

Recommendations - SEBI (Investment Advisers-IA) Regulations, 2013

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
1.	1(1)	<p>Short title and commencement</p> <p>These regulations may be called the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.</p>	No Comments
2.	1(2)	<p>These regulations shall come into force on the ninetieth day from the date of their publication in the Official Gazette.</p>	No Comments
3.	2(1)	<p>Definitions</p> <p>In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,–</p>	No Comments
4.	2(1)(a)	<p>“Act” means the Securities and Exchange Board of India Act, 1992 (15 of 1992);</p>	No Comments
5.	2(1)(b)	<p>"Board" means the Securities and Exchange Board of India established under section 3 of the Act;</p>	No Comments
6.	2(1)(c)	<p>“body corporate” shall have the meaning assigned to it in or under sub-section (7) of section 2 of the Companies Act, 1956 (1 of 1956);</p>	<p>It should be modified to include all amendments in the Companies Act i.e. currently it should mean company incorporated under the Companies Act, 2013.</p>
7.	2(1)(d)	<p>“certificate” means a certificate of registration granted under these regulations;</p>	No Comments

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8.	2(1)(e)	“change in control” in relation to a company or a body corporate, means:	No Comments
9.	2(1)(e)(i)	if its shares are listed on any recognized stock exchange, change in control within the meaning of clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;	No Comments
10.	2(1)(e)(ii)	in any other case, change in the controlling interest or change in legal form. Explanation.: For the purpose of sub-clause (ii), the expression “controlling interest” means an interest, whether direct or indirect, to the extent of more than fifty percent of voting rights or interest;	No Comments
11.	2(1)(f)	“company” means a company incorporated under the Companies Act, 1956;	It should be modified to include all amendments in the Companies Act i.e. currently it should mean company incorporated under the Companies Act, 2013
12.	2(1)(g)	“consideration” means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;	No Comments

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13.	2(1)(h)	<p>“financial planning” shall include analysis of clients’ current financial situation, identification of their financial goals, and developing and recommending financial strategies to realise such goals;</p>	<p>Financial Planning is not limited till the recommendation stage alone and Financial Planning involves a comprehensive six step process viz:</p> <ol style="list-style-type: none"> 1. Establishing and defining the client-planner relationship 2. Gathering client data, including goals 3. Analyzing and evaluating client’s financial status 4. Developing and presenting financial planning recommendations and/or alternatives 5. Implementing the financial planning recommendations 6. Monitoring the financial planning recommendations <p>Therefore, the definition of Financial Planning under this section should recognize all six steps as mentioned above.</p>
14.	2(1)(i)	<p>“firm” means a partnership firm registered under Indian Partnership Act, 1932 (9 of 1932);</p>	No Comments
15.	2(1)(j)	<p>“form” means any of the forms set out in the First Schedule;</p>	No Comments
16.	2(1)(k)	<p>“inspecting authority” means any one or more persons appointed by the Board to exercise powers conferred under regulation 23;</p>	No Comments

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17.	2(1)(l)	<p>“investment advice” means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:</p> <p>Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;</p>	<p>It may be observed that “Investment Advice” is a subset of “Financial Planning” and not vice versa. Therefore, the regulations may be redrafted to include “Investment Advice” as a subset of “Financial Planning”.</p> <p>Further, there shouldn't be any exemptions to any particular medium/s for “Investment Advice” as the “Investment Advice” delivered through any medium will affect the financial health of the consumers.</p>
18.	2(1)(m)	<p>“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;</p>	<p>As the “Investment Advice” could be provided with consideration or without consideration, the definition of “Investment Adviser” should be redrafted as given below:</p> <p>“investment adviser” means any person who 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;</p>
19.	2(1)(n)	<p>“limited liability partnership” means a partnership formed and registered under The Limited Liability Partnership Act, 2008(6 of 2009);</p>	No Comments

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20.	2(1)(o)	“NBFC” means a Non-Banking Financial Company regulated by Reserve Bank of India;	No Comments
21.	2(1)(p)	“NISM” means the National Institute of Securities Market established by the Board;	No Comments
22.	2(1)(q)	“partner” means partner of the firm or a limited liability partnership who renders investment advice on behalf of the firm or limited liability partnership;	No Comments
23.	2(1)(r)	“representative” means an employee or an agent of an investment adviser who renders investment advice on behalf of that investment adviser.	No Comments
24.	2(2)	The words and expressions used and not defined in these regulations but defined in the Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Companies Act, 1956 (1 of 1956), or any rules or regulations made there under shall have the same meanings respectively assigned to them in those Acts, rules or regulations made there under or any statutory modification or re-enactment thereto, as the case may be.	No Comments

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25.	3(1)	<p>Application for grant of certificate</p> <p>On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:</p> <p>Provided that a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate under sub regulation (2) within the said period of six months, till the disposal of such application.</p>	No Comments
26.	3(2)	<p>An application for grant of certificate of registration shall be made in Form A as specified in the First Schedule to these regulations and shall be accompanied by a nonrefundable application fee to be paid in the manner specified in Second Schedule.</p>	No Comments
27.	4	<p>Exemption from registration</p> <p>The following persons shall not be required to seek registration under regulation 3 subject to the fulfillment of the conditions stipulated therefore, —</p>	No Comments
28.	4(a)	<p>Any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;</p>	No Comments

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29.	4(b)	Any insurance agent or insurance broker who offers investment advice solely in insurance products and is registered with Insurance Regulatory and Development Authority for such activity;	<p>It should be prescribed that for the products to be “sold” by the agents, the accompanying specific financial advice should be prescribed by the “Investment Advisers” - Individuals and Non- Individuals.</p> <p>In addition, we need to take a holistic view of Insurance.</p> <p>Wikipedia defines Insurance as:</p> <p><i>“Insurance is the equitable transfer of the risk of a loss, from one entity to another in exchange for payment. It is a form of risk management primarily used to hedge against the risk of a contingent, uncertain loss.”</i></p> <p>The Chartered Insurance Institute (CII), the United Kingdom based accreditation and standards setting organization for professionals in the insurance and financial services industries, in their study texts describe that only financial, pure and particular risks are insurable. Risk management, the practice of appraising and controlling risk, has evolved as a discrete field of study and practice. The transaction involves the insured assuming a guaranteed and known relatively small loss in the form of payment to the insurer, the premium, in exchange for the insurer's promise to compensate (indemnify) the insured in the case of a financial (personal) loss. The insured receives a contract, called the insurance policy, which details the conditions and circumstances under which the insured will be financially compensated.</p>

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			<p>The insurance products thus should evolve so as to primarily manage risk. This concept has been exactly applied in non-life insurance. Life insurance however has been traditionally sold, especially in India, as an insurance-cum-investment product which has ingrained tax benefits. The mislaid investment aspect and tax savings have induced behavioral biases amongst policyholders who ignore the risk management aspect. The high premiums for an endowment plan or with-profit insurance policy do not provide adequate insurance cover, while high commissions to intermediaries do not leave enough investible surpluses to sustain a reasonable investment return. In India, therefore insurance remains under-penetrated due to the above fact.</p> <p>Life insurance should first cover the risk of death and disability in such a way that the entire life expenses and financial liabilities of the insured should be provided for in the insurance cover. This requires the cover to be large, which is mostly possible when pure insurance is the objective, not the investment part.</p> <p>By the very nature of inducement of behavioral anomalies which have been prominent in the evolution and growth of the life insurance industry in India, the insurance products are in great majority have embedded investment. These when subscribed, especially by salaried individuals with their first brush with tax savings, consume a large part of the investible surplus and bind them to a long-term commitment. It is only lately that the Government has recognized this</p>

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			<p>anomaly and has gradually removed tax incentives from insurance-cum-investment products. By introducing a certain ratio of sum assured to the premium paid per annum, say ten times, the tax incentives on premium paid have been curbed on other products.</p> <p>The said SEBI Regulations, by excluding from the ambit of regulations insurance intermediaries who offer investment advice in insurance products is a step not in alignment with the above stated Government initiatives. Such insurance-cum-investment products commit substantial investible surplus of individuals in long-term obligations and misalign the investment objectives for meeting important financial goals. The financial goals which evolve due to client-centric Financial Planning are inclusive and invariably cover insurance as risk management tool. However, putting an investment aspect to insurance products keeps the financial goals from evolving and leads to lopsided investment portfolio. Keeping this vast army of insurance intermediaries out of the ambit of Investment Advisers regulations is thus defeating the purpose of evolving investment advisory.</p> <p>Therefore, this section should be struck down.</p>

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
30.	4(c)	Any pension advisor who offers investment advice solely on pension products and is registered with Pension Fund Regulatory and Development Authority for such activity;	<p>Whereas "Life Insurance" provides us tools to manage the risk of dying early or untimely death, "Pension products" are designed to manage longevity risks and that of outliving financial savings.</p> <p>Wikipedia defines Pension as below:</p> <p><i>"A pension is a fixed sum to be paid regularly to a person, typically following retirement from service. The terms retirement plan and superannuation refer to a pension granted upon retirement of the individual. Retirement plans may be set up by employers, insurance companies, the government or other institutions such as employer associations or trade unions. Called "Retirement Plans" in the United States, they are commonly known as "Pension Schemes" in the United Kingdom and Ireland and "Superannuation Plans" in Australia and New Zealand. Retirement pensions are typically in the form of a guaranteed life annuity, thus insuring against the risk of longevity."</i></p> <p>In India, the Government and the organised sector, especially Financial Institutions and Banks provide pension to their employees in a defined benefit system, whereby lifelong pensions escalated with inflation are assured. However, employees who joined after a certain date (1st January, 2004) are under defined contributions system which seeks to provide pension only to the extent sustained by the corpus accumulated by the retiree,</p>

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			<p>and it could be for a limited term as well. Thus, the onus of pensions shifts to individuals from institutions. This opens vistas for a huge annuity market in India.</p> <p>The market for annuity products is fraught with problems, given the complex nature of the product and few providers. On the demand side, annuities are often viewed as investment instruments and as such they may be perceived to be unattractive from returns perspective when the cost of built-in guarantees is provided for. Yet annuities are “insurance” products in that they provide some form of costly protection against risk, be it longevity, mortality, or financial risk. Insurance companies in India are only authorized to issue annuities to individuals. It therefore leaves predominantly insurance intermediaries to sell annuities, which again have investment as a major component.</p> <p>Retirement Planning, on the other hand is a holistic activity under Financial Planning, which balances savings and investments seamlessly over accumulation stage to retirement and distribution stage post-retirement. Retirement goal is seen as an essential goal and a lot of parameters such as extent of savings, time period, investment strategy including investment returns, inflation scenario pre-and-post-retirement, life expectancy, etc are intricately considered and built in the Retirement Plan.</p> <p>By leaving out a category Pension Advisers from the ambit of Investment Advisers Regulation, SEBI is restraining Retirement</p>

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			<p>Planning industry from developing holistically. Developing retirement solutions from inception is purely an evolved investment domain. In India, pension industry has not evolved. An individual saves for retirement not knowing how much would be needed post-retirement. And whatever is accumulated goes into the forced buying of costly annuities, not knowing exactly to what extent in volume and time they would be adequate to sustain the remaining life.</p> <p>Therefore, this section should be struck down.</p>

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
31.	4(d)	Any distributor of mutual funds, who is a member of a self regulatory organization recognised by the Board or is registered with an association of asset management companies of mutual funds, providing any investment advice to its clients incidental to its primary activity;	<p>As per Oxford dictionary, "Incidental" is defined as, "<i>Happening as a minor accompaniment to something else</i>" or "<i>Occurring by chance in connection with something else</i>" or "<i>Happening as a result of.</i>"</p> <p>It may be observed that the Investment Advice provided by distributors of mutual fund products is not a minor activity since it can have a material impact on the financial health of consumers.</p> <p>Therefore, this section should be struck down.</p>
32.	4(e)	Any advocate, solicitor or law firm, who provides investment advice to their clients, incidental to their legal practice;	Advocates may provide advice related to only legal aspects like establishment of Trusts, preparation of Wills, Estate matters etc., however advising on financial products and investments in Property or other assets etc. cannot be considered incidental.
33.	4(f)	Any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Board, who provides investment advice to their clients, incidental to his professional service;	<p>Chartered Accountants (CAs) who offer advice for various Financial products should be under the ambit of the regulations notwithstanding the fact that the said advice may be incidental to the accounting practice.</p> <p>This is on account of the fact that many individuals/households route their investments through CAs.</p> <p>Furthermore, not charging any consideration for advice should not be the criteria for the exemption from the regulations as there is a very heavy reliance on the advice being rendered based on which several transactions are conducted.</p>

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
34.	4(g)	<p>Any stock broker or sub-broker registered under SEBI (Stock Broker and Sub-Broker) Regulations, 1992, portfolio manager registered under SEBI (Portfolio Managers) Regulations, 1993 or merchant banker registered under SEBI (Merchant Bankers) Regulations, 1992, who provides any investment advice to its clients incidental to their primary activity:</p> <p>Provided that such intermediaries shall comply with the general obligation(s) and responsibilities as specified in Chapter III of these regulations:</p> <p>Provided further that existing portfolio manager offering only investment advisory services may apply for registration under these regulations after expiry of his current certificate of registration as a portfolio manager;</p>	<p>The SEBI (Stock-brokers and Sub-brokers) Regulations, 1992 define a Stock-broker and Sub-broker as follows: “stock-broker” means a member of a stock exchange; and “sub-broker” means any person not being a member of stock exchange who acts on behalf of a stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers;”</p> <p>The SEBI (Stock-brokers and Sub-brokers) Regulations, 1992, in Schedule II, define (in sub-clause B: Duty to the Investor) under “Code of Conduct” for stock-brokers, the following, (amongst others):</p> <p>EXECUTION OF ORDERS: A stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.</p> <p>INVESTMENT ADVICE: A stock-broker shall not make a recommendation to any client who might be expected to rely thereon to acquire, dispose of, retain any securities unless he has reasonable grounds for believing that the recommendation is suitable for such a client upon the basis of the facts, if</p>

			<p>disclosed by such a client as to his own security holdings, financial situation and objectives of such investment. The stock-broker should seek such information from clients, wherever he feels it is appropriate to do so.</p> <p>A plain reading of the above regulation in respect of stock-brokers suggests that a stock-broker can, apart from the core business of executing orders for buying and selling of the securities for clients, render investment advice to clients after conducting due diligence of investment objectives and financial situation of the clients including the suitability analysis of such advice.</p> <p>It is obvious that stock-brokers can advise their clients on acquiring or disposing off securities while also executing such trades on their behalf. Moreover, the advice function is nowhere meant to be an incidental function under the said Regulations of stock-brokers and sub-brokers. Rather, it seems to be main function along with execution if thus sought by a client. Also, no “arms length relationship” is prescribed for stock-brokers in relation to their business of advice and execution.</p> <p>Juxtaposing the same to SEBI (Investment Advisers) Regulations, 2013, whereas a registered Investment Adviser needs to maintain an “arms length relationship” between the functions of advice and distribution, the “advice” being main function, the stock-brokers and sub-brokers are exempted from registration under the SEBI (Investment Advisers) Regulations, 2013 under the garb of “Incidental” advice to be rendered to their clients.</p>
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			<p>Hence, the exemption to stock-brokers and sub-brokers from registration under the SEBI (Investment Advisers) Regulations, 2013 should be withdrawn in case they choose to render advice.</p> <p>The SEBI (Portfolio Managers) Regulations, 1993 define portfolio managers as:</p> <p>“Discretionary Portfolio Manager” means a portfolio manager who exercises or may, under a contract relating to portfolio management, exercise any degree of discretion as to the investments or management of the portfolio of securities or the funds of the client, as the case may be;</p> <p>“Portfolio Manager” means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the client, as the case may be;</p> <p>A detailed 12-Para “Code of Conduct” has been mentioned in Chapter III of the said Regulations which covers inter alia exercising due diligence, exercising independent professional judgment, avoiding any conflict of interest in his investment or disinvestment decision with full disclosures, exercising fiduciary responsibility with duty of care, maintaining strict confidentiality, maintaining information flow with clients, exercising professional responsibility in respect of market operations and conduct of business, avoiding related party transactions, etc.</p>
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			<p>All the above intricately cover investment management which invariably includes investment research, sound professional judgment and market execution of the portfolio, whether non-discretionary or with any degree of discretion. The advice being a central part of the function of portfolio management cannot be incidental. The code of conduct also mandates that if the advice regarding any security is made in the publicly accessible media by a portfolio manager or any his employees, full disclosures of positions taken by the entity along with conflict of interest should be made.</p> <p>Juxtaposing the same to SEBI (Investment Advisers) Regulations, 2013, whereas a registered Investment Adviser needs to maintain an “arms length relationship” between the functions of advice and distribution, the “advice” being main function, the portfolio managers are exempted from registration under the SEBI (Investment Advisers) Regulations, 2013 under the garb of “Incidental” advice to be rendered to their clients.</p> <p>Hence, the exemption to portfolio managers from registration under the SEBI (Investment Advisers) Regulations, 2013 should be withdrawn and they should be required to register under the Regulations as well.</p> <p>The SEBI (Merchant Bankers) Regulations, 1992 define Merchant Bankers as:</p> <p>“merchant banker” means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or</p>
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			<p>acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;</p> <p>A detailed “Code of Conduct” has been mentioned in Schedule III of the said Regulations, which describes inter alia exercising due diligence, avoiding any conflict of interest with full disclosures, avoiding discrimination amongst its clients, save and except on ethical and commercial considerations, maintaining “arms length relationship” between its merchant banking and other activities, etc. The code of conduct also mandates that if the advice regarding any security is made in the publicly accessible media by a merchant banker or any of its employees, full disclosures of positions taken by the entity along with conflict of interest should be made.</p> <p>A plain reading of the definition and functions of merchant bankers discloses that the advice is a central function and if any other activity is undertaken an arms length relationship must be maintained. Yet the merchant bankers are exempted from registration under the SEBI (Investment Advisers) Regulations, 2013 under the garb of “Incidental” advice to be rendered to their clients. Hence, the exemption to portfolio managers from registration under the SEBI (Investment Advisers) Regulations, 2013 should be withdrawn.</p>
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35.	4(h)	Any fund manager, by whatever name called of a mutual fund, alternative investment fund or any other intermediary or entity registered with the Board;	No Comments
36.	4(i)	Any person who provides investment advice exclusively to clients based out of India: Provided that persons providing investment advice to Non-Resident Indian or Person of Indian Origin shall fall within the purview of these regulations;	The exemption should be struck down as Investment Advice provided to any category of clients for investments in India should come under the purview of this Regulation.
37.	4(j)	Any representative and partner of an investment adviser which is registered under these regulations: Provided that such representative and partner shall comply with regulation 7 of these regulations;	No Comments
38.	4(k)	Any other person as may be specified by the Board.	No Comments
39.	5(1)	Furnishing of further information, clarification and personal representation The Board may require the applicant to furnish further information or clarification regarding matters relevant to investment advisory services for the purpose of consideration of the application filed under sub-regulation (2) of regulation 3.	No Comments
40.	5(2)	The applicant or his authorised representative, if so required, shall appear before the Board for personal representation.	No Comments

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41.	6	<p>Consideration of application and eligibility criteria</p> <p>For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —</p>	No Comments
42.	6(a)	whether the applicant is an individual or a body corporate or a firm;	No Comments
43.	6(b)	whether in case the applicant is an individual, he is appropriately qualified and certified as specified in regulation 7;	No Comments
44.	6(c)	whether in case the applicant is a body corporate, all the representatives of the applicant who provide investment advice are appropriately qualified and certified as specified in regulation 7;	No Comments
45.	6(d)	whether in case the applicant is a firm or a limited liability partnership, all partners who are engaged in giving investment advice are qualified and certified as specified in regulation 7.	No Comments
46.	6(e)	whether the applicant fulfills the capital adequacy requirements as specified in regulation 8;	No Comments
47.	6(f)	whether the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;	No Comments

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48.	6(g)	whether the applicant has the necessary infrastructure to effectively discharge the activities of an investment adviser;	No Comments
49.	6(h)	whether the applicant or any person directly or indirectly connected with the applicant has in the past been refused certificate by the Board and if so, the grounds for such refusal;	No Comments
50.	6(i)	whether any disciplinary action has been taken by the Board or any other regulatory authority against any person directly or indirectly connected to the applicant under the respective Act, rules or regulations made thereunder;	No Comments
51.	6(j)	In case a bank or an NBFC proposes to undertake investment advisory services, whether it has been permitted by Reserve Bank of India and the application is made through a subsidiary or separately identifiable department or division;	No Comments
52.	6(k)	In case anybody corporate, other than a Bank or NBFC, which proposes to undertake investment advisory services, whether, the application is made through a separately identifiable department or division;	No Comments
53.	6(l)	In case an entity incorporated outside India undertakes to provide investment advisory services under these regulations, whether, it has set up a subsidiary in India and whether such subsidiary has made the application for registration;	No Comments

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54.	6(m)	In case a foreign citizen proposes to undertake investment advisory services, whether the applicant has set up an office in India and proposes to undertake investment advisory services through such office.	No Comments
55.	7(1)	<p>Qualification and certification requirement</p> <p>An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:</p>	No Comments
56.	7(1)(a)	A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognized foreign university or institution or association; or	<p>Professional qualifications like post graduate diploma in finance, accountancy, business management, commerce, economics etc. may be very good from an Academic or business perspective but the understanding of the professionals with these qualifications may be limited in the Personal Finance domain. Hence, qualification requirements may be limited to professional qualifications in the Financial Planning/Personal Finance domain only. Further, a requisite work experience/article ship with "Investment Advisers" may also be made mandatory.</p> <p>In addition, It may be observed that <u>FPSB India</u> has been <u>recognized</u> and approved by the <u>Central Government</u>, <u>as an educational institution/university</u> existing solely for educational purposes under Section 10(23C)(vi) of the Income Tax Act, 1961 by an order dated February 22, 2008 for the Department of Revenue, Ministry of Finance, Government of India.</p>

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57.	7(1)(b)	A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.	No Comments
58.	7(2)	An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:	No Comments
59.	7(2)(a)	from NISM; or	While NISM is specified as an accredited institution, in case of other institutions only certifications can be accredited. This is anti-competitive. This should be removed or a similar recognition should be provided to other institutions as well.

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60.	7(2)(b)	<p>from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.:</p> <p>Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:</p> <p>Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.</p>	<p>NISM is specified as an accredited institution as well as an accreditation body. This creates complete conflict of interest.</p> <p>Further, the ambiguous interpretation of the Section should be resolved and the regulations may be amended similar to as stated under the Draft Investment Advisers Regulations released by SEBI on August 16, 2012.</p> <p>Accordingly, the same should be read as follows:</p> <p><i>“...An Investment Advisor or Representative offering investment advice shall have the following Certifications:-</i></p> <ul style="list-style-type: none"> <i>(a) Certification on Financial Planning or fund or asset management or investment advisory services if provided by NISM or FPSB India, or</i> <i>(b) Any such certification from an institution accredited by NISM. Provided that an existing investment advisor seeking registration will be given a period of two years to obtain such certification....”</i>

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61.	8(1)	<p>Capital adequacy Investment advisers which are body corporate shall have a net worth of not less than twenty five lakh rupees.</p> <p>Explanation.: For the purposes of this regulation, "net worth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred expenditure not written off, including miscellaneous expenses not written off, and capital adequacy requirement for other services offered by the advisers in accordance with the applicable rules and regulations.</p>	The entire section should be struck off as the body corporate shall fall within the purview of the regulations under Amended Companies Act, 2013.
62.	8(2)	<p>Investment advisers who are individuals or partnership firms shall have net tangible assets of value not less than rupees one lakh:</p> <p>Provided that existing investment advisers shall comply with the capital adequacy requirement within one year from the date of commencement of these regulations.</p>	No Comments
63.	9	<p>Grant of certificate of registration The Board on being satisfied that the applicant complies with the requirements specified in regulation 6 shall send intimation to the applicant and on receipt of the payment of registration/renewal fees as specified in Second Schedule, grant certificate of registration in Form B under First Schedule, subject to such terms and conditions as the Board may deem fit and appropriate.</p>	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
64.	10	<p>Period of validity of certificate The certificate of registration granted under regulation 9 shall be valid for a period of five years from the date of its issue.</p>	No Comments
65.	11(1)	<p>Renewal of certificate Three months before the expiry of the period of validity of the certificate, the investment adviser may, if he so desires, make an application in Form A for grant of renewal of certificate of registration.</p>	No Comments
66.	11(2)	<p>The application for renewal under sub-regulation (1) shall be dealt with in the same manner as if it were an application made under sub-regulation (2) of regulation 3 for grant of certificate.</p>	No Comments
67.	12(1)	<p>Procedure where registration is refused After considering an application made under regulation 3, if the Board is of the opinion that a certificate should not be granted to the applicant, it may reject the application after giving the applicant a reasonable opportunity of being heard.</p>	No Comments
68.	12(2)	<p>The decision of the Board to reject the application shall be communicated to the applicant within thirty days of such decision.</p>	No Comments
69.	12(3)	<p>Where an application for a certificate is rejected by the Board, the applicant shall forthwith cease to act as an investment adviser: Provided that nothing contained in this regulation shall affect the liability of the applicant towards its existing clients under law.</p>	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
70.	13	<p>Conditions of certificate</p> <p>The certificate granted under regulation 9 shall, <i>inter alia</i>, be subject to the following conditions:-</p>	No Comments
71.	13(a)	the investment adviser shall abide by the provisions of the Act and these regulations;	No Comments
72.	13(b)	the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;	No Comments
73.	13(c)	<p>the investment adviser, not being an individual, shall include the words 'investment adviser' in its name:</p> <p>Provided that if the investment advisory service is being provided by a separately identifiable department or division or a subsidiary, then such Separately Identifiable Department or Division (SIDD) or subsidiary shall include the words 'investment adviser' in its name;</p>	No Comments
74.	13(d)	individuals registered as investment advisers shall use the term 'investment adviser' in all their correspondences with their clients.	Advisors offering services across asset classes and / or holding holistic Financial Planning certifications like CFP ^{CM} may use only respective certifications: and / or reference to one being "SEBI Registered" may be indicated.

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
75.	14(1)	<p>Recognition of body or body corporate for regulation of investment advisers</p> <p>The Board may recognize any body or body corporate for the purpose of regulating investment advisers.</p>	No Comments
76.	14(2)	<p>The Board may, at the time of recognition of such body or body corporate, delegate administration and supervision of investment advisers to such body or body corporate on such terms and conditions as may be specified by the Board.</p>	No Comments
77.	14(3)	<p>The Board may specify that no person shall act as an investment adviser unless he is a member of a recognized body or body corporate and in such event, provisions of these regulations and byelaws or articles of such body or body corporate shall apply <i>mutatis mutandis</i> to such investment advisers.</p>	No Comments
78.	15(1)	<p>General responsibility</p> <p>An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.</p>	The fiduciary duty of the investment advisor towards the client may be defined and the section may be modified accordingly.

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
79.	15(2)	An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.	This section should be read along with section 15 (5), which warrants disclosure of conflict of interest. Accordingly, in the said section the phrase “without explicit knowledge and consent of the client being advised” should be added.
80.	15(3)	An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.	No Comments
81.	15(4)	An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.	No Comments
82.	15(5)	An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client.	Refer to section 15 (2) above.
83.	15(6)	An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
84.	15(7)	<p>An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.</p> <p>Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a transaction on its own account after giving such revised assessment to the client at least 24 hours in advance of entering into such transaction.</p>	No Comments
85.	15(8)	<p>An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.</p>	No Comments
86.	15(9)	<p>An investment advisor shall abide by Code of Conduct as specified in Third Schedule.</p>	No Comments
87.	15(10)	<p>An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.</p>	No Comments
88.	15(11)	<p>In case of change in control of the investment adviser, prior approval from the Board shall be taken.</p>	No Comments
89.	15(12)	<p>Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.</p>	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
90.	15(13)	It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements under Regulation 7 at all times.	No Comments
91.	16	Investment adviser shall ensure that,-	No Comments
92.	16(a)	it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-	No Comments
93.	16(a)(i)	age;	No Comments
94.	16(a)(ii)	investment objectives including time for which they wish to stay invested, the purposes of the investment ;	No Comments
95.	16(a)(iii)	income details;	No Comments
96.	16(a)(iv)	existing investments/ assets;	No Comments
97.	16(a)(v)	risk appetite/ tolerance;	<p>Clients' cannot be expected to provide this information. Rather Investment Advisers should be equipped to assess Risk Tolerance/Risk appetite of clients through the use of structured scientific tools.</p> <p>Therefore, this requirement of obtaining risk appetite/ tolerance from clients should be struck down.</p>
98.	16(a)(vi)	liability/borrowing details.	No Comments
99.	16(b)	it has a process for assessing the risk a client is willing and able to take, including:	No Comments
100.	16(b)(i)	assessing a client's capacity for absorbing loss;	No Comments
101.	16(b)(ii)	identifying whether client is unwilling or unable to accept the risk of loss of capital;	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
102.	16(b)(iii)	appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers	No Comments
103.	16(c)	where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;	The list/definition of tools and process for Risk Profiling should be described in an explicit manner to avoid ambiguities with respect to the fitness and limitations. Else, the section may be deleted.
104.	16(d)	any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:	No Comments
105.	16(d)(i)	questionnaire is not vague or use double negatives or in a complex language that the client may not understand;	No Comments
106.	16(d)(ii)	questionnaire is not structured in a way that it contains leading questions.	No Comments
107.	16(e)	risk profile of the client is communicated to the client after risk assessment is done;	No Comments
108.	16(f)	Information provided by clients and their risk assessment is updated periodically.	Globally various research studies have shown that "Risk Tolerance" is a stable trait which does not vary according to the market conditions. It is the risk behavior which may change according to risk perception. The advisers need to assess the risk behavior periodically and address biases, if any. Therefore this section of updating Risk Assessment periodically should be struck down.

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
109.	17	Suitability. Investment adviser shall ensure that,-	No Comments
110.	17(a)	All investments on which investment advice is provided is appropriate to the risk profile of the client;	There may be scenarios wherein investment advisory only on the basis of Risk Profile alone may not lead to the achievement of complete financial goals. Therefore, there should be exemptions for deviating from Risk Profile (if required) with full disclosure and the consent of clients.
111.	17(b)	It has a documented process for selecting investments based on client's investment objectives and financial situation;	No Comments
112.	17(c)	It understands the nature and risks of products or assets selected for clients;	No Comments
113.	17(d)	It has a reasonable basis for believing that a recommendation or transaction entered into:	No Comments
114.	17(d)(i)	meets the client's investment objectives;	No Comments
115.	17(d)(ii)	is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;	No Comments
116.	17(d)(iii)	is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
117.	17(e)	Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.	No Comments
118.	18(1)	<p>Disclosures to clients</p> <p>An investment adviser shall disclose to a prospective client, all material Information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.</p>	No Comments
119.	18(2)	An investment adviser shall disclose to its client, any consideration by way of remuneration or compensation or in any other form whatsoever, received or receivable by it or any of its associates or subsidiaries for any distribution or execution services in respect of the products or securities for which the investment advice is provided to the client.	No Comments
120.	18(3)	An investment adviser shall, before recommending the services of a stock broker or other intermediary to a client disclose any consideration by way of remuneration or compensation or in any other form whatsoever, if any, received or receivable by the investment adviser, if the client desires to avail the services of such intermediary.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
121.	18(4)	An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.	No Comments
122.	18(5)	An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.	No Comments
123.	18(6)	An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.	No Comments
124.	18(7)	An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.	No Comments
125.	19(1)	Maintenance of records. An investment adviser shall maintain the following records,-	No Comments
126.	19(1)(a)	Know Your Client records of the client;	No Comments
127.	19(1)(b)	Risk profiling and risk assessment of the client;	No Comments
128.	19(1)(c)	Suitability assessment of the advice being provided;	No Comments
129.	19(1)(d)	Copies of agreements with clients, if any;	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
130.	19(1)(e)	Investment advice provided, whether written or oral;	How the oral advice will be deemed to be the "Investment Advice" should be stated and the evidence/s thereof: Lest it may be looked upon as a feedback / comment only. Additionally, the evidence for oral advice should be explained.
131.	19(1)(f)	Rationale for arriving at investment advice, duly signed and dated;	No Comments
132.	19(1)(g)	A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.	No Comments
133.	19(2)	All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years: Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.	No Comments
134.	19(3)	An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India.	While the Chartered Accountants may be trained for conducting financial audits for an organization, they may not be adept at conducting audits for Financial Planning processes. Chartered Accountants and Company Secretaries who are also Certified Financial Planners certificants with specific years of experience should also be permitted to conduct the compliance audit.

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
135.	20	<p>Appointment of compliance officer.</p> <p>An investment adviser which is a body corporate or a partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance by the investment adviser in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board.</p>	This section should be removed.
136.	21(1)	<p>Redressal of client grievances.</p> <p>An investment adviser shall redress client grievances promptly.</p>	No Comments
137.	21(2)	An investment adviser shall have adequate procedure for expeditious grievance redressal.	No Comments
138.	21(3)	Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.	<p>There should be a single point redress mechanism for consumers. As per the recommendations of the Financial Sector Legislative Reforms Commission (FSLRC) established by Government of India, Ministry of Finance to comprehensively review and redraft the legislations governing financial system in India, "...The Commission envisages a single unified Financial Redress Agency (FRA) which would serve any aggrieved consumer, across all sectors. This would feature a low-cost process through which the complaint of the consumer against the financial firm would be heard, and remedies awarded...."</p> <p>Accordingly, there should be a single point redress mechanism for grievances pertaining to financial products in which investments have been made based on investment advice. This calls for a need of convergence of regulations.</p>

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
139.	21(4)	Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.	No Comments
140.	22	<p>Segregation of execution services.</p> <p>Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:</p> <p>Provided that such distribution or execution services can only be offered subject to the following:</p>	No Comments
141.	22(a)	The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.	No Comments
142.	22(b)	The investment adviser shall maintain arms length relationship between its activities as investment adviser and distribution or execution services.	No Comments
143.	22(c)	All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through the investment adviser.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
144.	23(a)	<p>Board's right to inspect.</p> <p>The Board may suo motu or upon receipt of information or complaint appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, records and documents relating to investment advisers for any of the following reasons, namely:- to ensure that the books of account, records and documents are being maintained by the investment adviser in the manner specified in these regulations;</p>	No Comments
145.	23(b)	to inspect into complaints received from clients or any other person, on any matter having a bearing on the activities of the investment adviser;	No Comments
146.	23(c)	to ascertain whether the provisions of the Act and these regulations are being complied with by the investment adviser;	No Comments
147.	23(d)	to inspect into the affairs of a investment adviser, in the interest of the securities market or in the interest of investors.	No Comments
148.	24(1)	<p>Notice before inspection.</p> <p>Before ordering an inspection under regulation 23, the Board shall give not less than ten days notice to the investment adviser.</p>	No Comments
149.	24(2)	Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing direct that the inspection of the affairs of the investment adviser be taken up without such notice.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
150.	24(3)	During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.	No Comments
151.	25(1)	<p>Obligation of investment adviser on inspection</p> <p>It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.</p>	No Comments
152.	25(2)	It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
153.	25(3)	The inspecting authority shall, for the purposes of inspection, have power to examine on oath and record the statement of any employees, directors, partners or person responsible for or connected with the activities of investment adviser or any other associate person having relevant information pertaining to such investment adviser.	No Comments
154.	25(4)	The inspecting authority shall, for the purposes of inspection, have power to obtain authenticated copies of documents, books, accounts of investment adviser, from any person having control or custody of such documents, books or accounts.	No Comments
155.	26	<p>Submission of report to the Board.</p> <p>The inspecting authority shall, as soon as possible, on completion of the inspection submit an inspection report to the Board:</p> <p>Provided that if directed to do so by the Board, the inspecting authority may submit an interim report.</p>	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
156.	27	<p>Action on the inspection report.</p> <p>The Board may after consideration of the inspection report and after giving reasonable opportunity of hearing to the investment advisers or its authorized representatives, issue such directions as it deems fit in the interest of securities market or the investors including,-</p>	No Comments
157.	27(a)	requiring an investment adviser not to provide investment advice for a particular period;	No Comments
158.	27(b)	requiring the investment adviser to refund any money collected as fees, charges or commissions or otherwise to the concerned clients along with the requisite interest.	No Comments
159.	27(c)	prohibiting the investment adviser from operating in the capital market or accessing the capital market for a specified period.	No Comments
160.	28	<p>Liability for action in case of default.</p> <p>An investment adviser who –</p>	No Comments
161.	28(a)	contravenes any of the provisions of the Act or any regulations or circulars issued there under;	No Comments
162.	28(b)	fails to furnish any information relating to its activity as an investment adviser as required by the Board;	No Comments
163.	28(c)	furnishes to the Board information which is false or misleading in any material particular;	No Comments
164.	28(d)	does not submit periodic returns or reports as required by the Board;	No Comments

Sr. No.	Section	SEBI IA Regulations, 2013	FPSB India's Recommendations
165.	28(e)	does not co-operate in any enquiry, inspection or investigation conducted by the Board;	No Comments
166.	28(f)	fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.	No Comments
167.	29	<p>Power of the Board to issue clarifications etc.</p> <p>In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications and guidelines in the form of circulars.</p>	No Comments
168.	30	<p>Power of the Board over body or body corporate recognized under regulation 14.</p> <p>The Board reserves the right to alter, modify and overrule any decision, action taken or penalties imposed by the body or body corporate recognized under regulation 14.</p>	No Comments