Update

Introduction to SEBI (Investment Advisors), Regulations, 2012 (Investment Advisory Regulations)

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Introduction:

SEBI held a board meeting on 16th August 2012 where it gave its approval for introduction of SEBI (Investment Advisors), Regulations, 2012("the Regulations")[1]. Through, this regulation it is mandated that several onshore advisers have to register themselves with SEBI for enjoying the benefits of current model. It is expected that the current development would provide an impetus to the securities market. SEBI in 2007 and 2011 issued a consultative paper and a concept paper on regulating investment advisors and now a final draft of Regulations has been considered by SEBI.

Capital markets regulator SEBI proposed new rules for investment advisors that will require them to be registered with a Self-Regulatory Organization (SRO).The SRO formed to regulate investment advisors will be registered under the SEBI (Self Regulatory Organization) Regulations, 2004. Persons seeking registration as investment advisors have to obtain it from the SRO which shall charge registration and annual fee in return.

SEBI came up with the consultative paper on the regulation of investment advisors for public comments by 31st October 2011.Prior to this, draft (investment advisors) Regulations, 2007 came into effect which was considered to be an integral step for the purposes of bringing transparency in the conduct of dealing with market participants.

Introduction of these Regulations is considered to be an important development in the legal scenario governing the Indian fund industry. Regulation of investment advisors was a much awaited development given the growth of Indian asset management and financial advisory business. The introduction of the regulation is the outcome of heavy discussions between the industry participants.

Investment advisors regulations finally introduced

After a lot of deliberations concerning the governance of investment advisors, SEBI finally approved of the Regulations regulating investment advisors. These Regulations shall apply to all *individuals, body corporate and partnership firms* engaged in providing investment advice and therefore, entities engaged in selling financial products shall not be governed by these Regulations.

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[1] Can be viewed at:
http://www.sebi.gov.in/sebiweb/home/detail/24234/yes/PR-SEBI-Board-Meeting

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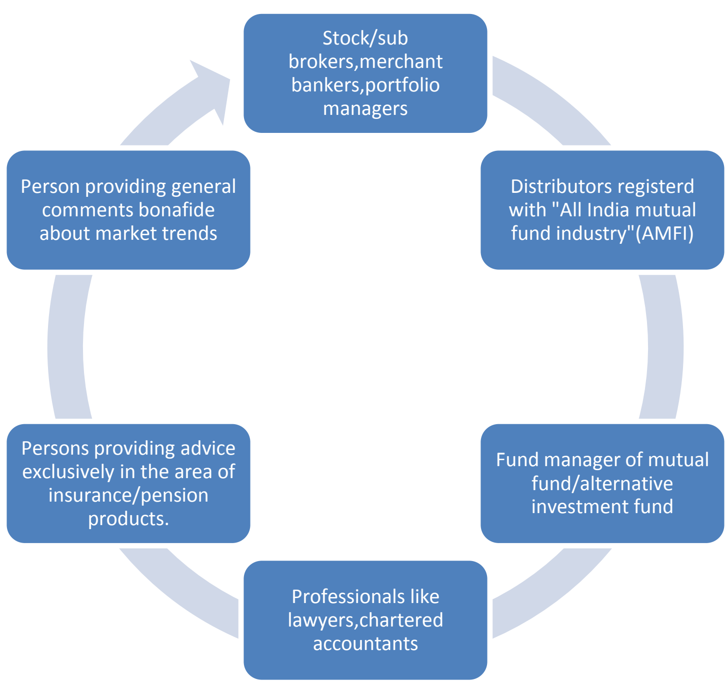
Coverage under investor advisor regulations

- All persons providing investment advice to investors for securing monetary gain.
- Investment advice to be given to media at large to hold significance.
- Sebi,initiallly,will direct registration and regulation of all investment advisors ,eligibility criteria such as qualification and networth requirement.

Investment advisors regulations, is an omnibus regulation requiring all investment advisors to be registered unless particularly exempted.

Exemption to certain group of people



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These regulations are not notified yet but it aims to bring large number of investment advisors under its regulatory supervision which were outside the scope of SEBIs supervision.

Other features of the Regulations

a) Segregation of advisory and distribution business

The remuneration or the consideration for investment advice can only be received from the client being advised and not from any other person. Banks and other body corporate engaged in distribution, referral or execution business along with advisory business will have to segregate their advisory business from rest of the activities and they need to provide such services only through subsidiary or department.

b) Mandatory requirements:

- Only professionals like CA,MBA or similar and having at least 10 years experience, armed with SEBI approved NISM certification and fulfilling its fit and proper criteria are eligible for registration as investment advisors.
- Additionally, they would be required to maintain a minimum net worth separately for investment advisory and shall have at least two key personnel with prescribed qualifications along with necessary infrastructure to discharge their functions.
- Details pertaining to voice and data records of every investment advice, facts and opinion related to advice given should be recorded with SEBI for at least five years.
- Outsourcing of activities is barred except research reports and they shall not be made liable for any civil or criminal liability for the advice that they render unless negligence or malafide intention is established.

Our analysis

The investment advisors were earlier governed by the Investment Advisory Agreement for the obligation cast upon them and any breach would therefore lead to breach of contract. But with the regulation coming in, the advisors are now statutorily governed, imposing a fiduciary obligation to act in the best interest of the investor. It is expected that this move will cast a greater degree of responsibility and accountability on the investment advisor.

It is further expected out of investment advisors to maintain their code of conduct, fiduciary responsibility, record keeping and risk profiling of clients as may be prescribed in the regulations

While it is anticipated that the compliance costs of these regulations upon the domestic intermediaries may cause hardships in the long run but it is going to certainly provide long term stability and certainty to asset management businesses in India.