III. THE RISE OF FINFLUENCERS: REGULATORY STRATEGIES BY SEBI AND INTERNATIONAL PERSPECTIVES

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ABSTRACT

This paper discusses the rise of and regulation of Indian financial influencers, or "finfluencers," and sheds light on their influence on retail investors, through interaction with the social media platforms like Instagram and YouTube. The paper starts with the rise of finfluencers in India, the impact of COVID-19 on the same, and highlights their role in increasing awareness about financial knowledge in India. The paper then highlights the risks and concerns posed by the rise of finfluencers, by discussing how they mislead and manipulate their views resulting in financial and well as non-financial harms. The author then put forth their revenue generation models, by dividing them into four categories. The author tries to dissect all the current Indian laws and addresses the challenges by comparing them to international best practices of the U.S.A., U.K., E.U., and Australia. The authors propose that clarity of definitions, a structured registration process, transparency mandating, and best international practices be adopted to enhance SEBI's regulatory framework. In particular, the recommendations for balancing investor protection with financial education, making technological enforcement, introducing accountability mechanisms, and getting a better regulatory landscape that safeguards retail investors but also gives room to responsible financial education in India, are the need of the hour. The authors have also proposed a draft regulatory framework for governing the landscape concerning finfluencers.

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I. INTRODUCTION

The inadvertent rise of the finfluencers, or financial influencers, has completely overhauled the engagement of retail investors with that of the financial markets. These financial gurus engage with their audiences through Instagram, YouTube, Telegram, and X (formerly Twitter) to impart investment education, stock or mutual fund recommendations, and financial knowledge with the help of content like reels, YouTube videos, posts, etc.[1] They democratise access to financial knowledge by educating their viewers about complex financial products, thereby bridging the gap between these heavy concepts and the average investors. As there are no mechanisms to check the authenticity of their knowledge and the quality of their advice, this raises genuine concerns about misinformation and market manipulation. Some of them act as financial educators while others engage in promoting financial products for undisclosed commissions, some of them also provide investment advice in the garb of investment education for undisclosed commissions. This blurs the line between independent advice and paid promotions.

The retail investor participation in India is the highest globally. As per the economic survey 2023-24, the registered investor base at the National Stock Exchange ("**NSE**") has tripled from March 2020 to March 2024 to 9.2 crore, potentially translating into 20% of Indian households are now channeling their household savings into financial markets.[2] This raise also led to the risk of unregulated financial advice resulting in misinformation and conflict of interest. As per the Advertising Standards Council of India

[1] Tamra Manfredo, 'How to Make $1 Million in Thirty Seconds or Less: The Need for Regulations on Finfluencers' (*Social Science Research Network* 15 December 2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4398463> accessed 29 September 2024.

[2] *Economic Survey 2023-24*, (Government of India, Ministry of Finance 2024) 67, para 2.78.

("**ASCI**"), many retail investors face difficulty in understanding the difference between promotional and unbiased content, making them vulnerable to misleading financial advice.[3] All these factors underscore the regulatory intervention by the Securities and Exchange Board of India ("**SEBI**") to protect its aim of safeguarding investors and market integrity.

COVID-19 gave momentum to these finfluencers. During the pandemic, retail investors rely majorly on these finfluencers to gain prompt financial knowledge. Since then, the regulators have realised that unqualified finfluencers can harm the interests of these investors through their advice. Finfluencers have remained unregulated in India as of today. Except for ASCI, which issued updated guidelines for influencer advertising in 2023.[4] After the publication of the Report on Retail Distribution and Digitalization[5] by the International Organisation of Securities Commission. The report recommends the adoption of regulatory measures by the members to counter the risks and challenges due to the digitalization of retail marketing and distribution. Taking note of this, SEBI released a consultation paper, open for public comments.[6] Soon after this, in June 2024, the SEBI approved norms to regulate finfluencers.

The approach of the SEBI resembles those adopted by other international regulators such as the United States Stock Exchange

[3] ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021) <https://www.ascionline.in> accessed 29 September 2024.

[4] ibid.

[5] International Organization of Securities Commission, *Report on Retail Distribution and Digitalisation* (Oct. 2022) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD715.pdf> accessed 29 September 2024.

[6] SEBI, *Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with unregistered Entities* (25 Aug. 2023) <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html> accessed 29 September 2024.

Commission ("**SEC**") and the European Securities and Markets Authority ("**ESMA**"), by obliging the finfluencers to provide necessary disclosures. But on contrary to other developed nations, India has a very big chunk of financially illiterate population including retail investors and decentralized nature of digital platforms (Telegram case), equipping SEBI with the unique set of challenges to deal with.

The objective of this paper is to critically evaluate the regulatory framework of SEBI to govern the finfluencers, with emphasis on its goal to protect the retail investors and need for fostering them with required financial education. With the help of the comparative analysis of international regulatory models, the author will propose the set of recommendations at the end of the paper for SEBI to enhance its oversight while fostering innovation. The ultimate aim is to develop a marketplace which not only curbs misinformation but also promotes responsible financial education amongst the investors, catering to the evolving digital trends.

II. RISE OF FINFLUENCERS

The rise of finfluencers is closely knitted to the rise in retail investors, the COVID-19 pandemic, social media, and the increase in the number of stock broking apps, such as Zerodha, AngleOne, etc., have eased the efforts of investors to make investments. The rise in social media supplemented the access to free financial education for a broader audience, which was once available only to registered financial advisors. Platforms such as Instagram, X (formerly Twitter), YouTube, Telegram, and Facebook have enabled the finfluencers to breakdown complex financial concepts into simpler ones for the general public, especially in a country like India where financial literacy is considerably low. With the help of these contents, personal finance and investing have become significantly easier for the financially illiterate population. The shift from traditional investment advisors to finfluencers is because of the accessibility to free investment advice available across social media platforms, thereby eradicating the high consultation fees paid to investment advisers. This advent of social media has created billion-dollar finfluencing industry wherein corporates pay these creators according to their followings and engagement in such platforms to promote their brand and marketable products.[7]

These finfluencers significantly impact the trading decisions of the investors with their influence. They shape their investing preferences and trading patterns by distilling the information that reaches to their followers, as a result, they synchronise the bunch of traders, which significantly influences the stock price movements. Although this phenomenon is not a fresh one, earlier the opinions of analysts who appeared on news channels like CNBC have also caused temporary movements in the stock prices of the company without impacting their prospects and fundamentals.[8] Indeed, research published in 1990 by Wall Street Journal's Heard on the Street section has quantified that the recommendations of analysts have significantly affected the stock prices between 1982 and 1985.[9]

Another factor that contributed to the rise of finfluencers, particularly in India, is that most of them upload their content in regional/local languages.[10]

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[7] Sue S Guan, 'The Rise of the Finfluencer' (2022) 19 N.Y.U Journal of Law and Business 491, 500.

[8] Utkarsh Gupta & Sumangala Bhargava, 'In the Realm of Finfluencers: Understanding the Indian Framework, Regulations, and Future Trends' (2023) 13 Nirma U LJ 51.

[9] Sue S Guan, 'The Rise of the Finfluencer' (2022) 19 N.Y.U Journal of Law and Business 491, 500.

[10] Bussiness Today, 'Rise of the Finfluencers' (*Business Today* 2021) <https://www.businesstoday.in/interactive/immersive/rise-of-the-finfluencers> accessed 17 October 2024.

Although the urban population mostly speaks and works in the English language, the rural population finds it easier to communicate in the local language. Therefore, the finfluencers who communicate in the local languages to their followers are able to drive financial education to far-reaching audiences.[11] Apart from other requirements of financially illiterate population, finfluencers also use other methods like comedy or their past experiences to ensure the traffic of followers comes back again.[12] One finfluencer, Sharan Hegde, uses comedy to deliver content and parallelly entertains its audience.[13]

III. CHALLENGES AND RISKS POSED BY FINFLUENCERS

The popularity of finfluencers can be both a boon and a bane to the financial markets and retail investors. While on the one hand, they make financial information more accessible, on the other hand, since they are neither licensed nor qualified, they might act as a bull in chinese shops by posing challenges like misleading their followers by risking their capital, engaging themselves in stock manipulation by apprising their followers to buy them which increase the value of those stock and in turn decrease the stock prices of the rival companies.[14]

To escape regulatory mechanisms, these finfluencers often use various methods such as the use of coded language and the setting up of partnerships with registered analysts. For example, on YouTube, they use phrases such as *"Machli Marr Gayi"* (fish is dead) to indicate a fall in prices and *"Murgi Khaa*

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[11] ibid.

[12] K Ramaswamy, 'Finfluencers in India: New Paradigms of Financial Trust and Authority' in S De, A Arya, M Young, D Ramesh, and J Pal (eds), Social Media and Society in India (University of Michigan Press 2023) 133–140.

[13] ibid.

[14] Aryaman Dubey, 'The Impact of Finfluencers in Corporate Governance in India: Comparative Analysis of Company Law Perspective and the Need for SEBI Regulation' (2024) IV Indian Journal of Integrated Research in Law.

Rahe Hai" (We're having chicken) to indicate a rise in prices.[15] In addition to this, for the purpose of gaining unlawful financial benefits, these finfluencers tend to deliver biased advice to their audience. For example, many finfluencers such as Ankur Warikoo and Akshar Shrivastava had advised investing in the firm 'Vauld', which went bankrupt, resulting in significant losses for many people. Also, PR Sundar, another notable finfluencer, was accused of sharing images of only profitable trades and erasing the loss-making transactions.[16] It is pertinent to note that not all investments will generate returns, some may result to losses also. It should be the obligation of these finfluencers to warn their audience of associated risks also.[17] Many notable celebrities and finfluencers, nowadays are also promoting products that are harmful to our health, for example, soft drinks, and also promoting betting and casino applications.[18] Thus, the investors should do proper due diligence on their part before investing their money also to avoid losses thereto.

A. Practices of Finfluencers: How do they make money

The paper divides finfluencers into four categories[19] based on the different parameters. These are as follows:

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[15] Asha Menon, 'From "Machli" to "Murgi" and "Chai": Finfluencers Work out Cryptic Phrases to Escape SEBI Glare' (*Money control* 5 June 2023) <https://www.moneycontrol.com/news/business/markets/machli-or-murgi-finfluencers-devise-innovative-ways-to-get-around-sebi-glare-10746731.html> accessed 17 October 2024.
[16] Suryansh, 'Need for Regulation of "Finfluencers" by SEBI' (*Live Law* 18 July 2023) <https://www.livelaw.in/lawschoolcolumn/finfluencers-sebi-stock-market-reserve-bank-of-india-advertising-standards-council-of-india-hnlu-232998> accessed 17 October 2024.
[17] ibid.
[18] ibid.
[19] Felix Pflücke, 'Regulating Finfluencers' (28 November 2022) 11(6) Journal of European Consumer and Market Law 212.

- Social media serves as the best platform for finfluencers to discuss and spread their well-intentioned strategies.[20] The model is simple; viewers get free content and finfluencers generate revenue with more views, for example, Instagram or YouTube AdSense. The problems lie in the fact that their content does not provide a complete picture of associated risks, and innocent viewers act upon the misleading advice to invest their savings, without considering the financial advice tailored to their financial situation thus leading to losses.[21] The harm in case consumer lose their lifetime savings is not limited to only financial aspects but also goes beyond unquantifiable measures such as emotional and psychological well-being.[22]

- The decisions and strategies of finfluencers may also be driven by mala fide intentions, with the contract of difference ("**CFD**") trading, meme stock, or cryptocurrency gaining specific traction. Some evidences suggests that finfluencers advertise financial products for their own benefit, going beyond advertisement revenue.[23] In such cases they implement 'pump and dump' schemes wherein these finfluencers encourage their followers to invest, suddenly increasing the stock prices. Once prices reach a certain level, these finfluencers sell their already held

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[20] Cathie Armour, 'Regulatory risk and finfluencer engagement for company directors' (*Australian Securities & Investment Commission* November 2021) accessed 18 October 2024.
[21] European Securities and Markets Authority, 'ESMA Highlights Risks to Retail Investors of Social Media Driven Share Trading (ESMA70-155-11809)' (*European Securities and Markets Authority* 17 February 2021) <https://www.esma.europa.eu/press-news/esma-news/esma-highlights-risks-retail-investors-social-media-driven-share-trading> accessed 18 October 2024.
[22] OECD, 'Measuring consumer detriment and the impact of consumer policy' (*OECD* 9 April 2020) <https://one.oecd.org/document/DSTI/CP(2019)13/FINAL/En/pdf#:~:text=Measuring%20consumer%20detriment%20is%20a,to%20'Measure%20consumer%20detriment> accessed 18 October 2024.
[23] James D Cox, Robert William Hillman and Donald C Langevoort, *Securities Regulation: Cases and Materials* (10th edn., Aspen Publishing 2006) 712–714.

shares causing a sudden decrease in the prices of shares.[24] Followers who invest late have to suffer losses, while finfluencers gain undue profits. Due to the mala fide intentions of finfluencers, the audience may suffer the loss of invested capital, generally due to unawareness of risk factors attached to such volatile assets, accompanied by non-financial harms also.[25]

- Another way finfluencers generate revenue is by advertising their one-on-one coaching sessions, courses, books, etc., with the promise that purchasing these services will help them generate future returns, whereas, the underlying objective might only be to generate revenue by advertising products.[26] The recommendations of finfluencers are driven by natural bias due to which a conflict of interest persists. This presents a great risk for the buyers of these services because these finfluencers offering them might not be trained investment professionals and these services might not suit the financial risk profile of the buyers, therefore, buyers suffer from financial as well as non-financial harms.[27]

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[24] Abhijeet Kumar, 'Explained: What Is Pump and Dump Scheme in Stock Market and How to Be Safe' (*Business Standard India* 5 June 2024) <https://www.business-standard.com/markets/news/explained-what-is-pump-and-dump-scheme-in-stock-market-and-how-to-be-safe-124060500381_1.html> accessed 18 October 2024.

[25] European Securities and Markets Authority, 'ESMA Highlights Risks to Retail Investors of Social Media Driven Share Trading (ESMA70-155-11809)' (*European Securities and Markets Authority* 17 February 2021) <https://www.esma.europa.eu/press-news/esma-news/esma-highlights-risks-retail-investors-social-media-driven-share-trading> accessed 18 October 2024.

[26] Dutch Authority for the Financial Markets (AFM), 'The pitfalls of "finfluencing": Exploratory study by the AFM into investor protection requirements relating to social media posts' (*AFM* December 2021) <https://www.afm.nl/~/profmedia/files/publicaties/2021/pitfalls-of-finfluencing.pdf?sc_lang=en> accessed 18 October 2024.

[27] European Securities and Markets Authority, 'ESMA Highlights Risks to Retail Investors of Social Media Driven Share Trading (ESMA70-155-11809)' (*European Securities and Markets Authority* 17 February 2021) <https://www.esma.europa.eu/press-news/esma-news/esma-highlights-risks-retail-investors-social-media-driven-share-trading> accessed 18 October 2024.

- Finfluencers collaborate with third parties to provide affiliate links to their viewers and receive a commission for every sign-up through these links.[28] These affiliate links could be for any online broker or other trading platforms these finfluencers have partnered with.[29] Third-party affiliate links could also gain more sign-ups by luring viewers for giveaways, by giving free stock or some credit to start investing.[30] Some of the finfluencers also receive a commission as per the amount of investment their viewers have invested in these broking platforms. This commission-based system has led to an increase in the advertisement of high-risk financial products like CFDs, which are highly unregulated in India.[31] The studies suggest that 74-89% of investors may lose their money while trading into CFDs, thus the financial harm can be the biggest factor here.[32] The real issue that comes into consideration with regards to this matter is that neither the finfluencers nor the viewers are aware of the associated

[28] SEBI, *Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with unregistered Entities* (25 August 2023) <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html> accessed 29 September 2024.

[29] Bussiness Today, 'Rise of the Finfluencers' (*Business Today* 2021) <https://www.businesstoday.in/interactive/immersive/rise-of-the-finfluencers> accessed 17 October 2024.

[30] Dutch Authority for the Financial Markets (AFM), 'The pitfalls of "finfluencing": Exploratory study by the AFM into investor protection requirements relating to social media posts' (*AFM* December 2021) <https://www.afm.nl/~/profmedia/files/publicaties/2021/pitfalls-of-finfluencing.pdf?sc_lang=en> accessed 18 October 2024.

[31] Bajaj Broking Team, 'Contract for Difference (CFD) Trading: Meaning, Working, Advantages and Risks | Bajaj Broking' (*Bajajbroking.in* 2024) <https://www.bajajbroking.in/blog/what-is-cfd-trading-and-how-it-works> accessed 19 October 2024.

[32] European Securities and Markets Authority (ESMA), 'Additional information on the agreed product intervention measures relating to contracts for differences and binary options (ESMA35-43-1000)' (ESMA 27 March 2018) <https://www.esma.europa.eu/sites/default/files/library/esma35-43-1000_additional_information_on_the_agreed_product_intervention_measures_relating_to_contracts_for_differences_and_binary_options.pdf> last accessed 19 October 2024.

risks for signing up on these third-party platforms, where the biggest risk might be fraud by which viewers suffer through financial as well as non-financial harm.

Therefore, with the above information, we can clearly understand the reason behind finfluencers posting content on social media. In all the categories, the viewers suffer from either financial or non-financial harm. In all ways possible innocent illiterate investors get into the trap of these finfluencers, turning into the exploitation of their financial savings. SEBI in its 2023 consultation paper has recognised four sources of income for finfluencers from an advertiser: referral fee for usage, non-cash benefits, direct compensation from the social media or other platform, or income from a profit-sharing model with the product, channel, platform or services.[33] The above-mentioned categories can broadly include all sources of income of finfluencers identified by the SEBI.

IV. REGULATORY FRAMEWORK IN INDIA AGAINST FINFLUENCERS

SEBI regulates the Indian capital market by issuing rules and regulations as and when the need arises.[34] Supreme Court has said that one of the roles of the SEBI is to ensure investors' confidence through effective regulatory mechanisms.[35] The regulatory challenge present on the face of the

[33] Malini Mukherjee, 'SEBI's Finfluencer Legal Framework: Gaps in Enforcement and Investor Education - IndiaCorpLaw' (*IndiaCorpLaw* 20 August 2024) <https://indiacorplaw.in/2024/08/sebis-finfluencer-legal-framework-gaps-in-enforcement-and-investor-education.html> accessed 24 October 2024.
[34] G Sabarinathan, 'SEBI's Regulation of the Indian Securities Market: A Critical Review of the Major Developments' (2010) 35 Vikalpa: The Journal for Decision Makers 13.
[35] N. Narayanan v. SEBI (2013) 12 SCC 152.

SEBI right now is to regulate finfluencers, whose presence is all over the internet social media platforms.

A. Consultation paper by SEBI.

SEBI on August 25, 2023 issued a "*Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including finfluencers)*",[36] this consultation paper aims to regulate finfluencers on three main aspects, those are, the obligation for registration and disclosure, the association of registered entities with that of unregistered entities (including finfluencers), and punishment against misleading advice.[37] The consultation paper ensured that the *"No SEBI registered entities including their agents or representatives, shall not either directly or indirectly, engage in any manner, whether monetary or non-monetary, with unregistered entities (including finfluencers)."* SEBI also said that any entity registered with SEBI, ant stock exchange, or Association of Mutal Fund of India ("**AMFI**") shall not share any confidential information with any unregistered entity.[38] On top of this SEBI called for the registration of the unregistered entity (including finfluencers) with the SEBI by furnishing the requisite information and all necessary disclosures.[39] Registered finfluencers shall have to display their

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[36] SEBI, *Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with unregistered Entities* (25 Aug. 2023) <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html> accessed 29 September 2024.

[37] Sara Sundaram, 'From Likes to Licenses: Regulating Finfluencers amidst Stricter Norms' (*Cyril Amarchand Mangaldas* 29 August 2024) <https://corporate.cyrilamarchandblogs.com/2024/08/from-likes-to-licenses-regulating-finfluencers-amidst-stricter-norms/> accessed 22 October 2024.

[38] SEBI, *Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with unregistered Entities* (25 Aug. 2023) <https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html> accessed 29 September 2024.

[39] ibid.

contact number, grievance redressal helpline, and necessary disclosures and disclaimers on all posts, and has to comply with all the rules and regulations made by SEBI.[40] The consultation paper suggested that SEBI can take necessary enforcement actions including filing a case under Section 420 of the Indian Penal Code, 1860 ("**IPC**") for fraud or impersonation.[41]

SEBI has released these regulations as an interim measure, up to the time it formulates permanent measures and amends necessary statutes to regulate the activities of finfluencers. This consultation will put these finfluencers under the watch of SEBI, and give SEBI liberty to monitor their actions so that they cannot harm the investors further. This blanket restriction on the association of unregistered entities with that of registered ones may be detrimental by limiting the availability of investment advice to the general public.[42] SEBI can take into account the Australian model wherein Australian Financial Services ("**AFS**") licensees can hire finfluencers and work with them, as long as they regularly audit and train them.[43] The finfluencers in Australia if hired, have to comply with the same rules and obligations as that of AFS licensees and in case of any misconduct, the AFS licensees are held liable on the part of finfluencers, by this way interest of the investors are protected in consonance with maintenance of the opportunistic alliance.[44] Similarly in India, Registered Investment Advisers ("**RIA**") can work with the

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[40] ibid.

[41] ibid.

[42] Aryaman Dubey, 'The Impact of Finfluencers in Corporate Governance in India: Comparative Analysis of Company Law Perspective and the Need for SEBI Regulation' (2024) IV Indian Journal of Integrated Research in Law.

[43] Shaswat Kashyap and Harshal Chhabra, 'Navigating Finfluencers Regulations: A Deep Dive into Australia's Landscape' (*Global Business Law Review Blog – SCCLP* 28 February 2024) <https://gblrscclp.in/2024/02/28/navigating-finfluencers-regulations-a-deep-dive-into-australias-landscape/> accessed 22 October 2024.

[44] Karsen Haseler, 'AFS Licensees Beware of Finfluencers' (*Mondaq.com* 2023) <https://www.mondaq.com/australia/consumer-law/1320434/afs-licensees-beware-of-finfluencers> accessed 22 October 2024.

finfluencers, on the lines of the Australian model. SEBI should consider taking these steps.

B. Proposals Approved by SEBI on Association of Regulated Entities With that of Unregistered Entities.

On June 27, 2024, SEBI held its 206th board meeting in which it approved the measures outlined in the 2023 consultation paper. SEBI has clarified that it will not restrict the association of regulated entities or its agents with any person who is solely providing education or services that are not linked to the advice or recommendation related to securities.[45] The SEBI has clarified that finfluencers are "*Financial influencers, commonly called 'finfluencers', are persons who provide information and/or advice/recommendations on various financial topics such as investing in securities, personal finance, banking products, insurance, real estate investment, etc. through their engaging stories, messages, reels and videos on various social/digital media platforms/channels such as Instagram, Facebook, YouTube, LinkedIn, Twitter, etc., and have the ability to influence the financial decisions of their followers*."[46] The proposals (PR 12/2024) approved by the SEBI in its Board meeting are:

- Any entities or persons or association of persons regulated by SEBI must refrain from forming any type of association with any person who directly or indirectly provides any kind of advice or makes an explicit claim of

[45] SEBI, *Proposal on association of persons regulated by the SEBI and the agents of such persons with persons who directly or indirectly provide advice or recommendations without being registered with SEBI or make any implicit or explicit claim of return or performance in respect of or related to a security or securities under the purview of SEBI* (27 June 2024) <https://www.sebi.gov.in/sebi_data/meetingfiles/jul-2024/1719916854117_1.pdf> accessed 23 October 2024.

[46] ibid.

return/recommendation of any kind of securities. The prohibited associations are financial transactions, sharing of IT systems, client referrals, etc.[47] (7.1)

- This restriction does not apply to individuals, permitted by the SEBI, solely dedicated to investor education including those who refrain from offering advice, recommendations, or making claims about returns or performance related to securities.[48] (7.4)

- The restriction also does not apply to associations through specified digital platforms having preventive or curative mechanisms to ensure that the platform is not used for providing advice, or claims of returns/performance in place.[49] (7.5)

This move by SEBI aims to reduce the dissemination of biased and misleading financial information drastically. This is a significant move towards investor protection and enhancing the transparency of the financial system.[50] The obligations will incidentally increase the diligence requirements of the unregistered entities. Also, the use of expressions like "any other associations of similar nature and character" to be refrained by regulated entities. Thus, the SEBI has made the definition of unregulated entities more inclusive, which is not limited to just social media finfluencers, but also

[47] ibid.
[48] ibid.
[49] ibid.
[50] Taxmann, '[Analysis] SEBI's New Regulations on Finfluencers – Protecting Investors from Unregistered Advisors' (*Taxmann Blog*3 September 2024) <https://www.taxmann.com/post/blog/analysis-sebis-new-regulations-on-finfluencers-protecting-investors-from-unregistered-advisors> accessed 23 October 2024.

includes any association or person that indulges in a similar kind of business as finfluencers.[51]

There are also many downsides to the proposed obligations as there will be serious risks in the implementation of the same. Challenges such as increased diligence have the taken by the regulated entities like stock brokers or mutual funds companies before onboarding new customers. They have to be more vigilant whether the proposed customer is a prudent individual or a finfluencer. But the question that arises is what if the concerned customer is someone who is operating from the platforms that provide anonymity like Telegram? In such cases, the diligence will become extremely difficult. Furthermore, even in the case these regulated entities identify that the concerned customer is finfluencer, even in such cases they have to check whether that person is registered or not. Therefore, the degree of diligence is the requirement for which the SEBI should provide further clarifications.

C. Finfluencers under SEBI (Investment Advisers) Regulation, 2013.

In India, Investment Advisers are regulated by the SEBI (Investment Advisers) Regulation, 2013 ("**IA Regulations**").[52] As per regulation 2(m), "investment adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called."[53] As per this definition, the

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[51] Sara Sundaram, 'From Likes to Licenses: Regulating Finfluencers amidst Stricter Norms' (*Cyril Amarchand Mangaldas* 29 August 2024) <https://corporate.cyrilamarchandblogs.com/2024/08/from-likes-to-licenses-regulating-finfluencers-amidst-stricter-norms/> accessed 22 October 2024.

[52] Securities and Exchange Board of India (Investment Advisers) Regulations 2013 (India).

[53] Securities and Exchange Board of India (Investment Advisers) Regulations 2013 (India), reg 2(m).

requirement of "consideration" is a prerequisite to be called an investment adviser. By this logic, finfluencers cannot fall under the mentioned definition as they do not take direct consideration for their advice. Their income sources are ad revenue or sponsorships etc. But some finfluencers provide courses or services where they directly charge money, in these aspects they take direct consideration, therefore, they fall under the term investment advisers under section 2(m).[54] The recent legal framework by SEBI mandates the finfluencers to register as investment advisers, thus, we can say that SEBI has already interpreted the finfluencers under IA regulations as investment advisers, and the only differentiation is made as a registered investment adviser and unregistered investment adviser.

Also, as per regulation 2(l)[55] of the IA regulation which defines investment advice, it specifically excludes advice made through electronic or digital media that is widely available to the public. Therefore, any advice given by the finfluencer through its digital media to the larger public is excluded from the ambit of investment advice under IA regulation. This provision needs amendment to comply with the recent framework of SEBI on finfluencers.

D. Effect of PFUTP Regulations on Finfluencers.

Section 12A of the SEBI Act, 1992, "*prohibits persons from directly or indirectly engaging in any manipulative or deceptive trading of securities.*"[56] This section directly aims at the power of SEBI to regulate

[54] SEBI, 'SEBI | Interim Order Cum SCN in the Matter of Unregistered Investment Advisory Activities of Mohammad Nasiruddin Ansari/ Baap of Chart' (*Sebi.gov.in* 2023) <https://www.sebi.gov.in/enforcement/orders/oct-2023/interim-order-cum-scn-in-the-matter-of-unregistered-investment-advisory-activities-of-mohammad-nasiruddin-ansari-baap-of-chart_78333.html> accessed 6 November 2024.
[55] Securities and Exchange Board of India (Investment Advisers) Regulations 2013 (India), reg 2(l).

[56] Securities and Exchange Board of India Act 1992, s 12A.

finfluencers indulging in fraudulent or unfair trade practices. This can be supplemented by SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003[57] ("**PFUTP Regulation**"), which provides powers to SEBI to penalise and order relating to unfair trade practices.[58]

Latest amendment under Section 4(2)(k) of the PFUTP Regulation has included the dissemination of information through any media that which disseminator knows or believes to be untrue and employs it in a reckless or careless manner.[59] The new provision requires that the disseminator be "reckless" when committing any wrong.[60] The term reckless has been interpreted by the USA court in a precise manner as "an extreme departure from the standards of ordinary care."[61]

The main challenge with PFUTP Regulation is that it is silent on whether the investor has suffered financial losses from misinformation by disseminators. There might be a possibility that the investor has suffered a financial loss, but that might not be related to the misinformation. The USA laws are clear on this part where the caution of loss is essential for establishing the liability of finfluencers for disseminating misinformation.[62] In the USA the "caution of loss" is provided under section 21D(b)(4) of the Securities

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[57] Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003.

[58] Soumyarendra Barik, 'Got wrong financial advice from an influencer online? Sebi has noticed and is doing something about it' (*The Indian Express* 18 November 2022) <https://indianexpress.com/article/explained/explained-economics/financial-advice-social-media-sebi-guidelines-explained-8275470/> accessed 23 October 2024.

[59] Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003, reg 4(2)(k).

[60] Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations 2022.

[61] Sundstrand Corp. v. Sun Chemical Corp. Feb. 23, 1977. 553 F.2d 1033. (USA)

[62] Meiring de Villiers, 'Rule 10b-5 Meets Wagon Mound: A New Perspective on Loss Causation' (2022) 23(2) Minn. J.L. Sci. & Tech.

Exchange Act, 1934.[63] "Loss caution" states that the plaintiff's economic loss must have a direct nexus between the misstatement and the economic loss.[64]

Since no Indian law talks about "loss caution" every finfluencer disseminating misinformation will be punished under PFUTP regulation, irrespective of whether the investor suffered losses due to the misinformation or not.[65] Thus, it is a need of an hour to codify "loss caution" provisions under the Indian laws to uphold the principles of equity while deciding the issue.

Under regulation 21D(b)(4) of the PFUTP Regulations, misstatement can influence the investment decisions of the investors. Therefore, misstatement has to be substantial enough to be considered material so that "there should be the likelihood that the reasonable investor should consider it while making investment decision".[66] If the misstatements artificially inflate the prices, then we can say that it was material enough. However, PFUTP regulation is silent on this aspect.

SEBI in the case of *Stock Recommendation using the Social Media Channel Telegram* (popularly known as 'Telegram case') has passed an interim order wherein upon the receipt of the complaint that the Telegram group was involved in the stock price manipulation, SEBI imposed the blanket

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[63] Securities Exchange Act of 1934 (US), s 21D(b)(4).
[64] Dura Pharmaceuticals v. Broudo 6 WYO. L. REV. 623, 628 (2006). (USA)
[65] Akshat Sharma & Mayank Gandhi, 'Deciphering Indian & USA Securities Laws -A Future Roadmap to Regulate Finfluencers in India' (*NLIU-Trilegal Summit on Corporate and Commercial Laws* 2023) <https://cbcl.nliu.ac.in/wp-content/uploads/2023/04/FINAL-Compiled-Manuscripts_Trilegal-Summit-Book-2023.pdf> accessed 23 October 2024.
[66] Allan Horwich, 'AN INQUIRY into the PERCEPTION of MATERIALITY as an ELEMENT of SCIENTER under SEC RULE 10b-5' (*Northwestern Pritzker School of Law Scholarly Commons* 2018) <https://scholarlycommons.law.northwestern.edu/facultyworkingpapers/15/> accessed 23 October 2024.

ban on the trading in Indian stock market by the admins of the group and also directed them to distribute the unlawful profits made by them.[67]

E. ASCI Guidelines for Influencer Advertising in Digital Media.

ASCI on June 1, 2021, issued 'Guidelines for Influencer Advertising in Digital Media' ("**Influencer Guidelines**").[68] The aim of these guidelines is the proper disclosure of the promotional content and necessary due diligence about the advertised product.[69] The necessary information provided in the Influencer Guidelines is as follows:

- It defines "influencer" as a person who: (a) has access to the audience on social media, and (b) who has the power to affect the opinion of the audience about a '*product, service, brand, or experience*'.[70] This definition also includes 'virtual influencers who are computer generated people or avatars who have realistic characteristics, features, and personalities of humans and behave similarly as humans.[71] Thus, ASCI has tried to make this definition more inclusive so that any class or category of influencer if emerges in the future, can be interpreted under this definition. The SEBI has also, in its June 2024 framework on finfluencers, adopted the same definition of influencers.

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[67] SEBI, *Interim Order in the matter of Stock Recommendations using Social Media channel Telegram* (12 Jan. 2022) <https://www.sebi.gov.in/enforcement/orders/jan-2022/interim-order-in-the-matter-of-stock-recommendations-using-social-media-channel-telegram_55305.html> accessed 23 October 2024.

[68] ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021) <https://www.ascionline.in> accessed 29 September 2024.

[69] Isheta T Batra and Sherry Shukla, 'An Insight into ASCI Guidelines for Social Media Influencers' (*Mondaq.com*2023) <https://www.mondaq.com/india/social-media/1361274/an-insight-into-asci-guidelines-for-social-media-influencers> accessed 23 October 2024.

[70] June, 'A&P Partners' (*A&P Partners*June 2021) <https://www.anppartners.in/blog/ascis-guidelines-for-influencer-advertising-on-digital-media> accessed 24 October 2024.

[71] ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021) <https://www.ascionline.in> accessed 29 September 2024.

- The Guidelines require influencers to make necessary disclosures before the audience and should also disclose any material connection between advertisers and influencers.[72] The material connection is inclusive of benefits and incentives, either monetary or other compensation, which can affect the credibility of advertisement made by the influencers.[73] The influencer must inform the audience whether the influencer is advertising the product, goods, or service because of the material connection or otherwise.[74] This will give free choice to the consumers either to buy the product or not advertised by these influencers.

- Before making any representations, the influencers providing any advice on investment relating to any banking, financial service, or insurance sector ("**BFSI**") must be registered with SEBI and meet the required qualifications.[75]

- The finfluencer must display their registration details in the advertisement of the product, service, brand, or experience.[76]

- Before promoting or endorsing any product or service, the influencers must do a proper due diligence so that they can substantiate the claims they

[72] ibid.
[73] ibid.
[74] Malini Mukherjee, 'SEBI's Finfluencer Legal Framework: Gaps in Enforcement and Investor Education - IndiaCorpLaw' (*IndiaCorpLaw* 20 August 2024) <https://indiacorplaw.in/2024/08/sebis-finfluencer-legal-framework-gaps-in-enforcement-and-investor-education.html> accessed 24 October 2024.
[75] ASCI, *Guidelines for Influencer Advertising in Digital Media* (2021) Addendum II <https://www.ascionline.in> accessed 29 September 2024.
[76] Malini Mukherjee, 'SEBI's Finfluencer Legal Framework: Gaps in Enforcement and Investor Education - IndiaCorpLaw' (*IndiaCorpLaw* 20 August 2024) <https://indiacorplaw.in/2024/08/sebis-finfluencer-legal-framework-gaps-in-enforcement-and-investor-education.html> accessed 24 October 2024.

will be making in their content. It also protects the influencers from future liabilities.[77]

V. INTERNATIONAL PERSPECTIVE

Financial authorities in the US, UK, EU, and Australia are paying more attention to regulating social media endorsements of financial products, especially when those endorsements involve financial influencers, or "finfluencers." These influencers, who have sizable fan bases on social media sites like YouTube, Instagram, and TikTok, have become well-known for endorsing a range of financial goods and services. Regulators are proactively addressing the increasing dangers connected with the promotion of high-risk financial products, like cryptoassets, which are frequently advocated by influencers, in response to worries about consumer harm. This increase in regulatory focus comes after many high-profile incidents in which consumers lost a lot of money on products that were advertised online.

A. United Kingdom

In the UK, the *Financial Conduct Authority* ("**FCA**") is making a concerted effort to stop unlawful and noncompliant financial advertisements on social media. The FCA is extending its guidance to make sure that financial promotions on social media sites like Instagram and Twitter adhere to current regulatory norms in response to the sharp rise in online financial advertisements. Ads aimed at younger, more impressionable consumers—who frequently place a great deal of trust in influencers—are especially targeted by the new regulations. The FCA's revised guidance attempts to address gaps,

[77] Isheta T Batra and Sherry Shukla, 'An Insight into ASCI Guidelines for Social Media Influencers' (*Mondaq.com*2023) <https://www.mondaq.com/india/social-media/1361274/an-insight-into-asci-guidelines-for-social-media-influencers> accessed 23 October 2024.

especially when promotional material fails to adequately explain the related investment risks[78]. The objective is to make sure that risk disclosures are obvious and conspicuous, especially in situations where there is little space to give complete context, like in short-form pieces.

B. European Union

To make sure that credit institutions and investment firms adhere to the MiFID II rules for marketing communications, *the European Securities and Markets Authority* (“**ESMA**”) in the EU has started a single supervisory action[79]. With an emphasis on protecting younger and less seasoned investors who could look to influencers for financial advice, this program primarily targets social media and influencer-driven advertisements. Although the EU does not have any rules specifically addressing influencer marketing, the Digital Services Act (“**DSA**”) and other consumer protection laws are being used to increase online advertising’s transparency. In order to address concerns about transparency, the DSA makes sure that online ads are properly marked as such and that users are given sufficient information about the advertiser behind the offer.

C. United States

The SEC in the US has taken a particularly active role in controlling influencers’ promotion of cryptocurrency assets. In one prominent instance, reality TV personality Kim Kardashian was fined $1.26 million for improperly

[78] Emily Barret and Nikki Johnston, ‘Likes to liability: UK FCA cracks down on ‘finfluencers’ <https://www.aoshearman.com/en/insights/ao-shearman-on-investigations/likes-to-liability-uk-fca-cracks-down-on-finfluencers> accessed 5 November 2024.

[79] EY, ‘Financial Compliance Requirements for Finfluencers’ (EY, 2023) https://www.ey.com/en_ch/insights/law/financial-compliance-requirements-for-finfluencers accessed 5 November 2024.

declaring her payments while endorsing EthereumMax ("**EMAX**") coins[80]. Actress Lindsay Lohan and YouTuber Jake Paul are among the other celebrities the SEC has prosecuted with illegally marketing cryptoasset securities[81]. The SEC revised its Investment Advisers Act marketing standards to include more precise guidelines regarding testimonials and endorsements in response to these concerns. To guarantee that investors are fully aware of any potential drawbacks, the revised regulations mandate that the substantial risks connected to financial products that are being offered be mentioned. The Federal Trade Commission ("**FTC**") has also tightened the rules surrounding endorsements by releasing updated guidelines to meet the expanding role of influencers in marketing[82].

The Federal Trade Commission ("**FTC**") in the United States regulates social media influencers in accordance with two main sets of rules: "*Disclosures 101 for Social Media Influencers" and "Guides Concerning the Use of Endorsements and Testimonials in Advertising.*" According to these rules, influencers must reveal any significant relationships—whether financial, familial, or professional—that they may have with the businesses whose goods they promote. Influencers are also forbidden from making false statements, either explicitly or implicitly, regarding the goods or services they support, and they are required to reveal any payment or other benefits they

[80] US Securities and Exchange Commission, 'SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security' (SEC Press Release No 2022-183, 3 October 2022) https://www.sec.gov/newsroom/press-releases/2022-183 accessed 5 November 2024.
[81] US Securities and Exchange Commission, 'SEC Charges Crypto Asset Trading Platform Bittrex and its Former CEO for Operating an Unregistered Exchange, Broker, and Clearing Agency' (SEC Press Release No 2023-59, 17 April 2023) https://www.sec.gov/newsroom/press-releases/2023-59 accessed 28 November 2024.
[82] US Federal Trade Commission, 'Endorsements, Influencers, and Reviews' (FTC, 2024) https://www.ftc.gov/business-guidance/advertising-marketing/endorsements-influencers-reviews accessed 5 November 2024.

may have received in return for their endorsements. It is anticipated that these guidelines will also apply to financial product endorsements.

In 2022, the SEC proposed changes to its investment advisor marketing regulations for *regulated Investment Advisors (IAs*). As a result of these amendments, IAs must make sure that all third-party testimonials, endorsements, and promotional activities adhere to complete disclosure guidelines, which include disclosing any payment received for such efforts.

The self-regulatory *Financial Industry Regulatory Authority* ("**FINRA**") has also released guidelines for broking firms. These companies are advised by FINRA to evaluate the backgrounds of possible social media influencers, offer suitable training, establish acceptable and unacceptable behaviour, and keep thorough records of influencer interactions and activity pertaining to referral programs. The goal of this regulatory monitoring structure is to guarantee that influencer marketing, especially in the financial services industry, continues to be open, moral, and in accordance with accepted norms.

D. Australia

The Australian Securities and Investments Commission (ASIC) keeps a careful eye on online conversations about financial products that influencers advocate or debate. Its main goal is to find and deal with any instances of financial advice or services that are unlicensed, misleading, or deceptive. Operating a financial services business without an Australian Financial Services (AFS) licence is prohibited by the Corporations Act 2001, unless the person is authorised to act as a representative of an AFS licensee or is exempt. Serious consequences, including as up to five years in prison for people and hefty fines for corporations that can amount to millions of dollars, can follow violations of these rules. When ASIC thinks it is in the public interest to pursue enforcement action, especially when it comes to consumer protection or market integrity, it does so. Additionally, ASIC has developed a precise methodology for determining whether or not an influencer's counsel meets legal requirements for financial product advising.

There may be a possible conflict of interest if the influencer's pay or perks are contingent on customer actions, such purchases, sign-ups, or other behaviours. In that scenario, the guidance might be considered financial product advice. ASIC evaluates the whole message that an influencer's content conveys, taking into account elements including the advice's presentation and whether it qualifies for an AFS License ("**AFSL**"). [83]

ASIC published Information Sheet INFO 269, titled "Discussing financial products and services online,[84] *"on March 21, 2022, to provide guidance to influencers and AFS licensees who work with them. The definition of "dealing by arranging"* (which includes activities like facilitating the purchase or sale of financial products), examples of misleading or deceptive conduct, which is illegal in relation to financial services, and examples of what constitutes financial product advice are all included in this document. As a useful manual, INFO 269 offers a code of behaviour for influencers, suggests certain disclosure procedures, promotes due research, and advises exercising caution when giving financial advice. Promoting appropriate and knowledgeable behaviour in online financial talks is the aim.

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[83] Michael Chhaya, Eugenia Kolivos and Kendra Turner 'The Rise and Regulation of Finfluencers' The Australian Journal of Financial Planning.

[84] ASIC, 'Discussing Financial Products and Services Online' (*asic.gov.au* March 2022) <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/> accessed 29 October 2024.

ASIC's regulatory position is unambiguous: unlicensed influencers must restrict their content to factual information, and if their recommendations have the potential to sway investment decisions, they should carefully consider obtaining an AFS licence or becoming an authorised representative of an AFS licensee. Influencers should only endorse financial goods after gaining a comprehensive grasp of them, the regulator stresses. This entails being cautious when talking about high-risk items, making sure that any claims are true and supported by evidence, and declaring any possible conflicts of interest. The total impression that an influencer's content makes, taking into consideration the context and surrounding circumstances, determines whether or not it qualifies as financial product advise.

ASIC v. Scholz,[85] a landmark decision, made it clear that talking about financial products on social media might make someone a "financial services business" for the Corporations Act 2001. The Act's definition of financial product advice, which encompasses any recommendations or remarks meant to sway consumers' decisions about financial products, was emphasised by this ruling.

To put it briefly, the purpose of ASIC's regulatory framework for influencers is to guarantee that online financial conversations are carried out in an ethical, transparent, and law-abiding manner. ASIC seeks to safeguard customers and uphold the integrity of financial markets by encouraging thorough content examination, advocating appropriate disclosures, and making sure influencers are aware of the legal ramifications of their recommendations.

[85] ASIC v. Scholz [2022] FCA 43.

VI. SUGGESTIONS AND CONCLUSION

Regulators are stepping up their efforts to shield consumers from possible harm as the promotion of financial products on social media keeps growing. Regulators hope to establish a framework that guarantees accountability and openness in the marketing of financial goods by concentrating on influencers. Enforcing rules pertaining to transparency, risk communication, and influencers' moral need to offer fair and honest counsel are crucial to these initiatives. It will be essential for institutions and financial influencers to remain aware and adhere to these revised requirements as the regulatory environment changes. By doing this, companies can support a more accountable and open approach to financial promotions, eventually protecting consumers' interests.

The Securities and Exchange Board of India (SEBI) ought to think about clarifying what constitutes "investment advice" in the Investment Advisors Regulations, taking inspiration from the Australian regulatory framework and acknowledging that a large number of financial influencers (finfluencers) give more weight to educational content than to direct investment advice. A more comprehensive and sophisticated definition would make a distinction between instructional content and counsel meant to sway investment decisions. As long as their content doesn't veer into giving out specific investment advice, this would allow influencers to offer beneficial financial education without running the danger of excessive responsibility.

SEBI's recently released Consultation Paper prohibits investment advisors from collaborating with influencers. This extensive ban may be seen as a preventative measure, but it may also unintentionally make it more difficult for the general population to receive financial education and information. Australian Financial Services (AFS) licensees, on the other hand, are free to work with influencers as long as they actively monitor and assess the content created. Influencers must be rigorously monitored by AFS licensees to make sure their content complies with legal requirements. Influencers are bound by the same compliance standards under this model since they represent the licensees as authorised representatives. This regulatory framework preserves equilibrium between investor protection and cooperation opportunities. SEBI should think about taking a similar tack, which would provide strong regulatory monitoring while permitting a strategic partnership between influencers and financial advisors. Such a strategy would achieve a balance between risk management and encouraging fruitful partnerships in financial education.

Non-binding guidelines on best practices for financial product promotion have been released by the Australian Securities and Investments Commission (ASIC). This guideline emphasises how crucial it is to present a fair assessment of the financial goods being advertised, including important details about costs, features, risks, returns, and suitable disclaimers. In order to keep their content accessible and intelligible to a wide audience, influencers are also encouraged to refrain from using excessively technical jargon. Furthermore, a tertiary degree (a diploma is a minimum need) and required financial product training are among the qualifications that ASIC mandates AFS licensees fulfill. This legal system guarantees that those involved in financial advertising possess the necessary knowledge and skills to offer precise, consumer-friendly advice. As the issue receives more regulatory attention, the Australian Competition and Consumer Commission ("**ACCC**") has also started to look for false endorsements and testimonies from social media influencers. ASIC's proactive approach and the increased scrutiny indicate that Australia may soon step up its investigations and enforcement efforts in this field. As it modifies its own framework to handle the difficulties presented by influencers, SEBI may learn a lot from this changing regulatory environment.

A. Tailored Approach for SEBI: Defining Clear Categories and Guidelines

Regulatory agencies such as SEBI (Securities and Exchange Board of India) should establish a required registration and licensing system for Finfluencers in order to better control this market. This would have several benefits:

- **Accountability and Compliance:** Because Finfluencers would be subject to license revocation for noncompliance with restrictions, they would be held responsible for their conduct. An incentive for responsible behaviour would result from this.
- **Investor Confidence:** Retail investors would be reassured that influencers are acting legally and in accordance with securities legislation if only licensed and regulated individuals were permitted to offer financial advice. This would significantly increase investor trust.

SEBI may modify the Australian model to meet the unique difficulties of the Indian market as it re-examines its regulatory strategy for influencers. Creating two separate groups within the regulatory framework—Registered Investment Advisors (RIAs) and unregistered financial advisors—is one possible remedy. While unregistered financial advisors, like influencers, would just need to comply with minimum disclosure and due diligence requirements, registered advisors (RIAs) would need to meet strict qualification and regulatory standards. By making this difference, SEBI would be better able to control the various levels of risk connected to various financial advice kinds.

The definition of “investment advisor” might be changed to better define the range of advising services. Those who offer advice in exchange for payment and those who get paid in response to their audience’s activities or behaviour (e.g., affiliate marketing, referrals, or performance-linked incentives) should be included in this.

In order to protect investor interests and control market development, SEBI could create a new categorisation for influencers within the more expansive definition of financial intermediaries by utilising its authority under Section 11(1) of the SEBI Act. This would guarantee that the regulatory framework successfully protects investor interests while enabling SEBI to create customised recommendations that take into consideration the special characteristics of influencer-driven financial advice.

In conclusion, SEBI may improve its approach to regulating influencers by learning from international best practices, especially the Australian model. SEBI can create an atmosphere that promotes the ethical use of social media for financial education while simultaneously shielding customers from possible hazards by enacting a more adaptable and thorough regulatory framework.

India can draft its own regulatory framework for governing finfluencers. The following essentials are recommended to be incorporated:

- **Definition of Finfluencers:** To withstand judicial and regulatory scrutiny, the term “finfluencer” needs to be defined precisely. It should cover any medium used to provide financial and investment-related advice to the general public, such as websites, social media, and other mass media.

- **Class Action Claims:** The pump and dump scheme affects a large number of investors. Under the 'Fraud-on-the-market' theory (USA), the reliance on the class action claim is placed more. Thus, adopting this theory into Indian Securities Law will ease the class of investors to claim their rights as they only have to prove that misstatement by finfluencers has led to inflated prices. Here the onus of proof on the plaintiff will be less and the judge will focus more on the present fraud, intention of the defendant, and harm caused.

- **Mutual Collaboration of Registered Entities with Finfluencers:** SEBI can take into account the Australian model wherein Australian Financial Services (AFS) licensees can hire finfluencers and work with them, as long as they regularly audit and train them. The finfluencers in Australia if hired, have to comply with the same rules and obligations as that of AFS licensees and in case of any misconduct, the AFS licensees are held liable on the part of finfluencers, by this way interest of the investors is protected in consonance with maintenance of the opportunistic alliance. Similarly in India, Registered Investment Advisers (RIA) can work with the finfluencers, on the lines of the Australian model. SEBI should consider taking these steps.

- **Disclosure Requirements:** All forms of content distributed by financial influencers, such as commercials, promotional materials, social media posts, celebrity endorsements, and media broadcasts that support certain financial products or investment strategies, must be covered by an extensive code of behaviour. This guarantees that the code's scope encompasses all possible channels for disseminating financial advice. This would entail having to reveal any possible conflicts of interest and any links with businesses that are mentioned in their material. Additionally, remuneration arrangements like affiliate marketing agreements or sponsorships should be transparent. With these disclosures, viewers would be better equipped to evaluate the caliber of the counsel they get and make more educated judgements. In order to inform viewers of the inherent dangers associated with any investment opportunity, influencers should also be obliged to add risk warnings on all of their content.

- **Consumer Protection:** It is unclear if it is reasonable to expect regulators to shield consumers from their vulnerability given the shorter attention spans of the digital age and the propensity of consumers to believe information that is presented in an aesthetically pleasing way, particularly on social media. Any code of conduct must guarantee that the information offered by financial influencers is accurate, fair, and supported by data that can be independently verified.

- **Formal Registration process for finfluencers:** SEBI currently lacks this system. SEBI should implement such a system, ideally with requirements such as obtaining a Certified Financial Planner ("**CFP**") certification or passing an aptitude test. This would ensure that Finfluencers meet a minimum level of competence, thereby increasing the trustworthiness of the information they provide to investors.

- **Morality Compass test:** The code of conduct can incorporate this straightforward yet powerful ethical principle. Influencers should not be allowed to give investment advice to others if they would not personally implement it (for example, they would not suggest the same investment to a family member). This test ensures the integrity of the suggestions by acting as a moral compass.

- **Technological Framework for Regulatory Enforcement:** The ability of financial authorities to use cutting-edge technical tools for real-time market surveillance and data analysis will be essential to effective regulation. To safeguard consumers, regulators need to be able to evaluate financial advice from influencers, spot possible dangers, and act quickly. In addition to sophisticated technology infrastructure, this calls for the know-how to convert complicated data into useful insights. Social media companies and SEBI should work together to combat false information and guarantee that financial material is accurate and not deceptive.
- **Accountability and Enforcement:** Regulations should guarantee prompt and effective accountability for influencers who violate the code of conduct. This includes creating strong enforcement systems to deal with infractions quickly and shield customers from dangerous advice.

- **Learning from International Counterparts:** In order to adopt efficient regulatory measures and shared best practices, SEBI should interact with its international counterparts. Fostering a reliable and vibrant financial environment in India would require creating a regulatory framework that supports a flourishing financial ecosystem, encourages Fintech innovation, and protects investors.

Social media companies themselves must actively participate in holding Finfluencers responsible and enforcing regulations. This entails combating deceptive or fraudulent tactics and advancing financial education and literacy to assist people in making better financial decisions.

Influencers' actions in the securities market are not addressed by SEBI's current regulatory framework, which mostly concentrates on punishing fraudulent acts after the fact. The regulation of their specialised activities is lacking, which makes it difficult to effectively monitor influencers who are becoming more and more significant in influencing Indians' financial literacy. The impact of misstatements is one of the many unanswered concerns caused by the lack of precise, well-defined regulations. The ambiguity of current rules, which demand evidence of loss causation and materiality, may lead to excessively broad interpretations that unfairly punish influencers whose remarks did not cause harm.

Additionally, there is a lack of clarity regarding the regulatory position on *anti-touting,* a sector that is ready for regulation and involves the promotion of particular securities or investments without enough transparency. These issues could be resolved and investors could be protected with a clear disclosure requirement for finfluencers. The encouragement of class-action lawsuits in securities fraud instances involving Finfluencers is another important suggestion. For investors who might have lost money, this could reduce the load on individual claimants and provide more effective legal recourse.

In conclusion, the regulatory gap of finfluencers in India's financial ecosystem must be filled. Finfluencer behaviour can be appropriately controlled by enacting precise and unambiguous laws, protecting ordinary investors from needless dangers. Ultimately, a strong regulatory framework will benefit all market participants by promoting a more open, responsible, and reliable financial environment.