Consultation paper on Review of Regulatory Framework for Investment Advisers (IA)

1. **Objective**

   The objective of the consultation paper is to seek comments from the public on the proposals that are intended to strengthen the regulatory framework for Investment Advisers (IA) as well as empower the IA to effectively discharge their responsibilities towards the investors who are the clients of IA.

2. **Background**

2.1 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. Investment Advisers are regulated by SEBI under Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) notified on January 21, 2013.

2.2 Any person who is providing investment advisory services in India is required to be registered with SEBI as IA under SEBI (Investment Advisers) Regulations, 2013. However, exemptions from registration as an investment adviser have been granted to various persons under Regulation 4 of IA Regulations, such as any person giving incidental advice to their clients, stock brokers, portfolio managers, chartered accountants, company secretaries, etc.

2.3 The objective of the IA Regulations, inter alia, was to lay down the framework for advisers who acts in a fiduciary capacity towards their clients and to address the conflict of interest arising due to the dual role played by the entity as adviser and distributor of financial products. Under these regulations, IA is required to comply with various requirements such as qualification criteria, net worth criteria, disclosures, maintenance of records etc. Further, the investment advisers are mandated to do appropriate risk profiling and have a process to arrive at suitable investments in line with the clients' requirements.

2.4 Investment adviser should act in the best interests of its clients when providing advisory services and should disclose to the client any actual or potential conflicts of interest. Further, the entity playing multiple roles should ensure that there is proper segregation of roles so as to minimize any possible conflicts of interest. In other words, to address the issue of conflict of interest arising due to multiple activities, it would be appropriate to ensure segregation of the activities and proper disclosures about segregation to the clients. Such segregation of advisory and distribution activities by the entity may lead to availability of complete information with the clients and the same may result in informed investment decision by them.

2.5 SEBI has been receiving numerous investor complaints against investment advisers. Nature of the complaints includes assured returns being offered by the Investment Advisors, charging of exorbitant fees from client with a false promises of handsome returns, mis-selling by IAs without adhering to the risk profile of the client, non-disclosure of complete service fees/charges and, extracting money in the name of various charges. Such conduct of these entities is against the interest of investors. SEBI has issued orders u/s 11B of SEBI Act, 1992 against various entities in the recent past wherein the entities were observed violating the provisions of IA regulations and SEBI (PFUTP) Regulations, 2003.

2.6 To further strengthen and make the IA Regulations robust and at the same time align with the regulatory framework with the developments in the securities markets, SEBI had issued three consultation papers dated October 7, 2016, June 22, 2017 and January 2, 2018 seeking public comments on various proposals relating to segregation of advisory and distribution activities, usage of misleading nomenclatures by distributors etc.

2.7 Working Group

In order to address the diverse views received during the aforesaid consultation process, SEBI constituted a working group to:

- Evaluate the proposals stated in the three consultation papers issued by SEBI and recommend the implementation measures thereof.
- Examine the model of client level segregation of advisory and distribution activities, highlight the risks in the model and mitigating factors for each risk.
- Review of IA Regulations.

The Working Group has deliberated on the various proposals stated in aforesaid consultation papers, model of client level segregation and issues observed in complaints against IAs. The Working Group submitted its report to SEBI in December 2019.

3. Issues and Proposals

Based on detailed deliberations on the Working Group recommendations and internal discussions, it is proposed to seek public comments on the following issues:

3.1. Issue 1: Client Level Segregation of Advisory & Distribution Activities

3.1.1. In terms of extant IA Regulations, individual and partnership firms registered as IAs are not allowed to provide distribution and/or execution services. Only corporate entities registered as IAs can offer execution or distribution services, subject to the condition that the investment advisory services are offered through Separate Identifiable Division or Department (SIDD). Such entities are required to keep their investment advisory services clearly segregated from other activities and are required to maintain arms-length relationship between their activity as an investment adviser and other activities. Further, investment adviser can obtain consideration/fee from the client being advised only and is required to comply with the higher requirements than that of distributors such as fiduciary obligation, maintenance of records, etc.

3.1.2. If an investment adviser advising on securities or investment products to a client, also earns consideration from distribution (directly or indirectly) on the products it is advising on, then there may be serious conflict of interest. The advice given by the investment adviser may not be in the best interest of the client. In order to address the issue of conflict of interest arising due to the dual role played by the entity as adviser and distributor of financial products, a clear segregation on client basis between Advisory and Distribution activities is proposed.

Proposal

3.1.3. There should be clear segregation between the two services provided to the client i.e. investment advice and distribution of the investment products.

3.1.4. For non-individual entities it is proposed to have client level segregation at a group level i.e. the same client cannot be accepted for offering both advisory and distribution services within the group of the non-individual entity. A client can either be an advisory client where no distributor consideration is received at the group level or distribution services client where no advisory fee can be collected from the client at the group level.

Group of Companies will be as per the provisions of Companies Act, 2013. Similar reference may be made for LLP.

3.1.5. Further, for Investment Advisers who are individuals, to have a level playing field, it is proposed that individuals may also be allowed to provide both IA services and distribution services provided client level segregation is adhered to. To enable IAs to distribute, they may obtain appropriate distribution registration. To address the issue of conflict of interest, a client can either be an advisory client where no distributor consideration is received at the family level or distribution services client where no advisory fee can be collected from the client at the family level, where "family" shall include individual, spouse, dependent children and dependent parents.

3.1.6. To ensure client level segregation at group/family level, following compliance and monitoring processes shall be adopted:

a) PAN of each client shall be the control record for identification and client level segregation.
b) Family of client would be reckoned as a single client and PAN of all the family members would jointly and severally be the control record, where "family" shall have the same meaning as defined above.A client may decide to transition out of advisory by terminating clients' advisory mandate and entering into a fresh mandate in relation to distribution services or vice versa.
c) A choice shall be given to all the existing clients to choose between the activities they would like to continue with the group/family of service providers. In case of existing clients who wish to take advisory services, the same client cannot be accepted for offering distribution services within the group/family. Similarly, in case of existing clients who wish to take distribution services, the same client cannot be accepted for offering advisory services within the group/family.
d) In case of new clients, the same client cannot be accepted for offering both advisory and distribution services. Clients new to the group/family to be informed about the option of availing advisory services or distribution services. Accordingly, once the new client has made the choice then the client should be on-boarded for the relevant services.
e) The investment adviser shall maintain on record an annual certificate from an auditor (in case of individual IA) and its statutory auditor (in case of a non-individual IA) confirming compliance with the client level segregation requirements.
f) IA shall, wherever available, advice direct version (non-commission based) products only.

3.2. Issue 2: Implementation of Advice (Execution)

3.2.1. In terms of extant IA Regulations, individual investment advisers are not allowed to sell any product and/or to provide execution services. Only corporate entities registered as investment adviser can offer execution or distribution services, subject to the condition that the investment advisory services are offered through separate identifiable division or department.

3.2.2. In the present market scenario, IAs are helping clients in implementation of the advice given to the client by charging some consideration as implementation (execution) fees.

As per the experience in the market, clients consider the investment advisers to be their trusted adviser and hence expect services as a “one stop shop”.

3.2.3. To enable the investment advisers in helping clients in implementation of the advice, the following is proposed:

Proposal

3.2.4. Implementation services in securities market may be allowed to IAs. However, IAs shall ensure that while providing implementation services to the advisory clients, no consideration (including any embedded/indirect/in kind commission or referral fees by any name) is received directly or indirectly at IAs group/family level. IA shall provide implementation services to its advisory clients only through direct schemes/direct code in the securities market.

3.2.5. IA is not entitled to charge any implementation fees from the client. Further, group/family of IA also cannot charge any implementation fees from the client.

3.2.6. The client may not be under any obligation to avail implementation services offered by the investment adviser i.e. the client may choose to avail implementation services from any other entity (outside the group/family) .

3.3. Issue 3: Terms and Conditions of Investment Advisory Services

3.3.1. Execution of an investment advisory agreement is not mandatory under the extant IA Regulations – clients may be thus unaware of the terms & conditions, processes of advisers and their rights in case of default or breach by IA.

3.3.2. In the absence of an agreement between adviser and the client, the client may be unable to exercise his right and prove his/her claims. In order to have transparency, explicit client consent and a document available with the client for his record regarding the terms and conditions of services availed , the following is proposed:

Proposal

3.3.3. IAs to provide a document to the client detailing the terms and conditions of the investment advisory services offered to the client. IAs shall ensure that neither any investment advice is rendered nor any fee is charged until consent is received from the client on the terms and conditions.

3.3.4. Following minimum mandatory terms shall be included in the aforesaid document:

3.3.4.1. Appointment of the Investment Adviser: Pursuant to valid and proper authority and in accordance with Applicable Laws, the client hereby appoints, entirely at his / her / its risk, the Investment Adviser to provide services to the client in accordance with the provisions of this document, SEBI (Investment Advisers) Regulations, 2013 and circulars issued thereunder (as applicable and in force from time to time).

3.3.4.2. The document must clearly and prominently, on the cover page:

(a) seek consent of the client on the following understanding :

- "I / We have read and understood the terms and conditions of investment advisory services provided by the IA and also understood the fee structure and mechanism for charging and payment of fee.

- Based on my written request to the IA, I / We was/were provided the opportunity by the IA to ask questions and interact with 'person(s) associated with the investment advice'".

(b) The IA to clearly declare to the client that:

- IA shall not manage funds and securities on behalf of the client and that it shall only receive such sums of monies from the client as are necessary to discharge the client's liability towards fees owed to the IA .

- IA shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice is risk-free and/or not susceptible to market risks and or that it can generate returns with any level of assurance.

(c) Fees prescribed under IA Regulations and circulars issued thereunder.(to be specifically mentioned here)

(d) Fees applicable to the client. (to be specifically mentioned here)

3.3.4.3. Scope of services: The services to be provided by the Investment Adviser to be described in detail. However, the same shall be subject to the activities permitted under the SEBI (Investment Advisers) Regulations, 2013.The Investment Adviser shall act in a fiduciary capacity towards its clients and disclose all conflicts of interest as and when they arise.

3.3.4.4. Functions of the Investment Adviser: Functions, obligations, duties and responsibilities of the Investment Adviser (including principal officer and all persons associated with the investment advice), with specific provisions covering, *inter alia,:*

(a) Terms of compliance with the SEBI (Investment Advisers) Regulations, 2013 and its amendments, rules, circulars and notifications.
(b) Compliance with the eligibility criteria as specified under the IA Regulations at all times.
(c) Risk assessment procedure of client including their risk capacity and risk aversion.
(d) Providing reports to clients on potential and current investments.
(e) Maintenance of client-wise KYC, advice, risk assessment, analysis reports of investment advice and suitability, terms and conditions document, rationale of advice, related books of accounts and a register containing list of clients along with dated investment advice in compliance with the SEBI (Investment Advisers) Regulations, 2013.
(f) Provisions regarding compliance audit as per the SEBI (Investment Advisers) Regulations, 2013.
(g) Undertaking to abide by the Code of Conduct as specified in the Third Schedule of the SEBI (Investment Advisers) Regulations, 2013.

3.3.4.5. Investment objective and guidelines:

(a) Types of securities in which investment advice would be provided, including an undertaking from the investment adviser to recommend direct implementation of advice i.e. through direct schemes/direct codes, and other client specifications / restrictions on investments, if any.
(b) Particulars regarding financial plan or model or strategy as agreed with the client (based on the risk profiling conducted for the client, total budgeted investment amount of the client and time period for deployment).
(c) Tax related aspects pertaining to investment advice and as applicable on the investment adviser's fee.

3.3.4.6. Risk Factors: A detailed statement of risks associated with each type of investment covering the standard risks associated with each type of investment.

3.3.4.7. Validity of advisory services**:** Minimum period if any, and provision for renewal, if any, along with terms and conditions for such renewal.

3.3.4.8. Amendments and termination: Conditions under which the document governing terms and conditions of advisory services may be altered, terminated, assigned and implications thereof, such as set off of fees received by the Investment Adviser, refund of fees, completion/termination of investment-in-progress, transition support obligations of the Investment Adviser, at least under the following circumstances:

(a) Voluntary / mandatory termination by the Investment Adviser.
(b) Voluntary / mandatory termination by the client.
(c) Suspension/Cancellation of registration of IA by SEBI.

3.3.4.9. Any other action taken by other regulatory body/ government authority.Relationship with related entities: The Investment Adviser to clearly declare that it is carrying on its activities independently, at an arms-length basis with its related entities. Disclosures of conflicts to be made.

3.3.4.10. Investment Adviser engaged in other activities:

(i) The Investment Adviser (individual) to represent to the client that it maintains an arms-length relationship between its activities as an investment adviser and other activities and to covenant that this arm's length relationship shall be maintained throughout the tenure of advisory service;

(ii) In case of Investment Advisers who are individuals:
1. to represent that they shall not provide any distribution services, for securities and investment products they advise, either directly or through their family to an advisory client.
2. to represent that they shall not provide investment advisory services, for securities and investment products that they distribute, either directly or through their family to the distribution client;

(iii) The Investment Adviser (non-individual);
1. to represent that they shall not provide any distribution services, for securities and investment products they advise, either directly or through their group to an advisory client.
2. to represent that they shall not provide investment advisory services, for securities and investment products that they distribute, either directly or through their group to the distribution client;

3.3.4.11. Representation to client: The investment adviser to ensure that it will take all consents and permissions from the client prior to undertaking any actions in relation to the securities or investment product advised by the investment adviser.

3.3.4.12. No right to seek Power of Attorney: The Investment Adviser to clearly declare that it shall not seek any power of attorney or authorizations from its clients for auto implementation of investment advice.

3.3.4.13. No conflict of interest: The Investment Adviser to clearly declare that he/ it does not derive any direct or indirect benefit out of the client's securities/investment products.

3.3.4.14. Maintenance of accounts and confidentiality:

(a) IA shall be responsible for maintenance of client accounts and data as mandated under the SEBI (Investment Advisers) Regulations, 2013.

(b) An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its client, except where such disclosures are required to be made in compliance with any law for the time being in force.

(c) An investment adviser shall not enter into transactions on its own account which are contrary to its advice given to clients for a period of fifteen days from the day of such advice. If, during the period of such fifteen days, 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.

3.3.4.15. Terms of fees:

(a) Provide specific details on the following:

(i) Fees prescribed under IA Regulations and circulars issued thereunder.
(ii) The quantum and manner of payment of fees for investment advice rendered.
(iii) Fee modalities and periodicity, by attaching a detailed fee schedule to the document;
(iv) Illustration(s) on how the fee will be determined.

(b) The payment of fees shall be through any mode which shows traceability of funds. Such modes may include account payee crossed cheque/ Demand Drafts or by way of direct credit to the bank accounts through NEFT/ RTGS/ IMPS/ UPI or any other mode specified by SEBI from time to time. However, the fees cannot be accepted in cash.

(c) The Investment Adviser should covenant that it shall receive all considerations by way of remuneration or compensation or in any other form from the client only and not from any person other than the client being advised, in respect of the underlying securities or investment products for which the advice is or to be provided.

3.3.4.16. Billing: Periodicity of billing with clear date and service period, whether payment to be made in advance, manner of payment of fees, type of documents evidencing receipt of payment of fee.

3.3.4.17. Liability of Investment Adviser: Liability of Investment Adviser towards client in case of fraud, gross negligence, wilful default in connection with discharge of duties to be specified. The document to clearly state that the Investment Adviser shall not incur any liability by reason of any loss, which a client may suffer by reason of any depletion in the value of the assets under advice, which may result by reason of fluctuation in asset value, or by reason of non-performance or under-performance of the securities/funds or any other market conditions.

3.3.4.18. Representations and covenants: Adequate and appropriate representations about qualifications of the adviser, principal officer, persons associated with the investment advice, receipt of all applicable approvals and consents (from regulatory / statutory bodies, third party consents, corporate approvals etc.) and covenant to maintain them throughout the validity of advisory service.

3.3.4.19. Death or Disability of client: Provisions in relation to continuation / termination of the advisory service in event of client's death / disability, succession, nomination, representation etc. to be incorporated.

3.3.4.20. Death or Disability of investment adviser: Every individual investment adviser must appoint one of its legal heirs, executor, trustee, administrator of estate of the deceased (the “Obligor”) as the person-in-charge in the event of investment adviser’s death / disability. The document must set out the full name, PAN and contact details of such Obligor. The document must disclose the steps to be taken by the Obligor in the event of the above eventuality in order to ensure protection of interest of the clients and redressal of clients’ claims, including but not limited to (a) giving notice to all clients of the occurrence of the eventuality and confirmation of having taken charge over by the Obligor (b) settlement of account with the client (fees payable and/or fees refundable), (c) completion of transition of any outstanding business to another duly registered investment adviser, (d) redressal of any outstanding or new disputes / claims of clients.

3.3.4.21. Settlement of disputes and provision for arbitration: Adequate provisions to cover protection of acts done in good faith as well as for dispute resolution mechanism including arbitration that may be prescribed under the SEBI (Investment Advisers) Regulations, 2013.

3.3.4.22. Adherence to grievance redressal timelines: IA shall be responsible to resolve the grievances within the timelines specified under SEBI circulars.

3.4. Issue 4: Fees

3.4.1. In terms of extant IA regulations, investment adviser is required to ensure that fees charged to the clients is fair and reasonable.

3.4.2. SEBI has received various complaints from investors against investment advisers regarding charging of unreasonable and unfair fees to the client. There are complaints where IA has charged unreasonably high fees, forced clients to pay additional fees for buying weekly reports, charged extraneous fees like service fees, file handling fees apart from the advisory fees etc. Such conduct of IA is against the interest of the investors and detrimental to the securities market.

3.4.3. To curb the instances of charging unfair and unreasonable fees to the client, a need is felt to further define the reasonable fees chargeable to the client. Accordingly, following is proposed:

Proposal

3.4.4. An investment adviser shall be entitled to charge fees in either of the following modes to a particular client:

A. Assets under advice (AUA) mechanism of fees:

(i) "assets under advice" shall mean the aggregate net asset value of :

- securities and investment products for which the investment adviser has rendered investment advice and also provided implementation services.
- securities and investment products for which the investment adviser only rendered investment advice and the implementation was concluded by the client directly or through other service providers.

(ii) Fees shall be charged on the basis of underlying assets under advice and IA has to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

(iii) any portion of Assets Under Advice in relation to which the investment adviser is continuing to be / or already has been compensated under any pre-existing distribution arrangement with any third party shall be deducted from assets under advice for the purpose of charging fee.

(iv) The maximum fees that can be charged under this mechanism shall be 2.5 percent of AUA per annum per family across all schemes/ products/ services provided.

B. <u>Fixed fees:</u>

The maximum fixed fees that can be charged by any IA shall be INR 75000 per annum per family across all schemes/ products/ services provided.

3.4.5. If agreed by the client, Investment Adviser can charge fees in advance. However, such advance cannot exceed fees for 2 quarters.

3.4.6. IA can charge fees from a client under any one mode on an annual basis. Change of mode can be effected only after 12 months of on boarding/last change of mode.

3.4.7. In the event of pre-mature termination of the investment advisory services, the client shall be provided a refund of fees for unexpired period subject to a maximum breakage fee of not greater than one quarter fee can be retained by the investment adviser.

3.4.8. The investment advisory document shall clearly set out the details of calculation of fees in a simplified manner.

3.5. <u>Issue 5: Eligibility Criteria for IAs</u>

3.5.1. <u>Qualification Criteria</u>

3.5.1.1. In terms of the extant IA regulations, an individual registered as an investment adviser under these regulations and partners and representatives of registered investment adviser offering investment advice shall have the following minimum qualifications, at all times:

(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 recognised foreign university or institution or association; or

(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.

3.5.1.2. Further, an individual registered as an investment adviser and partners and representatives of registered investment adviser offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or

(b) from any other organization or institution including Chartered Financial Analyst Certification Programme, Financial Planning Standards Board of USA or any recognized stock exchange in India provided that such certification is accredited by NISM.

3.5.1.3. In order to ensure that investment advisors possess the requisite skill sets to provide advice on investment products and have adequate understanding of business risks of each investment product, it is imperative that an investment adviser should, in addition to being a member of a professional body or having professional qualification / specific certification must have practical understanding through minimum number of years of experience of working in the relevant industry.

3.5.1.4. It is also imperative that all persons involved in client-facing investment advisory services are duly qualified, experienced and certified, on an on-going basis (to be confirmed through compliance audit). To address these issues the following is proposed:

<u>Proposal</u>

3.5.1.5. It is proposed that all persons associated with the provision of advisory services are duly qualified and experienced. Accordingly, the following definition of “persons associated with investment advice” and “principal officer” may be introduced.

3.5.1.6. “persons associated with investment advice” shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser (including any person occupying a similar status or performing a similar function irrespective of the nature of association with the IA) who is engaged in providing investment advisory services to the clients of the investment adviser. All client-facing operations such as sales, service relationship managers and client relationship managers etc. by whatever name called shall be deemed to be persons associated with investment advice. However, it shall not include persons whose functions are clerical or facilities / office administrative in nature where there is no client interface.

3.5.1.7. "principal officer" shall mean the managing director or designated director or managing partner or executive chairman of the board (or equivalent management body) who is responsible for the overall function of the business and operations of non-individual investment adviser.

3.5.1.8. Non-individual IA may appoint a principal officer.

3.5.1.9. An individual registered as an investment adviser under these regulations and principal officer in case of non-individual IA shall meet the following minimum qualification criteria, at all times:

i. a professional qualification or post-graduate degree or post graduate diploma (minimum two years) - 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 recognised foreign university or institution or association;

and

having an experience of at least five years relating to advice in securities or investment products or fund management or wealth management or asset management or portfolio management or in the business of buying, selling and dealing of securities;

and

ii. a certification on the subject matter directly related to the investment advice being offered to the clients, from:

a) NISM; or
b) any other organization or institution including Chartered Financial Analyst Certification Programme, Financial Planning Standards Board of USA or any recognized stock exchange in India provided that such certification is accredited by NISM.

However, all persons associated with investment advice shall comply with aforesaid requirements with minimum two years of experience.

3.5.1.10. The existing non individual investment advisers holding registration under these regulations shall ensure that the principal officer and persons associated with investment advice obtain such eligibility conditions within three (3) years.

3.5.1.11. The existing individual investment advisers holding registration under these regulations shall ensure that the individual advisor and persons associated with investment advice obtain such eligibility conditions within three (3) years. Individual investment advisors may opt for corporate structure within the said period to fulfil aforesaid requirements. For instance, there is a possibility of individual investment advisors fulfilling the educational requirement but not fulfilling experience requirement. Such advisors who may not be able to comply with 5 years' experience condition, can corporatize and employ principal officer to meet the qualification criterion.

3.5.2. Net worth requirements

3.5.2.1. In terms of the extant IA regulations, Investment Advisers which are a body corporate are required to have a net worth of not less than twenty-five lakh rupees and Investment advisers who are individuals or partnership firms required to have net tangible assets of value not less than rupees one lakh.

3.5.2.2. Financial capability of IA is an important factor to consider while assessing the capabilities of a person or an entity to perform the duties of Investment Advisers as envisaged under the IA regulations. To ensure that only the entities with adequate financial net worth, required to function as investment adviser, it is proposed to modify the requirements of net worth for IAs.

Proposal

3.5.2.3. Investment advisers who are individuals shall have net worth not less than ten lakh rupees.

3.5.2.4. Non individual Investment advisers shall have a net worth not less than fifty lakh rupees.

3.5.2.5. The existing investment advisers shall comply with the aforementioned net worth requirement within three (3) years.

3.5.2.6. Further, any individual registered as investment advisers whose number of clients exceed 150 or whose asset under advice exceed forty crore rupees shall compulsorily re-register itself as non-individual investment adviser within 6 (six) months of the trigger event.

3.6. Issue 6- Maintenance of record

3.6.1. SEBI has prescribed several responsibilities on IAs to safeguard interest of the investors like charging reasonable fees, mandatory risk profiling, ensuring suitability, disclosures to clients etc. However, as mentioned above, complaints mentioning instances of assured returns, charging exorbitant fees, unauthorised trades, advising without doing risk profile etc. are received. Record of interactions with clients can help in substantiating the statements made by the concerned parties.

3.6.2. To strengthen the process of grievance handling it is proposed that records of interactions with the client including prospective clients shall be maintained by IAs.

3.6.3. The record of interactions with the client could be, inter alia, in the form of:

a. Physical record written & signed by client,
b. Telephone recording,
c. Email from registered email id,
d. Record of SMS messages,
e. Any other legally verifiable record.

3.6.4. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services for the client.

3.6.5. IAs shall be required to maintain these records for a period of five years. However, in cases where dispute has been raised, such records shall be kept till final resolution of the dispute. If SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

3.7. Issue 7: Discontinuation of CPE program for validity of the registration as Investment Adviser

3.7.1. Currently, a registered investment adviser can revalidate the certifications provided by NISM either through passing examination conducted by NISM or attending Continuing Professional Education (CPE) program conducted by NISM accredited CPE providers.

3.7.2. In order to match the dynamic and evolving nature of securities market and risk involved, periodic certification of IAs is felt essential.

<u>Proposal</u>

3.7.3. It is proposed that all IAs shall be required to obtain fresh certification each time before the expiry of existing certificate to ensure compliance with certification requirement. The revalidation through CPE program may be discontinued after making necessary changes in existing provisions of SEBI (Certification of Associated Persons in the Securities market), 2007 or any other applicable legal provisions.

3.8. <u>Issue 8: Compliance audit requirement</u>

3.8.1. Regulation 19 of the IA Regulations stipulates that an investment adviser shall conduct yearly audits in respect of compliance with the IA Regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India. In order to have a timely completion of the compliance audit, escalate the adverse findings and submission of action taken thereof to SEBI, following is proposed:

<u>Proposal</u>

3.8.2. An investment adviser should complete the compliance audit within three months from end of each financial year and post completion of said audit must report the adverse findings along with action taken thereof to SEBI within a period of one month from the date of the audit report i.e. not later than July 31st of each year for the previous financial year.

3.9. ***Public Comments***:

Public comments are invited on the aforesaid proposals in the following format:

Name of entity/person/intermediary/organization:			
Sr. No.	Proposals	Comments/Suggestions	Rationale
	Page No. Para No.		

Comments/ suggestions may be forwarded by email to sebiria@sebi.gov.in latest by January 30, 2020.

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