

FPSB India's Recommendations:
Consultation Paper on Amendments/Clarifications to the SEBI (Investment Advisers) Regulations, 2013

Second Consultation Paper released on June 22, 2017

Name of Entity: Financial Planning Standards Board India (FPSB India)			
Section	Amendments proposed in the Consultation Paper	Suggestion	Rationale
1	<u>Clear segregation between investment advisory and distribution/execution services</u>		
1(i)	There shall be clear segregation between the investment advisory activities and distribution/execution services. An entity offering investment advisory services shall not be permitted to offer distribution/execution services.	A hybrid model where distribution, execution and advisory can co-exist with the same entity should be allowed.	Absolute separation of advisory and distribution/sale of products is a utopian scenario. Thus, considering the low levels of financial literacy, low per capita income and a reluctance to pay for personal finance advice at this stage may not facilitate the metamorphosis to this revised proposed model instantly.
1(ii)	The existing provision on offering execution/distribution services by banks, NBFCs and body corporates through separately identifiable departments or divisions (SIDDs) shall be omitted.	The existing provisions as per Section 6(j) and 6(k) of SEBI (Investment Advisers) Regulations, 2013 should continue.	--
1(iii)	Banks, NBFCs and body corporates offering investment advisory services through separately identifiable departments or divisions (SIDDs) under the existing framework shall segregate the same within a period of six months through a separate subsidiary.	Should be omitted.	In view of suggestion to 1(ii) above.

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1(iv)	Investment advisers who provide holistic advice/financial planning on financial products across multiple categories, viz., securities, insurance, pension, deposits, etc. need to obtain permission from the specific regulator and comply with the regulations of the respective regulators, if any.	Yes, it should be implemented.	--
1(v)	Entities/persons who are providing advice solely on non-securities shall not come under the purview of the SEBI (Investment Advisers) Regulations, 2013.	Yes, it should be implemented.	--
2	<u>Distribution of Mutual Fund Schemes by Distributors</u>		
2(i)	MFDs should not give any investment advice.	The terms “mis-selling” and “suitability” should be defined. IOSCO defines “Mis-selling” as generally a situation where a firm sells a financial product to a client that is not suitable for that client, and that includes the practice of misrepresenting or misleading an investor about the characteristics of a product or service. IOSCO further defines “Suitability” as a measure of the financial consumer’s needs duly assessed/computed based on the following: (i) Matching of the product with the financial consumer’s financial situation/needs (ii) a fair understanding of the product	Some element of advice has to be factored in when a Mutual Fund Distributor (MFD) interacts with an investor with a view to selling mutual fund schemes. It is impracticable for an MFD to sell a product to a customer without providing some qualitative comments as to how it would help the investor. A distributor can recommend a suitable product to an investor only based on the latter’s goals, risk appetite, and other such parameters. Without such assessment, deciding on a suitable product for the investor would be impossible. Further, there are various levels of complexity with regard to investment products which should be defined.
2(ii)	MFDs should offer suitable scheme to the investor considering all the available schemes distributed by them.		
2(iii)	MFDs should not offer any financial planning services to the investor which requires risk profiling, financial goal setting, etc.		
2(v)	MFDs shall refrain from mis-selling of mutual fund schemes. There shall be strict enforcement action on mis-selling of mutual funds and constant supervision towards ensuring suitability of mutual funds sold to investors.		

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		(iii) investment knowledge and experience (iv) investment objectives and time horizon (v) risk tolerance (vi) capacity to make regular contributions (vii) capacity to meet extra collateral requirements	
2(iv)	MFDs shall stop usage of nomenclature 'Independent Financial Adviser' or "Financial Adviser"; rather use the term "Mutual Fund Distributor" only;	Yes, it should be implemented.	--
2(vi)	MFDs shall be required to clearly disclose the following in a form to the investors which would be signed off by the investors before making any investment in mutual fund scheme through such distributor: a. The list of mutual funds where he is acting as a distributor b. the commission earned/ to be earned, c. suitability of the product sold to the investor, d. Disclaimer that he/she may not be acting in the best interest of investor.	Under 2(vi)(c), the MFDs may be required to state how they have arrived at the suitability of a certain product sold to the investor, instead of this being just a statement in the disclosure form. Under 2(vi)(d), the disclaimer is apparently designed to help the MFDs as regards their liability. However, the wording may put off a lot of investors. This disclaimer should be effectively worded so as to reflect the fiduciary relationship between the MFD and the investor, e.g. <i>"This mutual fund scheme/option is being offered based on the suitability of Mr./Mrs./Ms. X, and I am acting based on fiduciary responsibility in his/her interest to the best of my ability"</i>	This clause is not likely to invoke confidence on the part of the investor in the MFD, as the whole reason and purpose of the discussion/transaction is that the investor expects the agent to act in his interests.

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2(vii)	MFDs who want to get registered as investment advisers shall be allowed to receive trail commission for the products already distributed subject to disclosure to the clients. They shall not be allowed to sell/distribute any investment product pursuant to grant of registration as investment adviser.	MFDs even after registration as investment advisers should be permitted to offer additional/fresh products to clients including within the same household who are already under the subject MFDs' distribution list.	This would ensure the service to financial consumers who are already serviced by existing distributors, and thus would also ensure the continuity of financial investments.
3	<u>Incidental advice by recognized intermediaries</u>		
3(i)	In order to have clear segregation between investment advisory services and other services, it is proposed that all the intermediaries as stated above who are receiving separate identifiable consideration for investment advisory services shall need to register with SEBI as an investment adviser. In case they get registered as investment advisers, they shall not provide any distribution/execution services.	Yes, it should be implemented.	--

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3(ii)	All the persons who are engaged in providing holistic advice/financial planning services shall mandatorily be required to register themselves as an investment adviser.	CERTIFIED FINANCIAL PLANNER ^{CM} or CFP ^{CM} certificants should be exempted from such mandatory registration and should be recognised as eligible to offer advisory and financial planning services.	CFP ^{CM} certificants go through a rigorous process of Education, Examination, work Experience and Ethics as eligibility criteria for certification. The CFP ^{CM} certification underlines recommending investment/ financial strategies and asset classes and is product agnostic. It is the recognized standard of excellence for competent, ethical and holistic financial planning/personal finance services.
4	<u>Relaxation in registration requirements</u>		
4(i)	It is proposed that the educational qualification shall be relaxed for representatives/employees of registered investment advisers. They shall be a graduate in any discipline. In the case of individual investment advisers, there is no relaxation with respect to eligibility criteria and they shall need to fulfill eligibility and certification requirements as specified in the IA Regulations. However, in the case of partnership firms, at least one of the partners, and in the case of body corporates, at least one of the representatives shall fulfill the eligibility and certification requirements as specified in the IA Regulations.	CFP ^{CM} certification globally mandates a 3-year relevant work experience, which is defined as client-facing experience dispensing financial planning/ holistic personal finance services. The same experience, viz. three (3) years should be applicable to Registered Investment Advisers.	The relevance of experience to the specific area of financial planning/ holistic personal finance is necessary over a five (5) year experience in sundry financial services.
4(ii)	The net worth requirement for body corporates shall be reduced to Rs. 10 lakhs from the current requirement of Rs. 25 lakhs.	Apart from the net worth requirement, the focus should be laid on existing infrastructure, audited accounts, trained and certified manpower, etc.	This ensures system hygiene and is an effective measure of ability to service financial consumers.

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4(iii)	Application fees for corporate applicants, for initial 5 years, shall be reduced to Rs. 10,000 from the current requirement of Rs. 25,000 and the registration fees shall be reduced to Rs. 1,00,000 from the current requirement of Rs. 5,00,000. The subsequent fee to continue as investment adviser, after five years from the date of registration, shall remain as Rs. 5 lakhs. For individual applicants and partnership firms, the application fees of Rs. 5,000 and registration fees of Rs. 10,000 shall continue.	Yes, it should be implemented.	--
5	<u>Regulation of the activity of ranking of Mutual Fund schemes</u>		
	Considering the activity of Ranking of Mutual Fund Schemes as research report to the public that serves as a basis for their investment decision, it is proposed that the activity of ranking of MF schemes shall be brought under the regulatory ambit of SEBI (Research Analysts) Regulations, 2014. Accordingly, the definition of research analyst shall be appropriately broadened so as to cover such entities in the definition of research analyst. A separate chapter shall be made in the RA regulations on ranking of mutual fund schemes prescribing methodology, disclosure and other requirements, etc. as under:	Additionally, in order to help the financial consumer in choosing appropriate investment adviser as per the need and scale of services required, a model of rating financial advisers needs to be implemented as well. The proposed model is attached for SEBI's perusal.	The rating model of investment adviser on their infrastructure, scope of services, compliance standards, financials, etc would ensure that financial consumers have a choice for most appropriate services while also being assured of the chosen adviser's standards as defined in the model.
5(i)	Agencies/entities providing ranking of mutual fund schemes shall be required to register under SEBI (Research Analysts) Regulations, 2014.	Yes, it should be implemented with an option to either register under SEBI (Research Analysts) Regulations, 2014 or SEBI (Investment Advisers) Regulations, 2013.	--

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5(ii)	Agencies/entities providing ranking of mutual fund schemes on public media such as newspaper, website, etc., need not obtain registration from SEBI subject to compliance with the requirements specified such as disclosure of financial interest, holdings, methodology, etc. The proposed guidelines on ranking of mutual fund schemes shall cover the following:	Yes, it should be implemented.	--
5(ii)(a)	A Mutual Fund ranking entity shall be defined as any entity that ranks performance of MFs for general information of the common investors.	Yes, it should be implemented.	--
5(ii)(b)	A MF ranking entity shall rank the performance of mutual fund schemes through an objective methodology that is based on quantitative performance measurements and applied consistently to all mutual funds.	Yes, it should be implemented.	--
5(ii)(c)	A MF ranking entity should prominently disclose the criteria, name of category, number of funds in category and the data used for ranking different schemes. Also, the disclosure should be in a manner that is easily understandable by common investors.	Yes, it should be implemented.	--
5(ii)(d)	If all/certain schemes of certain MFs are not ranked, the same as well as the reason for non-inclusion should be disclosed prominently.	Yes, it should be implemented.	--
5(ii)(e)	Ranking must at a minimum be current to the most recent calendar quarter.	Yes, it should be implemented.	--
5(ii)(f)	A MF ranking entity shall disclose the holding of MF schemes' by its Board of directors and promoters.	Yes, it should be implemented.	--

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5(ii)(g)	A MF ranking entity should act independently of the AMC/MF and its affiliates in assessing the MF schemes' performance and should not accept any consideration, monetary or otherwise and whose services are not procured by the AMC/MF or any of its affiliates to assign the AMC/MF or its schemes a ranking.	Yes, it should be implemented.	--
5(ii)(h)	The rankings should be accompanied by the disclaimer that past performance is no guarantee of future returns. Also, it should be accompanied with the standard disclaimer that 'Mutual Fund investments are subject to market risks, read all scheme related documents carefully.' This would be applicable for the ranking entity as well as the MF using this ranking.	Yes, it should be implemented.	--