

# SEBI Guidelines for Investment Advisers

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Investment Adviser (“IA”) is a person who provides investment advices with respect to financial and investment products to its clients for a consideration. The Securities and Exchange Board of India (“SEBI”), being the regulator of IA, had notified SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations”) in the year 2013.

Earlier this year in January, 2020, with the intention to tighten the regime of IAs, SEBI had issued a consultation paper<sup>1</sup> proposing amendments in the IA regulations. After considering the inputs from public consultation, SEBI had reviewed the framework for regulation of IA and notified SEBI (Investment Advisers) (Amendment) Regulations, 2020 (“Amendment Regulations”) on July 03, 2020<sup>2</sup>. These Amendment Regulations are to come into force on September 30, 2020.

With the view to provide directions and instructions for better implementation of Amendment Regulations, SEBI has notified guidelines on Investment Advisers (“Guidelines”) vide circular<sup>3</sup> dated September 23, 2020. These Guidelines shall be required to be followed by Investment Advisers (“IA”) along with IA Regulations. The following article briefly provides overview of Guidelines issued by SEBI for IAs.

## Client level segregation of Advisory and Distribution Activities

Pursuant to the provisions of Regulation 22 of IA Regulations, there must be client level segregation of advisory and distribution activities. In case of individual IA, the family of an individual IA cannot provide distribution services to the client advised by the individual IA and the IA cannot provide any advisory services to a client who is receiving distribution services from other family members.

*Regulation 2(gc) - “family of IA” shall include individual investment adviser, spouse, children and parents*

On other hand in case of non-individual IA, the same client can either be an advisory client where no distributor consideration is received at the group level or distribution services client where no advisory fee is collected from the client at the group level. The meaning of the Group is specified under the explanation to Regulation 22.

<sup>1</sup> <https://www.sebi.gov.in/reports-and-statistics/reports/jan-2020/consultation-paper-on-review-of-regulatory-framework-for-investment-advisers-ia-45685.html>

<sup>2</sup> <http://egazette.nic.in/WriteReadData/2020/220363.pdf> and <https://www.sebi.gov.in/media/press-releases/jul-2020/sebi-notifies-amendments-to-sebi-investment-advisers-regulations-2013-47006.html>

<sup>3</sup> <https://www.sebi.gov.in/legal/circulars/sep-2020/guidelines-for-investment-advisers-47640.html>

*Explanation (iii) to Regulation 22(3) – ‘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 or the venturer of the company as per the provisions of the 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.*

Under the Guidelines, the SEBI has provided the compliance and monitoring process as given below for ensuring such client level segregation by IAs.

- In case of existing clients, clients who wish to take advisory services will not be eligible for availing distribution services within the group/family of IA, and vice-versa as the case may be.
- In case of new client, the option shall be provided to such client whether to avail advisory or distribution services from IA at the time of on boarding such client.
- The existing client shall have discretion to continue holding assets prior to the applicability of this segregation under the existing advisory/distribution arrangement. However, the client shall not be forced to liquidate/switch such existing holdings.
- IAs can monitor and ensure segregation of clients by obtaining PAN information. In case of client being an individual, family of client shall be recognised as a single client and PAN of all family members shall be recorded and monitored jointly and severally.

*Regulation 2(gb) - “family of client” shall include individual client, dependent spouse, dependent children and dependent parents*

There is a clarification given by SEBI in respect of dependent family members which has been included in the definition of ‘family of client’. The dependent family members shall be those members whose assets on which investment advisory is sought/provided, originate from income of a single earning individual of the family. Therefore, the client is required to provide an annual declaration or periodic updation as the case may be in respect of such dependent family members.

However, in case of non-individual client, such company or body corporate shall provide its PAN to IAs and the same shall be recognised distinctly and be monitored separately.

- To avoid undue advantage or gain in form of commission, SEBI has mandated IAs to provide advisory regarding direct plans of products, wherever such non-commission based products are available in the market. Auditor may verify that whether advices have been made regarding direct plans of products

## Compliance Audit

As per regulation 19 (3), IA has to ensure that annual audit is conducted by member of ICAI or ICSI in respect of compliance of IA Regulations and circulars issued thereunder. The audit is to be completed within six months from the end of each financial year. Further, the IA has to maintain on record an annual certificate from an auditor confirming all compliance with the client level segregation requirements as specified in Regulation 22 of IA Regulations. Such annual certificate is to be obtained within 6 months of the end of the financial year.

Based on registered address, IA shall be required to report to respective SEBI office regarding any adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA. Such reporting shall be done within a period of one month from the date of the audit report but not later than October 31st of each year for the previous financial year. The said requirement shall be applicable on the IAs from the financial year ending March 31, 2021 onwards.

## Agreement between IA and the Client

SEBI has mandated an execution of agreement between IA and client which shall specify key terms and conditions as prescribed under Annexure-A of the circular. IA can include additional terms and conditions as may be found necessary without contradicting or diluting the provisions of IA Regulations.

IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021. IA shall neither provide any investment advice nor charge any fees before execution of the agreement by the client and providing signed copy to the client.

## Advisory Fees

Earlier, IAs could charge fair and reasonable fees to the clients in lieu of providing advisory services. However, the term fair and reasonable was not defined or no ceiling limit was provided by SEBI regarding the same. There have been several complaints received by SEBI regarding unreasonable or exorbitant fees being charged by IAs.

To restrain such instances and unfair practices, SEBI has inserted Regulation 15A regarding advisory fees that can be charged by IAs to its clients. It was already discussed under consultation paper that IAs can either charge fees by opting Assets under Advice (AUA) mechanism or they can charge fixed fees.

Under AUA mode, the maximum fees that can be charged shall not be more than 2.5 percent of AUA per annum per client across all services offered by IA. IAs shall determine AUA with supporting documents viz. demat statement of the client. However, any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA. Also, under fixed fees mode, SEBI has imposed ceiling of Rs. 1,25,000 per annum per client across all services offered by IA.

Following are the general conditions prescribed under Guidelines for adopting any of the above modes for charging fees to the clients-

- In case “family of client” is reckoned as a single client, the above-mentioned fees shall be charged per “family of client”.
- IA shall charge advisory fees from a client under any one mode. However, the change of mode shall become effective only after 12 months of on boarding/last change of mode.
- IA may charge fees in advance subject to the consent of client. However, such advance shall not exceed fees for 2 quarters.
- In case of pre-mature termination of services, the client shall be refunded the fees for unexpired period. However, IA may retain a breakage fee of not more than one quarter fee.

## Qualification and Certification Requirement

Regulation 7 and Regulation 8 of IA Regulations have already been substituted by Amendment Regulations. Pursuant to the amendment, the qualification and Net worth requirement has been made more stringent by the SEBI.

Through these Guidelines, SEBI has provided exemption to certain existing individual IAs from meeting requirements as prescribed under Regulation 7(1)(a) and Regulation 7(1)(b). The said compliances with respect to qualification shall not be required to meet by existing individual IAs above fifty years of age (as on September 30, 2020). However, the requirement of NISM accredited certifications and compliance with conditions specified under Regulation 7(2) shall continue to apply.

## Registration as Non-Individual Investment Advisor

SEBI vide Amendment Regulations inserted Regulation 13(e) under which individual IA have to apply for registration as non-individual IA, in case number of clients of such individual IA exceeds 150 in total. For conversion of individual IA to non-individual IA, the application shall be made in Form A of IA Regulations. IA shall not on board any new client after reaching number of clients to 150 till grant of registration as a non-individual IA. However, during the period of examination of application by SEBI, individual IA shall continue to service existing clients. In case where IA does not get registration as non-individual IA, such IA shall continue the advisory activities as an Individual IA while ensuring that the numbers of clients does not exceed 150 in total.

It is important to note that existing Individual IA having more than 150 clients as on September 30, 2020 shall not on-board fresh clients and such Individual IA shall apply for registration as non-individual IA latest by April 01, 2021. Such Individual IA with more than 150 clients on September 30, 2020, shall report their number of clients to SEBI through [sebiria@sebi.gov.in](mailto:sebiria@sebi.gov.in), latest by October 15, 2020 in the format as prescribed under the circular.

## Maintenance of Record

IA have to maintain and preserve all records either in physical or electronic form as prescribed under Regulation 19 for a minimum period of five years or in case of dispute, till resolution of the dispute, as the case may be.

As per the Guidelines issued by SEBI, IA shall also be required to maintain all interactions regarding any investment advice provided to any client including prospective client. This would in turn facilitate transparency in functioning of IAs.

## Risk profiling and suitability for non-individual clients

Regulation 16 and 17 of IA Regulations mandates risk profiling and suitability for all categories of clients. IA have to obtain all necessary information from clients as prescribed under Regulation 16 for developing risk profile of the client. Before advising any client, IA has to assess the potential risk by taking into consideration risk absorption capacity of the client, risk of loss of capital and other such factors.

In case of non-individual clients, IA shall use the investment policy as approved by board/management team of such non-individual clients for risk profiling and suitability analysis. It is at option of non-individual client to share the investment policy. However, IA shall have discretion not to onboard non-individual client in the absence of investment policy/or other relevant facts as required by IA for risk profiling and checking suitability.

## Display of details on website and other communication channels

To protect the interest of investors and prioritise investors' interest over the interest of IA, SEBI has provided certain website disclosures to be made by IA. IAs shall display all such information, as provided under Guidelines, on its website, mobile app, printed or electronic materials, know your client forms, client agreements and other correspondences with the clients.

## Timelines for Actionable pursuant to these Guidelines:

Provisions		Actionable	Timeline
<b>Client level segregation of Advisory and Distribution Activities</b>		Segregation of advisory and distribution activities;	Latest by April 01, 2021
		Submit annual declaration or periodic updation as the case may be in respect of dependent family members.	
		Obtain annual certificate confirming compliance with Regulation 22 as a part of compliance audit.	Within 6 months of the end of the financial year

<b>Execution of Agreement with client including existing client</b>	Execution of agreement with all clients	Latest by April 01, 2021
	Submit a report to SEBI confirming the same	Latest by June 30, 2021
<b>Investment Advisory fees</b>	Compliance with Guidelines	Latest by April 01, 2021
<b>Qualification and Certification requirement</b>	Exemption to certain individual IAs	Above 50 years of age as on September 30, 2020
<b>Registration – Conversion of Individual IA to non-Individual IA</b>	Existing individual IA having more than 150 clients as on September 30, 2020 shall report their number of clients to SEBI	Latest by October 15, 2020
	Existing individual IA having more than 150 clients as on September 30, 2020 shall apply for registration as non-individual IA	Latest by April 01, 2021
<b>Maintenance of Record</b>	Maintenance of records as per Regulation 19	For a period of 5 years or till the date of resolution of dispute if any.
	Maintenance of interactions with clients for a period of 5 years	Latest by January 01, 2021
<b>Audit</b>	Compliance with IA Regulations	Within 6 months from end of each financial year.
	Report to SEBI regarding actions taken on adverse filings.	within a period of one month from the date of the audit report but not later than October 31st of each year. To start reporting with financial year ending on March 31, 2021.
<b>Risk Profiling and Suitability of non-individual clients</b>	Compliance with Guidelines	Latest by January 01, 2021
<b>Display of details on website and in other communication channels</b>	Compliance with Guidelines	Latest by January 01, 2021

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Partitioning of advisory services from distribution activities – Click [here](#)

