

Note on SEBI (Investment Advisers) (Amendment) Regulations, 2020

8th July 2020



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1. Introduction

The Securities and Exchange Board of India on 3rd July 2020, published a notification in the Official Gazette of India, amending certain provisions of the SEBI (Investment Advisors) Regulations, 2013. These have been issued after 4 consultation papers (in 2016, 2017, 2018 and 2020) were published and feedback on all was considered.

These regulations are to come into effect on the 90th day of their publication in the Official Gazette i.e. on 01st October 2020

The same were first approved by the SEBI in their board meeting on 16th February 2020, which individually addressed provisions introduced in the various consultation papers.

2. Major Amendments introduced in SEBI (Investment Advisors) (Amendment) Regulations, 2020

1. Separation of Advisory and Distribution Activities (regulation 22)

The subject of the separation of advisory and distribution activities of an investment adviser has been brought up in the various consultation papers introduced and has now been introduced as an amendment.

Separate requirements have been prescribed for individual and non-individual investment advisers. For the purpose of these amendment regulations “non-individual” means a body corporate including a limited liability partnership and a partnership firm;

It is provided that the compliance and monitoring between the separation of these activities will be as per guidelines prescribed by SEBI, but no such guidelines have been prescribed yet.

Individual Investment Advisers

As per this amendment, an individual investment adviser cannot provide distribution services. This extends to the family of the investment adviser. i.e. family members of an investment adviser cannot provide distribution services to those clients to whom the investment adviser provides advice. Similarly, the investment adviser cannot provide advice to any client who is receiving distribution services from family of the investment adviser.

Family of the investment adviser for this purpose is defined as: *family of an individual investment adviser” shall include individual investment adviser, spouse, children and parents;*”

Non-Individual Investment Advisers

Non-Individual Investment Advisers are required to ensure client level segregation between its advisory and distribution services i.e. the same client cannot be offered Advisory and distribution services by the Non-Individual Investment Adviser and its group entities.

‘Group’ for this purpose shall mean an entity which is a holding, subsidiary, associate, subsidiary of a holding company to which it is also a subsidiary or an investing company of the venturer of the company as per the provisions of Companies Act, 2013 for non-individual investment adviser which is a company under the said Act and in any other case, an entity which has a controlling interest or is subject to the controlling interest of a non-individual investment adviser.

The amendment also continues the requirement for non-individual investment advisers to maintain an arm's length relationship between its activities as investment adviser and distributor by providing advisory services through a separately identifiable department or division.

2. Execution of Investment Advice (Regulation 22A)

- Investment advisers are allowed to provide implementation services to their advisory clients. However, no consideration commission or referral fees, whether embedded or indirect or otherwise by any name can be received by the adviser at the family level (in case of individual investment advisers) or the group level (In case of non-individual investment advisers)
- No fees for providing implementation fees can be charged from the client as well
- These implementation services can be provided only through direct schemes /products in the securities market.
- It must also be ensured that the client is not under any obligation to avail the implementation services

3. Networth Requirements (Regulation 8)

Non-Individual Investment Advisers

Net worth requirement of **Rs 50 Lakh** has been prescribed. The earlier requirement for body corporates was **Rs 25 Lakh** whereas the requirement for partnership firms was only **Rs 1 Lakh**

Network has been defined as - "*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 networth requirement for other services offered by the advisers in accordance with the applicable rules and regulations.

Individual Investment Advisers

net tangible assets of **Rs. 5 lakh** has been prescribed. The earlier capital adequacy requirement for Individual investment advisers was only **Rs 1 lakh**.

Existing investment advisers must comply with these requirements within three years from the date of commencement of the Amendment Regulations.

4. Qualification and Certification Requirements (Regulation 7)

Existing Investment Advisers must comply with these requirements within a period of 3 years.

Individual Investment Adviser/ Principal Officer of a Non-Individual Investment Adviser

For the purpose of these regulations Principal officer is defined as "*principal officer*" shall mean the managing director or designated director or managing partner or executive chairman of the board or equivalent management body who is responsible for the overall function of the business and operations of non-individual investment adviser."

The minimum Qualifications (at all times) and Certifications Requirements prescribed are:

- Professional Qualification or post graduate degree or Post Graduate Diploma in Finance, Accountancy, Business Management commerce, economics, capital market, banking, insurance or actuarial science or CFA Charter
- 5 years' experience in activities relating to advice in financial products or securities or fund or asset or portfolio management;
- certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

Fresh Certification for the same must be obtained before the previous certification expires and the same cannot be obtained through a CPE program

Non-Applicability: SEBI may however, specify existing individual Investment Advisors to whom the Professional Qualification and Experience Requirements shall not be applicable. The Certification Requirement whether still be applicable or not, is not specified in the amendment.

Persons Associated with Investment Advice

The definition given for 'persons associated with investment advice' is as given below:

persons associated with investment advice" shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser;

Explanation. —

All client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called shall be deemed to be persons associated with investment advice, but do not include persons who discharge clerical or office administrative functions where there is no client interface."

The minimum Qualifications (at all times) and Certifications Requirements prescribed are:

- Professional Qualification or post graduate degree or Post Graduate Diploma in Finance, Accountancy, Business Management commerce, economics, capital market, banking, insurance or actuarial science or CFA Charter
- an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management
- certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

Fresh Certification for the same must be obtained before the previous certification expires and the same cannot be obtained through a CPE program

5. Fee (Regulation 15A)

The amendment regulations provide that the fee charged by the Investment advisers will be as prescribed by board guidelines. However, none of the specific methods as were proposed by the consultation papers have included in the regulations.

6. No of Clients (Regulation 13)

Individual Investment advisers who have more than 150 clients shall apply for registration as Non-Individual Investment Advisers. This would mean that they have to adhere to all requirements (such as that of net worth) as prescribed for Non-Individual Investment advisers. The timeline for the same is still to be prescribed by the board.

7. Added Definitions (Regulation 2)

Other than the regulations included above, the following definitions have been added to the regulations:

“assets under advice” shall mean the aggregate net asset value of securities and investment products for which the investment adviser has rendered investment advice irrespective of whether the implementation services are provided by investment adviser or concluded by the client directly or through other service providers;”

“CPE” means continuing professional education in terms of clause (f) of sub regulation (1) of regulation 2 of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007;

“family of client” shall include individual client, dependent spouse, dependent children and dependent parents; The term ‘family of clients’ has however not been used anywhere in the regulations

8. Other Major Amendments

- No person, while dealing in distribution of securities, shall use the nomenclature “Independent Financial Adviser or IFA or Wealth Adviser or any other similar name unless they are a certified investment adviser (Regulation 3)
- Replacement of the terms ‘representative’ by ‘Principal officer’ or ‘persons associated with investment advice’ or addition of any of these words as applicable throughout the regulations (Regulation 4, Form A, Third Schedule)
- Replacement of the words ‘body corporate’ or ‘firm’ with ‘non-individual’ (Regulation 6, Form A)
- Replacement of the term ‘capital adequacy’ with ‘net worth’ (Regulation 6)
- Replacement of the term ‘partners’ with term ‘principal officer and persons associated with investment advice’ with respect to partnership firms (Form A)

- Replacement of the term 'directors' and 'employees and agents of the applicant (hereinafter referred to as 'representatives')' with the term 'principal officer and persons associated with investment advice' with respect to body Corporates (Form A)
- Item 5 of Form A on 'Execution of Service' to be replaced with 'Implementation of Advice or Execution Services' which requires a declaration that that no consideration shall be received directly or indirectly at Investment Adviser's group or family level for the said service and whether non-individual investment adviser proposed to provide distribution services
- Regulations requiring the investment adviser to disclose consideration received for distribution or recommending services have been omitted (Regulation 18)
- Address Identity proof of principal officer and persons associated with investment advice is also required to be submitted while making applications (Form A)

3. Other Recent Changes

SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169 issued on 27 December introduced certain measures for strengthening the conduct of investment advisers. This includes:

1. Introducing Restrictions on Providing Free trials
2. Proper Risk Profiling and Consent of client for Risk Profiling
3. Receiving fees through Banking Channels
4. Display of Complaint Status on Website of Investment Adviser

4. Conclusion

The Amendments notified in the SEBI (Investment Advisors) (Amendment) Regulations, 2020 that were being indicated by the various consultation papers and were approved earlier in the year have now been notified. However, the large no of days that has been provided before the same will come into force (after 90 days), gives the Investment Advisers sufficient time to prepare for the implementation of the same.

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