures relating to conflict of interests which may arise during course of the investment adviser's activities being undertaken. This includes keeping the client informed of any conflict of interest arising from various other activities carried out by the investment adviser, informing the client of any consideration / remuneration received by the investment adviser or its associates and subsidiaries and includes informing the client of any actual or potential conflicts arising from 'any connection to or association' with any issuer of products or securities, including any material information or fact that could even possibly compromise the investment adviser's objectivity or independence.

The IA Regulations further go on to address specific cases where conflict is deemed to exist, and has put in measures to mitigate the same. The IA Regulations mandate that an investment adviser shall not enter into transactions on its own account contrary to its advice given to a client for a period of 15 days from the date of such advice. However, it may enter into such a transaction after sending a revised assessment of the situation to the client 24 hours prior to entering into such transaction. What remains largely uncertain is the inherent inconsistency in obligations imposed on investment advisers whose segregated departments may undertake a contrary advice within the stipulated time period and without the respective departments being aware of it. In such a case, the question that begs to be answered is whether SEBI will penalize the investment adviser for failing to provide notice before entering into such a transaction or for failure to maintain the appropriate Chinese wall.

The IA Regulations also prohibit an investment adviser from purchasing or selling securities / investment products on its own account (knowingly) from / to a client.

KYC compliance and Code of Conduct

The investment adviser is also required to follow the Know Your Client ("KYC") guidelines specified by the SEBI from time.7 In addition; a prescribed 'Code of Conduct' is to be adhered by the investment adviser. The 'Code of Conduct' prescribes the following tenets: Honesty and fairness; diligence; effectively employing capabilities; gaining all relevant information relating to the clients; providing all necessary information relevant to clients; charging fair and reasonable fees; disclosing conflict of interests; compliance with applicable regulatory requirements; and allocating relevant responsibility to senior management.

Other Important Miscellaneous Obligations and Compliances

The IA Regulations also outlines various other obligations on, and compliances to be fulfilled by, the investment adviser, including carrying out risk profiling for the clients, maintenance of prescribed records, appointment of a compliance officer, setting up procedures to redress client grievances in a timely and prompt manner and making relevant disclosures such as material information pertaining to itself, its disciplinary history, its affiliations, its remuneration, its holding or positions with respect to financial products, etc. to enable the client to take an informed decision on whether to procure the services of the investment adviser.

SEBI Guidelines for Investment Advisors on Fees, Client Segregation

SEBI has allowed RIAs to charge fees under the fixed fee model or percentage of assets under advice model. The Securities and Exchange Board of India (SEBI) has come out with detailed guidelines for registered investment advisors (RIAs). The regulations were first proposed in January and finalized in July 2020. The latest set of guidelines fills in the gaps in areas such as fees, which were previously sidestepped.

Under these guidelines, RIAs will not be permitted to offer distribution and advice to the same client. Fees will be capped at 2.5% or ₹1.25 lakh, depending on whether a percentage or a flat fee is levied. Individual RIAs with more than 150 clients will have to corporatize or stop accepting additional clients. All RIAs will have to sign investment advisory agreements with clients by 1 April 2021, incorporating terms laid down by SEBI.

The SEBI guidelines said that existing clients can opt for either the advisory or the distribution services of the RIA at the group or family level. However, the rules state that clients should not be forced to redeem existing assets under advisory or distribution due to this choice.

SEBI has also allowed grandfathering of existing assets of clients, so nobody will have to redeem based on which service they choose. New clients will also have to choose between distribution and advice.

'Client' as per the SEBI guidelines includes the dependent family of the client. SEBI has stated that 'dependent' mean members whose assets on which the advisory is sought to be provided originate from a single income. This implicitly carves out an exception for non-dependent family members such as independently employed spouses.

The definition of family as dependent on a single source of income can help advisors distinguish between independent family members but it could push some individual RIAs closer to the upper limit of 150 clients.

This is because separate counting of independent spouses adds to the client count overall. Individual RIAs with more than 150 clients will also have to register as corporate RIAs, as per the new SEBI rules. If they are not granted corporate registration, they can continue to service up to 150 clients as individuals.

SEBI has allowed RIAs to charge fees under the fixed fee model or percentage of assets under advice (AuA) model.

In case of fixed fee, SEBI has set a cap of ₹1.25, lakh higher than the ₹75,000 it had proposed in January. In the case of percentage of AuA, the cap has been set at 2.5%.

The fee structure doesn't allow for much flexibility. For example, specific fees for project work on particular client finances, but at 2.5%, the cap is liberal.

RIAs must also comply with the qualification thresholds proposed by SEBI such as post-graduate qualifications in certain subjects and five years of experience (two years for persons associated with investment advice).

However, the regulator has carved out a curious exception for existing RIAs over the age of 50. However, the latter will have to hold NISM accredited certifications. SEBI has also laid down certain procedural guidelines with respect to audit and record-keeping.

RIAs will now have to maintain an audit trail of conversations even with prospective clients. This doesn't necessarily mean recording all phone calls, but rather some form of record, like signed minutes of the meeting or email from registered email id will have to be kept. The SEBI guidelines also bring in clarity on the applicable deadline for compliance ranging from 1 January 2021 to 1 April 2021. There was some ambiguity about this previously.

THE GAZETTE OF INDIA
EXTRAORDINARY PART - III - SECTION 4
PUBLISHED BY AUTHORITY NEW DELHI,
JANUARY 21, 2013
SECURITIES AND EXCHANGE BOARD OF INDIA NOTIFICATION
Mumbai, the 21st January, 2013
SECURITIES AND EXCHANGE BOARD OF INDIA
(INVESTMENT ADVISERS) REGULATIONS, 2013

No. LAD-NRO/GN/2012-13/31/1778.-In exercise of the powers conferred by sub-section (1) of Section 30 read with 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

1. Short Title and Commencement

(1) These regulations may be called the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

(2) These regulations shall come into force on the ninetieth day from the date of their publication in the Official Gazette.

2. Definitions

(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 sub-section (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 for providing investment advice;

(h) "Financial planning" shall include analysis of clients' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realise such goals;

(i) "Firm" means a partnership firm registered under Indian Partnership Act, 1932 (9 of 1932);

(j) "Form" means any of the forms set out in the First Schedule;

(k) "Inspecting authority" means any one or more persons appointed by the Board to exercise powers conferred under regulation 23;

(l) "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 client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;

(m) "Investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

(n) "Limited liability partnership" means a partnership formed and registered under The Limited Liability Partnership Act, 2008(6 of 2009);

(o) "NBFC" means a Non-Banking Financial Company regulated by Reserve Bank of India;

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

(q) "Partner" means partner of the firm or a limited liability partnership who renders investment advice on behalf of the firm or limited liability partnership;

(r) "Representative" means an employee or an agent of an investment adviser who renders investment advice on behalf of that investment adviser.

(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 regulations made thereunder shall have the same meanings respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.

CHAPTER II — Registration of Investment Advisers

3. Application for Grant of Certificate

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

Provided that a person acting as an investment adviser 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.

(3) An application for grant of certificate of registration shall be made in Form A as specified in the First Schedule to these regulations and shall be accompanied by a non-refundable application fee to be paid in the manner specified in Second Schedule.

4. Exemption from Registration

The following persons shall not be required to seek registration under regulation 3 subject to the fulfillment of the conditions stipulated therefor,

(a) Any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;

(b) Any insurance agent or insurance 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 solely on pension products and is registered with Pension Fund Regulatory and Development Authority for such activity;

(d) Any distributor of mutual funds, who is a member of a self-regulatory organisation recognised by the Board or is registered with an association of asset management companies of mutual funds, providing any investment advice to its clients incidental to its primary activity;

(e) Any advocate, solicitor or law firm, who provides investment advice to their clients, incidental to their legal practice;

(f) Any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Board, who provides investment advice to their clients, incidental to his professional service;

(g) Any stock broker or sub-broker registered under SEBI (Stock Broker and Sub- Broker) Regulations, 1992, portfolio manager registered under SEBI (Portfolio Managers) Regulations, 1993 or merchant banker registered under SEBI (Merchant Bankers) Regulations, 1992, who provides any investment advice to its clients incidental to their primary activity:

Provided that such intermediaries shall comply with the general obligation(s) and responsibilities as specified in Chapter III of these regulations:

Provided further that existing portfolio manager offering only investment advisory services may apply for registration under these regulations after expiry of his current certificate of registration as a portfolio manager;

(h) Any fund manager, by whatever name called of a mutual fund, alternative investment fund or any other intermediary or entity registered with the Board;

(i) Any person who provides investment advice exclusively to clients based out of India:

Provided that persons providing investment advice to Non-Resident Indian or Person of Indian Origin shall fall within the purview of these regulations;

(j) Any representative and partner of an investment adviser which is registered under these regulations:

Provided that such representative and partner shall comply with regulation 7 of these regulations;

(k) Any other person as may be specified by the Board.

5. Furnishing of Further Information, Clarification and Personal Representation

(1) The Board may require the applicant to furnish further information or clarification regarding matters relevant to investment advisory services for the purpose of consideration of the application filed under sub-regulation (2) of regulation 3.

(2) The applicant or his authorized representative, if so required, shall appear before the Board for personal representation.

6. Consideration of Application and Eligibility Criteria

For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —

(a) whether the applicant is an individual or a body corporate or a firm;

(b) whether in case the applicant is an individual, he is appropriately qualified and certified as specified in regulation 7;

(c) whether in case the applicant is a body corporate, all the representatives of the applicant who provide investment advice are appropriately qualified and certified as specified in regulation 7;

(d) Whether in case the applicant is a firm or a limited liability partnership, all partners who are engaged in giving investment advice are qualified and certified as specified in regulation 7.

(e) whether the applicant fulfills the capital adequacy requirements as specified in regulation 8;

(f) whether the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(g) whether the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser;

(h) Whether the applicant or any person directly or indirectly connected with the applicant has in the past been refused certificate by the Board and if so, the grounds for such refusal;

(i) whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected to the applicant under the respective Act, rules or regulations made thereunder;

(j) In case a bank or an NBFC proposes to undertake investment advisory services, whether it has been permitted by Reserve Bank of India and the application is made through a subsidiary or separately identifiable department or division;

(k) In case anybody corporate, other than a Bank or NBFC, which proposes to undertake investment advisory services, whether, the application is made through a separately identifiable department or division;

(l) In case an entity incorporated outside India undertakes to provide investment advisory services under these regulations, whether, it has set up a subsidiary in India and whether such subsidiary has made the application for registration;

(m) In case a foreign citizen proposes to undertake investment advisory services, whether the applicant has set up an office in India and proposes to undertake investment advisory services through such office.

7. Qualification and Certification Requirement

(1) An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:

(a) A professional qualification or post-graduate degree or post graduate 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 securities or fund or asset or portfolio management.

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or

(b) from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

8. Capital Adequacy

(1) Investment advisers which are body corporate shall have a net worth of not less than twenty five lakh rupees.

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, deferred expenditure not written

off, including miscellaneous expenses not written off, and capital adequacy requirement for other services offered by the advisers in accordance with the applicable rules and regulations.

(2) Investment advisers who are individuals or partnership firms shall have net tangible assets of value not less than rupees one lakh:

Provided that existing investment advisers shall comply with the capital adequacy requirement within one year from the date of commencement of these regulations.

9. Grant of Certificate of Registration

The Board on being satisfied that the applicant complies with the requirements specified in regulation 6 shall send intimation to the applicant and on receipt of the payment of registration/renewal fees as specified in Second Schedule, grant certificate of registration in Form B under First Schedule, subject to such terms and conditions as the Board may deem fit and appropriate.

10. Period of Validity of Certificate

The certificate of registration granted under regulation 9 shall be valid for a period of five years from the date of its issue.

11. Renewal of Certificate

(1) Three months before the expiry of the period of validity of the certificate, the investment adviser may, if he so desires, make an application in Form A for grant of renewal of certificate of registration.

(2) The application for renewal under sub-regulation (1) shall be dealt with in the same manner as if it were an application made under sub-regulation (2) of regulation 3 for grant of certificate.

12. Procedure where Registration is refused

(1) After considering an application made under regulation 3, if the Board is of the opinion that a certificate should not be granted to the applicant, it may reject the application after giving the applicant a reasonable opportunity of being heard.

(2) The decision of the Board to reject the application shall be communicated to the applicant within thirty days of such decision.

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

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

13. Conditions of Certificate

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

(a) The investment adviser shall abide by the provisions of the Act and these regulations;

(b) The investment adviser 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 adviser, not being an individual, shall include the words 'investment adviser' in its name:

Provided that if the investment advisory service is being provided by a separately identifiable department or division or a subsidiary, then such separately identifiable department or division or subsidiary shall include the words 'investment adviser' in its name;

(d) Individuals registered as investment advisers shall use the term 'investment adviser' in all their correspondences with their clients.

14. Recognition of body or body corporate for regulation of investment advisers

(1) The Board may recognize any body or body corporate for the purpose of regulating investment advisers.

(2) The Board may, at the time of recognition of such body or body corporate, delegate administration and supervision of investment advisers to such body or body corporate on such terms and conditions as may be specified by the Board.

(3) The Board may specify that no person shall act as an investment adviser unless he is a member of a recognized body or body corporate and in such event, provisions of these regulations and byelaws or articles of such body or body corporate shall apply *mutatis mutandis* to such investment advisers.

CHAPTER III — General Obligations and Responsibilities

15. General Responsibility

(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.

(2) An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.

(3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

(4) An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.

(5) An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client.

(6) An investment adviser shall not divulge any confidential information about its client, 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.

(7) An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.

Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a transaction on its own account after giving such revised assessment to the client at least 24 hours in advance of entering into such transaction.

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

(10) An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.

(11) In case of change in control of the investment adviser, prior approval from the Board shall be taken.

(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.

(13) It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements under Regulation 7 at all times.

16. Risk Profiling

Investment adviser shall ensure that,-

(a) It obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i) Age;
(ii) Investment objectives including 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) It has a process for assessing the risk a client is willing and able to take, including:
(i) Assessing a client's capacity for absorbing loss;
(ii) Identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii) Appropriately interpreting client 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 identified and mitigated;

(d) Any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:
(i) Questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
(ii) Questionnaire is not structured in a way that it contains leading questions.

(e) Risk profile of the client is communicated to the client after risk assessment is done;

(f) Information provided by clients and their risk assessment is updated periodically.

17. Suitability

Investment adviser shall ensure that-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has 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 its investment objectives and risk tolerance;
(iii) Is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, 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 absorbing loss.

18. Disclosures to Clients

(1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.

(2) An investment adviser shall disclose to its client, any consideration by way of remuneration or compensation or in any other form whatsoever, received or receivable by it or any of its associates or subsidiaries for any distribution or execution services in respect of the products or securities for which the investment advice is provided to the client.

(3) An investment adviser shall, before recommending the services of a stock broker or other intermediary to a client disclose any consideration by way of remuneration or compensation or in any other form whatsoever, if any, received or receivable by the investment adviser, if the client desires to avail the services of such intermediary.

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

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

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

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

19. Maintenance of Records

(1) An investment adviser shall maintain the following records,-

(a) Know Your Client records of the client;
(b) Risk profiling and risk assessment of the client;
(c) Suitability assessment of the advice being provided;
(d) Copies of agreements with clients, 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 containing list of the clients, the date of advice, nature of the advice, and the products/securities in which advice was rendered and fee, if any charged for such advice.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

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

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.

20. Appointment of Compliance Officer

An investment adviser which is a body corporate or a partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance by the investment adviser in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board.

21. Redressal of Client Grievances

(1) An investment adviser shall redress client grievances promptly.

(2) An investment adviser shall have adequate procedure for expeditious grievance redressal.

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

(4) Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

22. Segregation of Execution Services

Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:

Provided that such distribution or execution services can only be offered subject to the following:

(a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.
(b) The investment adviser shall maintain arm's length relationship between its activities as investment adviser and distribution or execution services.
(c) All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through the investment adviser.

CHAPTER IV — INSPECTION

23. Board's Right to Inspect

The Board may *suo motu* or upon receipt of information or complaint appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, records and documents relating to investment advisers for any of the following reasons, namely: -

(a) To ensure that the books of account, records and documents are being maintained by the investment adviser in the manner specified in these regulations;
(b) To inspect into complaints received from clients or any other person, on any matter having a bearing on the activities of the investment adviser;
(c) To ascertain whether the provisions of the Act and these regulations are being complied with by the investment adviser;
(d) To inspect into the affairs of a investment adviser, in the interest of the securities market or in the interest of investors.

24. Notice before Inspection

(1) Before ordering an inspection under regulation 23, the Board shall give not less than ten days' notice to the investment adviser.
(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 adviser be taken up without such notice.
(3) During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.

25. Obligation of Investment Adviser on Inspection

(1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.
(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.
(3) The inspecting authority shall, for the purposes of inspection, have power to examine on oath and record the statement of any employees, directors, partners or person responsible for or connected with the activities of investment adviser or any other associate person having relevant information pertaining to such investment adviser.
(4) The inspecting authority shall, for the purposes of inspection, have power to obtain authenticated copies of documents, books, accounts of investment adviser, from any person having control or custody of such documents, books or accounts.

26. Submission of Report to the Board

The inspecting authority 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, the inspecting authority may submit an interim report.

27. Action on the Inspection Report

The Board may after consideration of the inspection report and after giving reasonable opportunity of hearing to the investment advisers or its authorized representatives, issue such directions as it deems fit in the interest of securities market or the investors including,-

(a) Requiring an investment adviser not to provide investment advice for a particular period;
(b) Requiring the investment adviser to refund any money collected as fees, charges or commissions or otherwise to the concerned clients along with the requisite interest.
(c) Prohibiting the investment adviser from operating in the capital market or accessing the capital market for a specified period.

CHAPTER V — Procedure for Action In Case Of Default

28. Liability for Action in Case of Default

An investment adviser who -

(a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;
(b) fails to furnish any information relating to its activity as an investment adviser as required by the Board;
(c) furnishes to the Board information which is false or misleading in any material particular;
(d) does not submit periodic returns or reports as required by the Board;
(e) does not co-operate in any enquiry, inspection or investigation conducted by the Board;
(f) Fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

Chapter VI — Miscellaneous

29. Power of the Board to issue clarifications etc

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.

30. Power of the Board over body or body corporate recognized under regulation 14

The Board reserves the right to alter, modify and overrule any decision, action taken or penalties imposed by the body or body corporate recognized under regulation 14.

FIRST SCHEDULE *FORM A*

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 *[See* **Regulations 3 and 11] Application for Grant of Certificate of Registration/Renewal as investment adviser**

Securities and Exchange Board of India

SEBI Bhavan, C4-A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400051 - India

Instructions

1. This form is meant for use by the applicant for grant of certificate of registration as an investment adviser.
2. The applicant should complete this form, and submit it, along with all supporting documents to the Board at its head office at Mumbai.

3. This application form should be filled in accordance with these regulations.
4. The application shall be considered by the Board provided it is complete in all respects.
5. All answers must be legible and all the pages must be numbered with signature/ stamp on each page of the form.
6. Information which needs to be supplied in more detail may be given on separate sheets which should be attached to the application form and appropriately numbered.
7. The application must be signed.
8. The application must be accompanied by an application fee as specified in the Second Schedule to these regulations.

1. General Information

(a) Name, address of the registered office, address for correspondence and principal place of business, telephone number(s), fax number(s), e-mail address of the applicant.

(b) Whether application is for registration/renewal. Provide registration number if the application is for renewal of certificate.

(c) Name, direct line number, mobile number and e-mail of the contact person(s).

(d) Legal structure of applicant - Whether the applicant is an individual, body corporate (including company), partnership firm or limited liability partnership.

(e) Whether the applicant is a bank /NBFC.

(f) Date and place of incorporation/establishment, if any. If the applicant is incorporated outside India, details of such incorporation.

(g) Whether the applicant is engaged in investment advisory services prior to making application under these regulations.

(h) Whether the applicant is registered with SEBI, RBI, IRDA or PFRDA in any capacity. If so, details of such registration.

(i) Write-up on the activities of the applicant.

(For renewal application, provide details of existing investment advisory services including number and type of clients, assets under advice, revenue, profitability, products/ securities on which investment advice was provided, etc.)

2. Details of Applicant (Provide details of only the section applicable to you)

I. In Case Applicant is an Individual:

1. Whether the applicant has:
   (a) A professional qualification or post-graduate degree or post graduate 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 securities or fund or asset or portfolio management.

   (Provide self-certified copies of supporting documents).
2. Copy of certification obtained in accordance with regulation 7(2).

   (If the applicant is an existing investment adviser applying for fresh registration, then provides a declaration stating that it shall obtain such certification within two years from the date of commencement of these regulations and submit a copy of the certification to the Board within 15 days of receipt of such certification.)
3. Number of employees and agents of the applicant, if any, who shall render investment advice under these regulations on behalf of the applicant. Provide documents as mentioned in points (1) to (2) above for such employees/ agents.
4. Enclose identity proof and address proof of the applicant.

5. Details of ownership/directorship of the applicant in any companies or partnership interest in any firm or limited liability partnership.
6. Copy of Income Tax Return/ Copy of Form 16 for the last 3 years.
7. Copy of assets and liabilities statement and certification of net tangible assets certified by a chartered accountant (not more than six months old at the time of filing of application). Please note that membership number of the Chartered accountant must be included in the certificate,

II. In Case Applicant is a Company:

1. Shareholding pattern and profile of the directors (Enclose identity proof and address proof of the directors).
2. Number of employees and agents of the applicant (hereinafter referred to as 'representatives') who render/propose to render investment advice under these regulations on behalf of the applicant.
3. Declaration by the applicant that its representatives currently comply with the certification and qualification requirements under regulation 7. *(If the applicant is an existing investment adviser applying for fresh registration, then provide a declaration stating that the applicant shall ensure that all its representatives obtain such certification within two years from the date of commencement of these regulations and after all its representatives obtain the certification, a declaration to that effect shall be submitted to SEBI.)*
4. Declaration by the applicant that it shall ensure that its representatives comply with the certification and qualification requirements under Regulation 7 at all times.
5. List of associated companies registered with SEBI, RBI, IRDA or PFRDA along with the registration number.
6. If applicant is a bank or NBFC, then copy of approval from RBI for undertaking investment advisory services.
7. Net worth certificate by a chartered accountant, not more than six months old. Please note that membership number of the chartered accountant must be included in the certificate,

III. In case applicant is a partnership firm or a limited liability partnership:

1. Names and Beneficial ownership pattern of the partners engaged/proposed to engage in investment advice (Enclose identity proof and address proof of the partners).
2. Whether the aforesaid partners have:

   (a). A professional qualification or post-graduate degree or post graduate 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 securities or fund or asset or portfolio management.

   (Provide self-certified copies of supporting documents).

3. Copy of certification obtained by the aforesaid partners in accordance with regulation 7(2).

   (If the applicant is an existing investment adviser applying for fresh registration, then provide a declaration stating that all the partners engaged in investment advice shall obtain such certification within two years from the date of commencement of these regulations and after all such partners obtain the certification, a declaration to that effect shall be submitted to SEBI.)

4. Declaration that the aforesaid partners shall obtain fresh certification before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

5. Copy of assets and liabilities statement and certification of net tangible assets of the partnership firm certified by a chartered accountant (not more than six months old at the time of filing of application). Please note that membership number of the chartered accountant must be included in the certificate.

IV. In case applicant is a body corporate *(other than company or limited liability partnership):*

1. Shareholding pattern and profile of the directors (Enclose identity proof and address proof of the directors).
2. Whether the applicant is set up or established under the laws of the Central or State Legislature and whether the applicant is permitted to carry on of the activity of an investment adviser (Enclose relevant extract of the relevant Statute/Act).
3. Number of employees and agents of the applicant (hereinafter referred to as 'representatives') who render/propose to render investment advice under these regulations on behalf of the applicant.
4. Declaration by the applicant that its representatives currently comply with the certification and qualification requirements under regulation 7. *(If the applicant is an existing investment adviser applying for fresh registration, then provide a declaration stating that the applicant shall ensure that all its representatives obtain such certification within two years from the date of commencement of these regulations and after all its representatives obtain the certification, a declaration to that effect shall be submitted to SEBI.)*
5. Declaration by the applicant that it shall ensure that its representatives comply with the certification and qualification requirements under regulation 7 at all times.
6. Net worth certificate by a chartered accountant, not more than six months old. Please note that membership number of the chartered accountant must be included in the certificate.

3. Business Plan

1. Proposed business plan & means of achieving the same.
2. The type of products/ securities on which investment advice is proposed to be rendered.
3. Process for risk profiling of the client and for assessing suitability of advice.

4. Details of Infrastructure

1. Details of office space, office equipment, furniture and fixtures, communication facilities, research capacity, research software for undertaking investment advisory services.
2. Declaration that the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser.

5. Execution Services

1. If the applicant is a body corporate, whether the applicant proposes to offer distribution or execution services to its clients.
2. If yes, provide a declaration that the services are being offered through a subsidiary/ separately identifiable department or division.

6. Other Information/Declarations/ Regulatory Actions

(a) Details of all settled and pending disputes in the last 5 years.
(b) 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; If yes, provide details of the same.
(c) Whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected with the applicant under the Act or the regulations made there under in the last 5 years. If yes, provide details of the action.
(d) Whether the applicant/directors/promoters/ partners have been indicted/involved in any economic offence in the last 5 years. If yes, provide details of the same.
(e) A credit report/ score from CIBIL for the applicant.(Tor *applicants other than financial institutions & banking companies)*

(f) Declaration that the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(g) Declaration that the applicant shall not obtain any consideration by way of remuneration or compensation or any other form whatsoever, from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided to the client. (h) Any other information considered relevant to the nature of services to be rendered by the applicant.

7. Declaration Statement

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

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

I/ We further agree that I/ 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 Advisers) Regulations, 2013, guidelines/instructions as may be announced by the Securities and Exchange Board of India from time to time.

I/ We further agree that as a condition of registration, I/ 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)
(Date and Place)

FORM B

Securities and Exchange Board of India (Investment Adviser) Regulations, 2013
[See regulation 9] Certificate of registration as investment adviser

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 adviser subject to the conditions specified in the Act and in the regulations made thereunder.

II. The Registration Number of the investment adviser is IN/IA/.

Date :

Place : MUMBAI

By Order Sd/-
For and on behalf of Securities and Exchange Board of India

SECOND SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 [Regulation 9]

FEES

1. Every applicant shall pay non-refundable application fees of five thousand rupees along with the application for grant or renewal of certificate of registration.
2. Applicants which are individuals and firms shall pay a sum of ten thousand rupees as registration/ renewal fee at the time of 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 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 by a demand draft in favor of 'Securities and Exchange Board of India' payable at Mumbai or at respective regional or local office.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
[See **sub-regulation (9) of regulation 15] CODE OF CONDUCT FOR INVESTMENT ADVISER**

1. **Honesty and fairness**

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

2. **Diligence**

   An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

3. **Capabilities**

   An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

4. **Information about clients**

   An investment adviser 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 to its clients**

   An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

6. **Fair and reasonable charges**

   An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the clients are fair and reasonable.

7. **Conflicts of interest**

   An investment adviser shall try to avoid conflicts of interest as far as possible and when they cannot be avoided, it shall ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.

8. **Compliance**

   An investment adviser 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 adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

U. K. SINHA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

Consultation paper on Amendments to the SEBI (Investment advisors) regulations, 2013

Background

SEBI had issued a consultation paper on October 07, 2016 seeking public comments on the clarifications/amendments to SEBI (Investment Advisors) regulations, 2013. A revised consultation paper was issued on June 22, 2017 clarifying certain issues raised by the market participants. Based on the feedback received and to prevent the conflict of interest between advising of investment products and selling of investment products by the same entity/ person, the proposals are revised as under.

Proposals

- There should be the clear segregation between the two activities of the entity ie. providing investment advice and distribution of the investment products / execution of investment transactions.
- Individuals who are willing to get registered as investment advisors shall not provide any distribution services in financial products/either directly or through any of their immediate relatives. Similarly, individuals providing distribution services shall not provide advice for investing in financial product either directly or through their immediate relatives. Immediate relative means a spouse of a person, and includes parent, brother, sister or child of such person or of the spouse as defined under SEBI (Substantial acquisition of shares and takeover), regulations 2011.
- Banks, NBFC's, body corporates , LLP's and firms who are willing to get registered as investment advisors, shall not provide any distribution services in financial products, either directly or through their holding company or associate company or subsidiary company. Similarly banks, NBFC's, body corporates, LLP's and firms providing distribution services shall not provide investment advice in financial products either directly or indirectly through their holding company or associates company or subsidiary company.
- Existing registered investment advisors who are offering distribution services through immediate relatives or through separately identifiable division or department or through holding / subsidiary / associate company shall chose among providing investment advice or the distribution services before March 31, 2019. Similarly, distributors who are offering advisory services through aforesaid modes shall also chose between distribution services and advisory services. From April 1, 2019 any person including their immediate relatives or holding / subsidiary / associate entity, shall offer either investment advice or distribution services.
- Mutual fund distributors (MFD's), while distributing their mutual fund products can explain the features of products to client, and shall ensure the principal of 'appropriateness of products' to the client. As per the extant SEBI circulars, appropriateness is defined as selling only that product categorization that is defined as best suited for the client. As part of disclosures to clients, MFD's shall disclose the list of mutual funds they are affiliated with and that the information provided is restricted to the mutual fund products being distributed by them. However, the client may also consider other alternate products, which are not being offered by them before making investment decision.