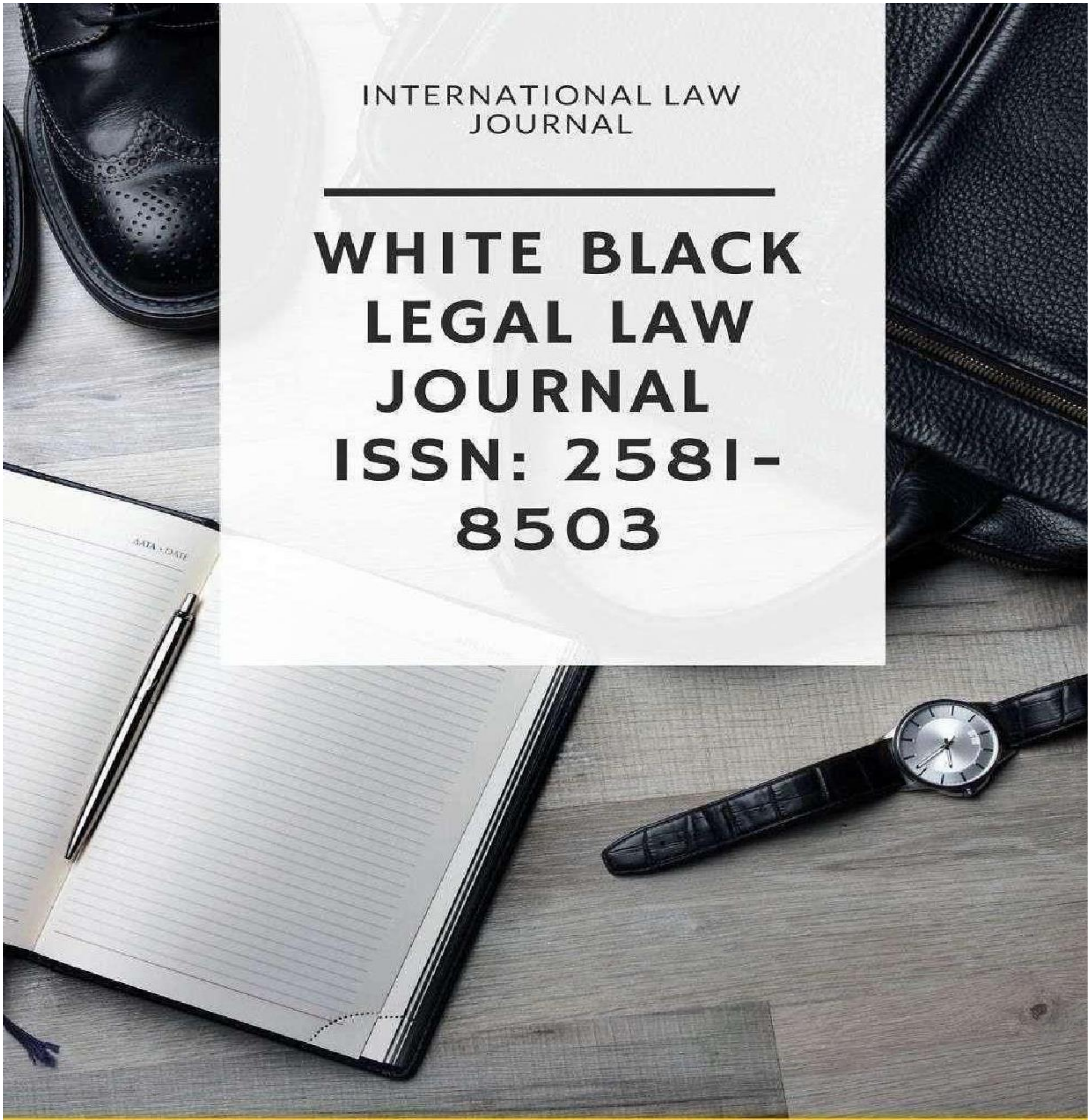

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

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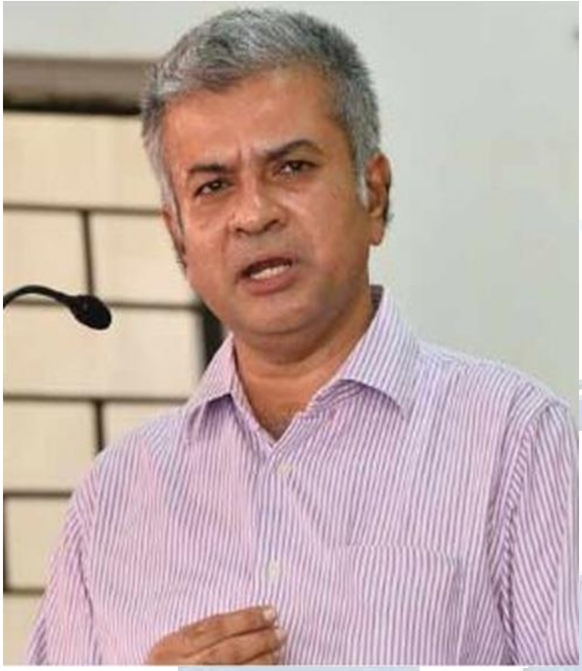

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LIKES TO LEGALITIES: SEBI'S REGULATORY REFORMS FOR FINFLUENCERS IN INDIA

AUTHORED BY - SHREYA SHETTY

ABSTRACT

The paper explores the influence of financial influencers, or "Finfluencers," on investor behaviour and decision-making processes in the Indian securities market. It delves into the regulatory challenges and loopholes in monitoring and enforcing compliance among Finfluencers in India, as well as the existing regulatory framework. The paper highlights the emergence of Finfluencers as influential figures providing financial guidance and advice through digital platforms, particularly social media, and the impact of their activities on investor decision-making. It also discusses SEBI's proposed regulations for financial influencers, emphasizing the need for transparency, accountability, and investor protection.

Additionally, the paper provides a cross-border regulatory analysis, comparing the approaches taken by financial regulators in countries such as France, Australia, and the European Union in regulating the activities of Finfluencers. The paper emphasizes the significance of SEBI's role in upholding the credibility and stability of India's financial ecosystem amidst the evolving landscape of financial marketing.

1. INTRODUCTION

As the world navigated through the unprecedented challenges brought forth by the COVID-19 pandemic, a remarkable shift occurred in the realm of finance. The digital platform, already burgeoning with potential and promise, assumed an even greater significance as individuals found themselves confined to their homes, seeking solace and opportunity in the virtual realm. With uncertainty looming large, people began to recognize the importance of passive income and sought to optimise their savings for greater financial security.

The confluence of several factors further fuelled this transformation. The proliferation of cheap and free trading apps, coupled with the widespread availability of affordable smartphones and robust 4G networks, democratised access to the equity markets. Consequently, a surge of new investors entered the fray, eager to test their mettle in the world of stocks and securities. In the aftermath of the pandemic, the Indian bourses witnessed an unprecedented surge, with the number of Demat Accounts soaring to new heights, reaching a staggering total of 13.93 crore by December 2023. Additionally, investments through Systematic Investment Plans (SIPs) surged to a record high of 6.4 lakh crore over the past five years, signalling a burgeoning culture of investment in the country.

2. FINFLUENCERS AND THEIR INFLUENCE

Against this backdrop, the stage was set for a transformative figure to emerge – one capable of guiding the masses towards the promises of instant success, passive income, and future security. Enter the financial influencers or "Finfluencers" – a formidable army of seemingly savvy, intelligent, and relatable individuals poised to lead the charge. Finfluencers represent a new intermediary between financial institutions and consumers. They provide general investment information, promote investment products, offer guidance, and, in some instances, make investment recommendations[1].

[1] Serena Espeute and Rhodri Preece, 'The Finfluencer Appeal: Investing in the Age of Social Media' (CFA Institute 2024) <https://rpc.cfainstitute.org/en/research/reports/2024/finfluencer-appeal> accessed 20 March 2024.

In the midst of economic upheaval and digital proliferation, these Finfluencers have emerged as beacons of financial wisdom, capturing the attention and admiration of a vast audience. With their engaging content and accessible demeanour, they have succeeded in demystifying complex financial concepts and inspiring confidence among aspiring investors. However, amidst the allure of instant success and wealth, questions arise regarding the accountability and credibility of these Finfluencers, particularly in a landscape where regulations and oversight may be lacking.

Amidst economic turmoil and the rapid expansion of digital platforms, Finfluencers have emerged as guiding lights in the realm of financial knowledge, captivating a wide audience with their engaging content and approachable demeanour. By simplifying intricate financial concepts, they have empowered aspiring investors and instilled confidence within them. However, as these Finfluencers promise the allure of quick success and wealth, concerns regarding their accountability and credibility have surfaced, especially in a regulatory environment that may not adequately oversee their activities.

Moreover, the absence of formal qualifications and credentials has enabled individuals without conventional financial expertise to establish their credibility by leveraging the capabilities of social media platforms. These platforms provide opportunities to craft a distinct online persona, cultivate one-sided relationships with followers, and construct coherent storylines. Numerous Indian Finfluencers lack formal backgrounds in finance and have instead shifted from related fields like corporate consulting or hold MBA degrees[2].

Ankur Warikoo, a prominent figure on social media, frequently interacts with his followers through Instagram stories and comments. While his current content leans towards motivation and lifestyle topics, his earlier posts centred around his experiences as an investor and entrepreneur, offering insights on financial management. Notably, Warikoo prioritizes sharing his personal journey with finance over highlighting his financial credentials and addressing concerns about financial literacy among his audience. By sharing anecdotes of embarking on

[2] Krithi D. Ramaswamy, "Finfluencers in India: New paradigms of financial trust and authority." In S. De, A. Arya, M. Young, D. Ramesh, & J. Pal (Eds.) Social media and society in India (pp. 133–140). University of Michigan.

his financial journey later in life, Warikoo's appeal lies more in his persona, charisma, and aspirational drive towards financial independence rather than in his formal qualifications in finance[3]. According to data, Warikoo has emerged as one of the top earning finfluencers in India with an average annual income of just shy of one million dollars[4].

But this is not exactly a new problem, however, there has been limited exploration regarding the impact of finfluencers, particularly on YouTube, on stock prices. Conversely, numerous studies have examined the manipulation of stock prices through other social media platforms, notably Twitter. A 2017 research on the American Securities Market revealed that unusually high levels of activity on Twitter are correlated with significant price surges on the day of the event, coinciding with the dissemination of positive information among Twitter users. However, this is often followed by a rapid price reversal in the subsequent week, suggesting a pattern consistent with pump-and-dump schemes[5].

In January 2021, the influence of social media on stock markets became notably evident when certain stocks, such as GameStop, were heavily promoted through the Reddit forum Wallstreetbets. Within two weeks, the price of GameStop surged from $20 to $480. Studies indicate that by monitoring the promising recommendations shared on Wallstreetbets, investors can potentially achieve greater returns compared to the broader market[6].

In our profit-oriented economy, it's safe to assume that little comes without a cost, especially in the digital sphere where consumers are often seen as commodities for many market participants. Today's consumers differ significantly from those of the past. Prior to making a purchase, contemporary consumers typically seek input from their trusted influencers. According to a 2022 nationwide survey in India, influencers wield substantial sway over their followers' buying choices. Roughly 59 percent of respondents expressed a heightened inclination to try products recommended by their preferred influencer. Additionally, 52 percent

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3 ibid.

4 'India: Leading Finfluencers by Annual Income 2023' (*Statista*) <https://www.statista.com/statistics/1419794/india-leading-finfluencers-by-annual-income/> accessed 20 March 2024.

5 Thomas Renault ,'Market Manipulation and Suspicious Stock Recommendations on Social Media(2017).

6 Tolga Buz, 'Should You Take Investment Advice From WallStreetBets? A Data-Driven Approach.

acknowledged making purchases influenced by such recommendations[7].

This underscores the importance for investors to understand the nature of considerations, sponsorships, or fees, if any, received by their trusted influencers. More importantly, investors must ascertain whether the advice provided is genuinely influenced by financial incentives. And the actual responsibility of making such disclosures should lie with the fincluencers. It has also been found that, despite the rapid rise in popularity of financial influencers, in India, a significant number of them operate without being registered investment advisors and have frequently been found to contravene Advertising Standards Council of India (ASCI) guidelines[8].

The clever strategies of these finfluencers resulted in significant losses for numerous investors during the cryptocurrency boom and crash of 2020–22. Crypto firms fueled the cryptocurrency frenzy through deceptive and highly persuasive marketing campaigns targeting inexperienced retail investors[9]. These campaigns featured endorsements from prominent actors, athletes, influencers, and celebrities, implying that cryptocurrency assets would provide greater safety, profitability, and inclusivity compared to traditional financial products[10]. Retail investors who ventured into crypto- assets incurred substantial losses during the cryptocurrency crash, while knowledgeable insiders often sold off their crypto investments before retail investors did so[11].

Finfluencers, incentivized by sponsorships or financial gains from crypto firms (often with ownership stakes), promoted this surge as a fast-track opportunity for investors to “get rich quick”. Numerous retail investors in the United States and elsewhere bought into crypto-assets due to a "fear of missing out" on the remarkable price increases seen with Bitcoin, Ethereum, and other cryptocurrencies during the cryptocurrency boom[12].

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7 ‘India: Influencer Impact on Consumer Behavior 2022 | Statista’ <https://www.statista.com/statistics/1359453/india-influencer-impact-on-consumer-behavior/> accessed 20 March 2024.

8 ‘India: Leading Finfluencers by Annual Income 2023’ (n 4).

9 Arthur E Wilmarth, ‘We Must Protect Investors and Our Banking System from the Crypto Industry’ [2023] SSRN Electronic Journal accessed 20 March 2024

10 ‘“Nightmare”: Collapse of Leading Crypto Lender Traps Investors’ <https://www.ft.com/content/64648e10-cc09-4304-a274-87b66d37d3bc> accessed 20 March 2024.

11 Raphael Auer and others, ‘Crypto Trading and Bitcoin Prices: Evidence from a New Database of Retail Adoption’ (2023) <https://papers.ssrn.com/abstract=4357559> accessed 20 March 2024.

12 Arthur E Wilmarth, ‘We Must Protect Investors and Our Banking System from the Crypto Industry’ [2023] SSRN Electronic Journal <https://www.ssrn.com/abstract=4360175> accessed 20 March 2024. (n 9).

Finfluencers frequently go beyond promoting products and investment schemes; they craft an enticing image of a luxurious and desirable lifestyle. Investors are led to believe that by investing in the promoted schemes, they can achieve a similar opulent lifestyle. However, the reality is that such aspirations are highly improbable. Hence, with a new player entering the traditional securities market, it became evident that existing regulations were insufficient to prevent them from overstepping boundaries. This necessity prompted SEBI to assert its role as a regulator.

3. EXISTING REGULATORY FRAMEWORK IN INDIA

In the realm of securities markets, the function of an investment adviser has long been established, given the inherent sensitivity of market dynamics prompting investors to seek guidance on optimizing their funds. SEBI acknowledged the presence of investment advisers and the necessity to regulate their activities to ensure that the advice provided is genuine, impartial, and in the best interests of investors. Thus, to address this requirement, the regulatory body introduced the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("IA Regulations").

Regulation 2 (m) of the regulation defines “investment adviser” as any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or groups of persons and includes any person who holds out himself as an investment adviser, by whatever name called[13]. According to the IA Regulations, individuals are prohibited from serving as investment advisers unless they have obtained registration certification from SEBI. These regulations also outline certain eligibility criteria that entities seeking registration must adhere to in order to qualify for certification.

The regulation dictates that "Investment advice" encompasses guidance pertaining to the investment, acquisition, sale, or other transactions involving securities or investment products, as well as advice concerning investment portfolios comprising securities or investment products, regardless of whether it is communicated in written or oral form. However, it should

[13] Regulation 2(1)(m), Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

be noted that investment advice disseminated through newspapers, magazines, electronic, broadcasting, or telecommunication mediums that are widely accessible to the public shall not be deemed as investment advice[14] for the purposes outlined in these regulations. This provision of the regulation comes as a saving grace for finfluencers as they typically offer advice to their audience without charging a fee, and their advice is publicly accessible, which is why they can skirt the parameters of this regulation and cannot be classified as investment advisers.

In July 2020, SEBI introduced significant amendments to the IA Regulations, coinciding with the surge in finfluencers leveraging increased screen time during the COVID-19 lockdown to expand their follower base. These amendments not only revised the qualification, certification, and net worth criteria for investment advisers but also imposed restrictions on their ability to offer distribution or charge for implementation services. Additionally, SEBI imposed a cap on the fees investment advisers can charge, thereby limiting their services and potential earnings[15].

Predicting trends in the securities market and understanding the behaviour of investors is an important part. Proficiency in market research and analysis empowers investors to make well-informed decisions regarding the purchase, sale, or retention of stocks or securities. Equipped with a diverse array of financial data and analytical tools, they can effectively assess companies and their financial standings, thus pinpointing potentially lucrative investment prospects. Moreover, market research analysts stay abreast of developments and trends within the financial sector, enabling them to furnish timely guidance and recommendations aimed at optimizing investor's portfolio performance. Collaborating with a research analyst allows an investor to leverage their expertise and experience, facilitating prudent investment choices.

Research Analysts (RAs) in India are regulated by the SEBI (Research Analysts) Regulations, 2014 ("RA Regulations"). These regulations impose strict compliance requirements on RAs, including qualifications, certifications, and disclosure of conflicts of interest. Regulation 2 (u) defines "research analyst" as a person who is primarily responsible for;

a. preparation or publication of the content of the research report; or

b. providing research reports; or

[14] Regulation 2(1)(l), Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
[15] SEBI (Investment Advisers) (Amendment) Regulations, 2020.

c. making a 'buy/sell/hold' recommendation; or

d. giving price target; or

e. offering an opinion concerning the public offer, with respect to securities that are listed or to be listed in a stock exchange[16].

However, unregistered finfluencers are not subject to these regulations and operate outside their purview. Furthermore, unlike finfluencers, Registered Investment Advisers (RIAs) and Research Analysts (RAs) possess the professional qualifications necessary for providing financial advice on securities or investment products. Additionally, they adhere to various regulatory requirements. Crucially, RIAs and RAs are required to disclose any conflicts of interest pertaining to the financial instruments covered by their advice. While these changes aimed to reinforce the objectives of the IA Regulations and ensure advisers prioritize their client's best interests, they have proven to be burdensome for investment advisers and counterproductive for the securities market itself.

Furthermore, The Advertisement code for Investment Advisers (IA) and Research Analysts (RA), which was issued by SEBI on April 5, 2023, requires registered IAs and RAs to obtain prior authorization from SEBI before disseminating any form of communication or advertisement material. This includes content shared on social media platforms or any other online platform. It's important to note that this regulation specifically targets RIAs and RAs and does not extend to finfluencers[17].

As observed above SEBI’s current regulations are not able to take the activities and operations of Finfluencers within its ambit. Furthermore, SEBI also currently does not have any specific law designed specifically for finfluencers. However, they are generally expected to follow overarching regulations like Section 12-A of the SEBI Act, 1992, and Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").

According to Section 12A of the SEBI Act, no one should engage in any fraudulent or

[16] Regulation 2 (u) Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

[17] Advertisement code for Investment Advisers (IA) and Research Analysts (RA), Circular No.: SEBI/HO/MIRSD/ MIRSD-PoD-2/P/CIR/2023/51 (April 05, 2023).

misleading practices related to stock exchange transactions[18], while Regulation 4 of the PFUTP Regulations considers knowingly false or misleading statements made to influence investment decisions as "manipulative, fraudulent, or an unfair trade practice[19]." This regulation also prohibits the reckless or careless dissemination of information or advice likely to sway investors dealing in securities.

SEBI has taken action against finfluencers on several occasions, particularly for engaging in fraudulent activities like 'pump and dump schemes' to deceive investors. In an interim order in the matter of Stock Recommendations using YouTube in the scrip of Sadhna Broadcast Limited[20], SEBI received complaints alleging price manipulation and share offloading by certain entities in the Sadhna Broadcast Limited stock. These complaints claimed that misleading YouTube videos containing false content, supported by paid marketing campaigns worth millions of rupees for broader exposure, were being uploaded to entice investors. Once these unsuspecting investors entered the stock, the alleged entities purportedly sold off their holdings at inflated prices.

SEBI noted that note that the proceeds from the prima facie fraudulent trades could not have been generated by the NetSellers and Volume Creators unless the Notices had played their respective roles in the alleged manipulative scheme in violation of SEBI Act and PFUTP Regulations[21].

Similarly, Sharpline Broadcast Limited, and Mr P.R. Sundar and his company – Mansun Consultancy Private Limited, SEBI intervened to penalize those involved in misleading investors and manipulating the market[22]. However, the existing regulatory framework primarily targets fraudulent and unfair trade practices and isn't fully equipped to address the diverse challenges posed by unregistered/unregulated finfluencers.

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[18] S. 12-A, Securities and Exchange Board of India Act, 1992.

[19] Regulation 4(2)(k), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (July 17, 2003).

[20] Interim Order in the Matter of Stock Recommendations using YouTube in the scrip of Sadhna Broadcast Limited, WTM/AN/ISD/ISD-SEC-1/24333/2022-23 (March 2, 2023).

[21] Ibid.

[22] Settlement Order in the Matter of Mansun Consultancy Pvt. Ltd., SO/AA/EFD2/2023-24/7081 (May 25, 2023).

On October 25, 2023, SEBI issued an interim order, referred to as the 'BoC order,' against Mohammad Nasiruddin Ansari, also known as Nasir, a fincluencer operating under the alias 'Baap of Chart.' This order represents the latest in a series of enforcement actions taken by SEBI against finfluencers. SEBI observed that Nasir's activities fell within the purview of the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (IA Regulations, 2013), the Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992), and the PFUTP Regulations, 2003[23].

The investigation into Nasir's activities commenced after SEBI analysed his buy/sell recommendations on social media platforms such as Twitter and Telegram. It was found that Nasir presented himself as a stock market expert and offered 'educational courses' promising guaranteed profits. He extensively promoted these courses on various social media channels and conducted physical workshops on securities market trading. Additionally, Nasir created private chat groups with course subscribers, where he provided buy/sell recommendations disguised as educational content.

SEBI's investigation raised concerns regarding Nasir's potential dissemination of false information and whether his educational activities masked unregistered investment advisory services. Consequently, SEBI determined that Nasir's workshops and courses served as a guise to lure investors into securities transactions based on his advice, violating IA Regulations, 2003. Furthermore, Nasir's conduct was found to contravene the PFUTP Regulations, 2003, as outlined separately by SEBI. This case highlights SEBI's commitment to combatting unregistered investment advisory services propagated through social media platforms, underscoring the need for regulatory vigilance in safeguarding investors from misleading financial advice.

4. THE GLOBAL TREND: A CROSS-BORDER REGULATORY ANALYSIS

Financial regulators around the world have been addressing the challenges posed by

[23] Interim Order cum SCN in the matter of unregistered investment advisory activities of Mohammad Nasiruddin Ansari/ Baap of Chart, WTM/AN/MIRSD/MIRSD-SEC-6/29693/2023-24 (October 25, 2023).

finfluencers disrupting financial markets. France was among the first countries to outlaw influencers from promoting financial products, including cryptocurrencies, through paid content. Violators could face up to two years in prison and fines of up to 300,000 Euros.

The Dutch Authority for the Financial Markets (AFM) released a report uncovering several concerning findings (AFM, 2021). While finfluencers contribute to simplifying the investment process, the priorities of their followers are not consistently prioritized. Additionally, there is a scarcity of impartial finfluencers, and transparency issues persist, as previously mentioned[24].

In Australia, operating an unlicensed financial services business is a criminal offence, carrying penalties of up to five years imprisonment for individuals and significant fines for corporations[25]. The Australian Securities and Investment Commission (ASIC) has established an objective threshold to determine if a finfluencer's advice constitutes financial advice. If the finfluencer's compensation depends on consumer behaviour, there is likely a conflict of interest, and the advice may be considered financial product advice. ASIC's Information Sheet 269 (INFO 269) outlines a code of conduct for finfluencers, recommending disclosure practices, thorough due diligence, and caution in giving advice[26].

The European Securities and Markets Authority (ESMA) has brought finfluencers under unfair commercial practices regulations[27]. Hidden marketing is prohibited under the Unfair Commercial Practices Directive (UCPD), and finfluencers must label sponsored content to avoid civil and administrative penalties[28]. The Market Abuse Regulations require unbiased financial advice with proper conflict disclosure, and finfluencers must ensure clarity between facts and interpretations to avoid sanctions.

Regulators across jurisdictions have developed robust mechanisms to regulate finfluencers, including issuing warnings to consumers and introducing advertising guidelines specifically

[24] ‘AFM Reminds “Finfluencers” of Rules for Online Posts on Investing’ accessed 20 March 2024. 25 S.911A, Chapter 7.6, Corporations Act (2001) (Aus.).
[25] S.911A, Chapter 7.6, Corporations Act (2001) (Aus.).
[26] ‘Discussing Financial Products and Services Online’ <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/> accessed 20 March 2024.
[27] Article 11, Unfair Commercial Practices Directive, 2005/29/EC (May 11, 2005).
[28] Article 20, Market Abuse Regulations, (EU) No 596/2014 (April 16, 2014)

for finfluencers. Regulators globally are becoming increasingly aware of the situation. For example, the Financial Markets Authority (FMA) in New Zealand issued a guide in January 2021 to help consumers and social media influencers manage risks related to discussing money online[29]. In another instance, the United States Securities and Exchange Commission charged eight social media influencers USD 100 million in December 2022 for their involvement in a stock manipulation scheme promoted on Discord and Twitter[30].

5. THE NEXT TREND: SEBI’S STANCE GOING FORWARD

The dilemma of finfluencers lies in the balance between knowledge dissemination and informational symmetry. While they aim to provide simplified information, retail investors seek quick profits without extensive market research, leading to oversimplification. Although there is a lack of a unified code governing finfluencers, organizations like the Advertising Standards Council of India (ASCI) have issued guidelines to ensure transparency in influencer advertising in digital media. The Department of Consumer Affairs also provides endorsement know-how for influencers to disclose any commercial interests to protect consumer rights.

To enhance the accountability of finfluencers, the ASCI recently revised its 'Guidelines for Influencer Advertising in Digital Media'. According to these updated guidelines, influencers operating in the banking, financial services, and insurance (BFSI) sectors are required to register with SEBI and possess the necessary qualifications before providing investment-related advice. They are also mandated to transparently disclose their certified expert status or practitioner credentials whenever they offer advice, promote, or comment on the merits or demerits of products or services.

A concerning trend has emerged wherein some finfluencers obtain SEBI Registration numbers from Registered Investment Advisers (RIAs) to comply with ASCI guidelines while evading SEBI's oversight. In response, SEBI released a consultation paper on August 25, 2023, aimed

[29] ‘FMA Releases Guide for “Finfluencers”’ (*Your Site Name*) <https://www.fma.govt.nz/news/all-releases/media-releases/fma-releases-guide-for-finfluencers/> accessed 20 March 2024.
[30] ‘SEC Charges Eight Social Media Influencers in $100 Million Stock Manipulation Scheme Promoted on Discord and Twitter’ <https://www.sec.gov/news/press-release/2022-221> accessed 20 March 2024.

at addressing these malpractices[31]. This consultation paper stipulates that unregistered entities (finfluencers) are prohibited from collaborating with registered intermediaries or regulated entities to promote or advertise their services or products.

Furthermore, finfluencers who are registered with SEBI, stock exchanges, or the Association of Mutual Funds in India (AMFI) in any capacity must include specific details such as their registration number, contact information, grievance redressal helpline, and a disclaimer in all their posts. They are also required to provide appropriate disclosures and adhere to relevant codes of conduct and advertisement guidelines issued by SEBI, stock exchanges, or other recognized regulatory bodies. Additionally, they are prohibited from paying trailing commissions based on the number of referrals as referral fees, although stockbrokers are allowed to accept and pay referral fees for restricted referrals from retail clients. Entities regulated by SEBI, stock exchanges, or AMFI are further prohibited from sharing confidential client information with unregistered entities.

In 2016, SEBI proposed amendments to the IA Regulations with the aim of broadening the scope of "investment advice" to encompass all communication mediums. However, due to criticism and concerns regarding regulatory overreach, SEBI decided against implementing this provision. Nevertheless, considering the current landscape, this approach could prove effective in bringing finfluencers under regulatory oversight.

SEBI's efforts to ensure accountability among finfluencers are still in their early stages, highlighting the importance of drawing insights from the Australian regulatory model. One potential strategy could involve categorizing finfluencers into two distinct groups: Registered Investment Advisers (RIAs) and unregistered financial advisors. RIAs would be subject to stringent qualification requirements, while unregistered advisors would only need to meet minimum disclosure and due diligence criteria. This approach would require amending the definition of "investment advisor" to include those offering advice without compensation. SEBI has the authority under Section 11 of the SEBI Act to introduce a new category of finfluencers within the intermediary framework.

[31] Securities and Exchange Board of India, Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers) (August 25, 2023)

The 2023 Consultation paper, while discouraging RIAs from associating with finfluencers, risks limiting the accessibility of investment advice to the general public. In contrast, in Australia, AFS licensees can engage finfluencers provided they oversee their content and provide appropriate training. Once engaged, finfluencers operate as authorized representatives of AFS licensees, subject to identical regulatory standards, ensuring investor protection while facilitating collaboration.

Many finfluencers focus on educational content related to financial fundamentals rather than providing investment advice. However, the current definition of "investment advice" under the IA Regulations fails to distinguish between educational content and actionable advice. SEBI should strive to adopt a more comprehensive definition to allow finfluencers to educate their audience without fear of legal repercussions.

To ensure investors receive quality advice, SEBI could introduce basic qualification requirements for finfluencers. While finfluencers possess market knowledge, they may lack professional qualifications mandated for RIAs. Therefore, a minimal qualification threshold could be implemented. Given the challenges of monitoring finfluencers' digital activities, collaboration with the Advertising Standards Council of India (ASCI) is essential. SEBI could provide guidelines on posting finance-related content, drawing inspiration from existing frameworks such as INFO 269 and FTC Disclosures 101 for Social Media influencers. This collaborative effort would enhance awareness among finfluencers and establish a self-regulatory mechanism.

The evolving digital media landscape and global financial markets will continue to pose challenges to SEBI, necessitating agility, vigilance, and collaboration both domestically and internationally.

6. CONCLUSION

The proposed regulation of financial influencers by SEBI represents a crucial milestone in upholding the integrity and transparency of financial markets. However, as the influence of financial influencers continues to burgeon, SEBI is poised to confront a multitude of challenges in the foreseeable future. The rapid evolution of technology poses an ongoing hurdle for SEBI, necessitating continuous adaptation of regulations to effectively encompass online platforms. Furthermore, in light of the seamless cross-border communication and investment flows, SEBI may find it imperative to collaborate with international regulatory bodies to address influencers with a global reach.

Moreover, as financial influencers employ increasingly innovative marketing tactics to circumvent regulations, SEBI will face an ongoing battle to stay ahead of these strategies. Investor awareness and education could play a pivotal role as the source of these finfluencers power is their influence on the public. The landscape of financial marketing is dynamic, and ensuring regulatory compliance amidst this dynamism will be paramount for SEBI. To conclude, SEBI's steadfast dedication to addressing these challenges will be pivotal in upholding the credibility and stability of India's financial ecosystem in the years ahead.