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THE DIGITAL AGE OF INVESTOR PROTECTION: ASSESSING THE MEASURES BY SEBI ON MISLEADING FINANCIAL ADVICE

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Abstract

The accelerated growth of the digital platforms completely transformed our obtaining of financial information. A new breed of social media users (so-called fin-influencers) was born on social media such as YouTube, Instagram, Telegram, or Twitter. These individuals leave out investment advice to large masses without any college qualification or regulated professionalism. They have certainly made finance more affordable, but misleading or unproved advice,⁸⁴⁷ manipulation of the market, and pure exploitation of retail investors have been dispersed by them. India largely has squashed these risks through a set of rules introduced by SEBI, the primary securities regulator in India,⁸⁴⁸ to enhance investor protection. In the current paper, we closely examine the structure of SEBI to provide digital financial advice, primarily whether it works or not with the dubious suggestions of fin-influencers. We will examine existing regulations, implementation, and the obstacles and end with the recommendations on how to strengthen accountability and provide more protection to ordinary investors.

Introduction

The technological revolution has transformed the entire trade and investor behavior into a dual. It has become easier to acquire financial knowledge with smart phones, low-cost internet and everybody chained to social media.³ Retail investors today are relying on content highly to make money decisions with the majority referring to these financial influencers or fininfluencers when deciding on stocks, mutual funds, crypto, etc.⁴ They gnash at all things and complicate everything into a simple bit. Although that is awesome as far as financial literacy is concerned, it is the source of new regulation agonies.

Contrary to registered adviser, most of the fin-influencers act as self-proclaimed creators – no educational requirements, no governmental

regulation, no liability.⁵ They may be influenced to favour certain picks, be hype-artificial or straight-out lies, particularly when such picks are sponsored by companies or market participants. Others are also charged with spiking certain shares in their own benefit or and pump-and-dump manipulations that interfere with market prices and defraud other investors.⁸⁴⁹ Such cases are not clearly disclosed and regulated, which endangers the protection of investors and the integrity of the market.

The go to regulator in the securities market and in securing the interest of investors in India is the SEBI which was instituted in the SEBI Act of 1992. With time, the SEBI came up with some regulations which are supposed to maintain the transparency and accountability of the

⁸⁴⁷ Nidhi Bothra, Regulation of Financial Influencers and Investor Protection in India, 5 *Indian J. L. & Tech.* 112 (2023).

⁸⁴⁸ Securities and Exchange Board of India Act, No. 15 of 1992, India Code.

⁸⁴⁹ SEBI v. Rakhi Trading Pvt. Ltd., (2018) 13 S.C.C. 753 (India).

financial advice: SEBI (Investment Advisers) Regulations, 2013;⁸⁵⁰ SEBI (Research Analysts) Regulations, 2014;⁸⁵¹ and some of the circulars regarding the digital advisory services. Mostly recently, SEBI has also been more prolific in its actions against fin-influencers by providing principles regarding disclosure of conflicts of interest and by limiting the ability of unregistered individuals to provide investment advice.

With the increasing influence of online platforms on the decisions taken by investors, we must find out whether existing regulations are sufficient to address the problem of deceptive financial guidance in social media. This paper is critical of the approach employed by SEBI and identifies areas of enforcement weaknesses and finds ways the reforms can prevent the erosion of investor protection in the digital age.

Thematic Discussion

Due to the growth in digital communication technology, financial markets in the world have been re-defined. The emergence of internet trading platforms, mobile applications, and social media in India has made access to financial knowledge to be democratic.⁸⁵² The participation of retail traders increased tremendously following the pandemic situation,⁸⁵³ with lots seeking Internet-based ways of investing. As much as digital information will enable us, the regulatory maze into which it has thrown us is an up mess in which fake or unverified counsel is likely to raise. One of the biggest changes in this regard is the emergence of fin-influencers. Such creators hack into channels such as YouTube, Instagram, Telegram, Twitter in order to sell financial advice, stock selections, and approaches to their subscribers. Their material replaces complicated issues into digestible and interesting bits, and thus has become a success among people who have just started investing.

But since there is no official control and responsibility, we do worry about the validity of this information.⁸⁵⁴

Retail investment decisions are influenced by the fin-influencers to a considerable degree. Numerous people snatch stock tips off them without necessarily verifying the origin. In many cases they push some securities and conceal any conflict such as paid recommendation or association with a brokerage house.⁸⁵⁵ Such lack of transparency is prone to mislead investors and create a loophole of manipulating the market.

These issues have been attempted to be addressed by SEBI in various legal frameworks. The regulator has the authority to regulate investors and manage the securities market under the SEBI Act, 1992.⁸⁵⁶ With this mandate in place, SEBI has established elaborate regulations to investment advisory services and research analysis.

The regulations by SEBI (Investment Advisers) 2013 render it obligatory that one who provides investment advice should be registered and abide by stringent points. These regulations mandate qualification, certification and conflict-of-interest disclosure as a way of ensuring that investors receive credible unbiased advice. The registered advisers should operate under fiduciary and prioritise the customer.⁸⁵⁷

In the same manner, the SEBI (Research Analysts) Regulations, 2014 apply to the ones that publish research reports or provide security analysis. These codes drive the levels of transparency by ensuring analysts disclose their financial interests and independence of the market intermediaries.⁸⁵⁸

Using these rules on fin-influencers is however grey. Some of them argue that they are only conducting a financial education but not giving

⁸⁵⁰ SEBI (Investment Advisers) Regulations, 2013, Gazette of India.

⁸⁵¹ SEBI (Research Analysts) Regulations, 2014, Gazette of India.

⁸⁵² M.Y. Khan, *Indian Financial System* (McGraw Hill 2020).

⁸⁵³ Gov't of India, *Economic Survey 2023–24*, Ministry of Finance.

⁸⁵⁴ Afra Afsharipour, *The Role of Securities Regulation in Investor Protection*, 12 *J. Corp. L. Stud.* 233 (2018).

⁸⁵⁵ IOSCO, *Investor Protection and Market Integrity Report* (2021).

⁸⁵⁶ SEBI Act, 1992, § 11.

⁸⁵⁷ SEBI (Investment Advisers) Regulations, 2013, Reg. 15.

⁸⁵⁸ SEBI (Research Analysts) Regulations, 2014, Reg. 16.

proper advice⁸⁵⁹. They avoid the regulatory actions by wrapping their posts as educational messages and not investment advice. This loop hole enables them to manipulate the market without being subject to the control of SEBI.

A second significant issue related to fin-influencers is that they can manipulate the market. Recommendations of investment could spread fast using social media, and increase or decrease trading of particular securities with a sudden increase. In other cases, the influencers might market some of the stocks having purchased them at lower prices and therefore artificially inflating their prices before selling at a profit. These schemes are similar to the traditional pump-and-dump schemes but in digital format.⁸⁶⁰

SEBI has been enforcing some actions to individuals and entities that are engaged in the promotion of investment misleadingly.⁸⁶¹ The regulator has also given warnings and guidelines in an attempt to discourage unregistered financial advice through social media. SEBI has also advised the investors to only direct registered intermediaries when seeking investment advice.⁸⁶²

SEBI has been suggesting increasingly tougher regulatory action in recent years in order to counter the rising power of fin-influencers. Such recommendations involve prohibiting joint ventures between registered and unregistered Influencers, obligatory publication of the sponsorship activity, and the effective checking of the online financial material.¹⁵ These actions are geared towards enhancing transparency and to make sure that the investors are not deceived by unpublished promotional efforts.

With such efforts, there are still big problems in regulating digital financial advice. Social media networks are not restricted by jurisdictions⁸⁶³

and enable a rapidly spreading content which is hard to regulate and implement by a false information. Besides, the line dividing financial education and investment advice is still very weak, making it harder to enforce.

The other obstacle is associated with the awareness of the investor. Most of the retail investment victims are illiterate in the financial market, thus unable to distinguish the plausibility of online investment recommendations.²² The influence of influencer content is convincing, and with a possible quick profit made, the content might persuade people to make an impulsive investment decision, without sufficient research.

SEBI should use a multi-pronged regulation approach in order to meet these challenges.⁸⁶⁴ To prevent deviant behavior, it can be better to reinforced the disclosure rules, increase monitoring of online platforms, and impose fines on misleading financial promotions. Conjunctive work with social media firms can also enhance modification control and help eliminate content based on fraud.

In addition, financial literacy marketing among investors should be encouraged in the protection of investors in the long term. Educational programs, which focus on highlighting the dangers of investing without ascertaining and analyzing their advice, may aid investors to make informed choices and lessen their dependency on the unregulated influencers.

The aspect of regulating the influences of fin-influencers also provokes broader issues regarding the freedom of speech in comparison to the regulation of the market. The social media sites are a platform of social discourse and knowledge dissemination, and the idea of over-regulation could leave valid financial education

⁸⁵⁹ SEBI, Consultation Paper on Association with Unregistered Entities (2023).

⁸⁶⁰ Ketan Parekh v. SEBI, (2006) SAT 32.

⁸⁶¹ Sahara India Real Estate Corp. Ltd. v. SEBI, (2013) 1 S.C.C. 1.

⁸⁶² SEBI, Investor Education and Protection Initiatives, <https://www.sebi.gov.in>. ¹⁵ SEBI Consultation Paper (2023), supra note 16.

⁸⁶³ World Bank, Global Financial Development Report: Financial Consumer Protection (2019). ²² Reserve Bank of India, Report on Trend and Progress of Banking in India (2023).

⁸⁶⁴ Umakanth Varotil, Investor Protection and Corporate Governance in India, 10 NLSI Rev. 45 (2016). ²⁴ E. Gordon & K. Natarajan, Financial Markets and Services (Himalaya Publ. 2021).

content suppressed. The regulation, therefore, should be well formulated so that accountability is achieved without suffocation of innovation and discussion.

Finally, the success of the SEBI regulatory framework will be conditional upon its scope to adjust to the quickly changing digital world. With the spread of financial markets into the digital

media structural arena, regulators need to formulate new infection approaches to deal with the advent risks without losing confidence of investors in the securities market.

Conclusion

The advent of digital platform has radically changed how financial information is produced, shared and consumed. Social media has helped people to read investment-related information in real time, as well as engaging financial analysts, experts and influencers all over the globe. Although this digital revolution has contributed to financial awareness and democratization of the market information,²⁴ it has also provided new threats to investors. One of the most important changes in the modern ecosystem of investments is the emergence of fin-influencers, who offer their financial assistance to users in the form of online platforms.

The leading producers of financial content have become popular among fin-influencers because of their tendencies to make complex financial ideas understandable and explain the strategies of investing in a way relatable to the audience. This kind of content offers a convenient entry point into the financial markets to a wide number of retailers, especially to those that are new to the stock market. This has however left people with deep concerns about the credibility and integrity of information being spread in this space given that there is no professional regulation and accountability.⁸⁶⁵

Fin-influencers have been accused in a number of occasions encouraging the promotion of certain specific securities without adequate disclosures, taking part in paid promotions, or promoting speculative trading behavior exposing investors to high financial risks.

The SEC board of India is important to ensure the integrity of the securities market and also to protect the interest of investors. The regulator has put in place a comprehensive framework to facilitate transparency,²⁶ accountability and professionalism in financial advisory services through the act of regulating namely the SEBI Act of 1992 and the regulations that came with it such as the SEBI (Investment Advisers) Regulations, 2013 and the SEBI (Research Analysts) Regulations, 2014. Such regulations give firm qualification strategies, disclosure regulations, and fiduciary responsibilities on registered intermediaries and hence defends investors against being misled or susceptible to prejudiced advice.

Nevertheless, the advent of fin-influencers has brought to light some of the weaknesses of the current regulatory system. The number of influencers who act outside the formal regulation framework is high because they position their content as financial education and not investment advice. This difference has formed regulatory loopholes such that unregistered people can make their voices heard regarding how investment is made without the regulation of SEBI. Moreover, the easy spread of financial data in the social media sites makes it hard to control and check the spreading misleading information as it can easily go unmonitored by the regulators.

SEBI has to make further improvements to its regulatory strategy in order to overcome these challenges. Enhancing disclosure obligations, limiting relationships between the regulated and unregistered influencers, and increasing the oversight of the online platforms are some

⁸⁶⁵ V.K. Bhalla,
Investment
Management
(S. Chand

2019). ²⁶ SEBI
Annual Report
2022–23.

of the practises that may greatly increase the accountability of the financial advice system. Meanwhile, cooperation between regulators and technological companies, as well as market intermediaries, is required to identify and preclude fraud promotions in financial advertisements.

It is also critical that financial literacy of retail investors should be enhanced. Well-educated investors are in a higher position to critically analyse the investment advice and not to fall prey to deceptive advice. Creating investor awareness programs, educating investors, and open communication on the regulation may be significant in instilling investor confidence and responsible investing behaviors.

Finally, although digital platforms have provided new opportunities to learn about finances and to be a participant on the market, they have posed a sophisticated regulatory issue. An active and flexible regulatory system is required to make sure that the advantages of hybrids in digital financial communications are achieved without the threat to the safety of investors. The fact that SEBI attempts to regulate fin-influencers are evolving is a noteworthy move toward ensuring the interests of retail investors in the digital age are upheld, yet in the future, constant monitoring, policy innovation, and engagement with the stakeholders will still play a critical role towards the integrity and stability of the securities markets in India.⁸⁶⁶

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⁸⁶⁶ Ministry of Corporate Affairs, Financial Literacy and Investor Awareness Initiatives, <https://www.mca.gov.in>.

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