



CIRCULAR

SEBI/HO/IMD/DF1/CIR/P/2020/182

September 23, 2020

All SEBI Registered Investment Advisers

Sir/Madam,

Subject: Guidelines for Investment Advisers

1. Securities and Exchange Board of India (SEBI), after considering the inputs from public consultation, reviewed the framework for regulation of Investment Advisers (IA) and notified Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter referred as “amended IA Regulations”) on July 03, 2020. These amendments shall come into force on September 30, 2020.
2. In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:
 - (i) Client Level Segregation of Advisory and Distribution Activities

To ensure client level segregation at Investment Adviser’s group/family¹ level, as per Regulation 22 (5) of amended IA Regulations, following compliance and monitoring process shall be adopted:

- a. Existing clients, who wish to take advisory services, will not be eligible for availing distribution services within the group/family of IA. Similarly, existing clients who wish to take distribution services will not be eligible for availing advisory services within the group/family of IA.
- b. A new client will be eligible to avail either advisory or distribution services within the group/family of IA. However, the option to avail either advisory services or distribution services shall be made available to such client at the time of on boarding.
- c. Client under these guidelines shall include individual client or non-individual client.
- d. The client shall have discretion to continue holding assets prior to the applicability of this segregation under the existing advisory/distribution

¹ “Group” and “family of an individual investment adviser” shall be as per Regulation 22 (3) (iii) and Regulation 2(gc) respectively of the amended IA regulations

arrangement. However, the client shall not be forced to liquidate/switch such existing holdings.

- e. PAN of each client shall be the control record for identification and client level segregation.
- f. In case of an individual client, “family of client”² shall be reckoned as a single client and PAN of all members in “family of client” would jointly and severally be the control record. However, the same is not applicable for non-individual clients.
- g. The dependent family members shall be those members whose assets on which investment advisory is sought/provided, originate from income of a single entity i.e. earning individual client in the family. The client shall provide an annual declaration or periodic updation as the case maybe in respect of such dependent family members.
- h. IA shall, wherever available, advice direct plans (non-commission based) of products only.
- i. 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 as specified in Regulation 22 of amended IA Regulations. Such annual certificate shall be obtained within 6 months of the end of the financial year and form part of compliance audit, in terms of Regulation 19(3) of the amended IA Regulations.

(ii) Agreement between IA and the client

- a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in **Annexure-A**.
- b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder.
- c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.
- d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.

² “Family of client” and “AUA” shall be as per as per Regulation 2 (gb) and Regulation 2(aa) respectively of the amended IA regulations



(iii) Fees

Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

- a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.
- b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.
- c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

- a. In case “family of client” is reckoned as a single client, the fee as referred above shall be charged per “family of client”.
- b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.
- c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.
- d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.

(iv) Qualification and certification requirement

Regulation 7 of the amended IA Regulations specifies the minimum qualification and certification requirements for IAs. Further, in terms of second proviso of regulation 7 (1), existing individual IAs above fifty years of age (as on September 30,2020) shall not be required to comply with the qualification and experience requirements specified under Regulation 7(1)(a) and 7(1)(b) of the amended IA Regulations. However, such IAs shall hold NISM accredited certifications and

comply with other conditions as specified under Regulation 7 (2) of the amended IA Regulations at all times.

(v) Registration as Non Individual Investment Advisor

- a. As per Regulation 13(e) of the amended IA Regulations, an individual IA shall apply for registration as non-individual investment adviser on or before reaching 150 clients.
- b. Such application for registration shall be made in FORM-A as per the amended IA regulations, along with the requisite fee and same shall be assessed in accordance with the provisions of SEBI(Investment Advisor) Regulations, 2013 and amendments thereto as well as circulars issued thereunder.
- c. Once number of clients reaches 150 and till grant of registration as a non-individual IA, Individual IA shall not on-board fresh clients. However, during the period of examination of application by SEBI, individual IA shall continue to service existing clients. In case the aforesaid IA does not get registration as non-individual IA, such IA shall continue the advisory activities as an Individual IA while ensuring that the numbers of clients does not exceed 150 in total.
- d. As per Regulation 13(e) of the amended IA Regulations, existing Individual IA having more than 150 clients as on September 30, 2020 shall not on-board fresh clients and such Individual IA shall apply for registration as non-individual IA latest by April 01, 2021. However, during the period of examination of application by SEBI, individual IA shall continue to service existing clients.
- e. Existing Individual IA, having more than 150 clients on September 30, 2020, shall report their number of clients to SEBI through sebiria@sebi.gov.in, latest by October 15, 2020 in the following format:

Name of IA	Registration No.	No. of clients as on September 30, 2020	Registered office address

(vi) Maintenance of record

Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:

- a. IA shall maintain records of interactions ,with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:



- i. Physical record written & signed by client,
- ii. Telephone recording,
- iii. Email from registered email id,
- iv. Record of SMS messages,
- v. Any other legally verifiable record.

- b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.
- c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

(vii) Audit

- a. As per regulation 19 (3) of the amended IA Regulations, IA shall ensure that annual audit in respect of compliance of SEBI (Investment Advisers) Regulations, 2013 and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year.
- b. The adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA, shall be reported to respective SEBI office (based on the registered address of IA) within a period of one month from the date of the audit report but not later than October 31st of each year for the previous financial year starting with the financial year ending March 31,2021.

(viii) Risk profiling and suitability for non-individual clients

- a. Regulation 16 and 17 of SEBI (Investment Adviser) Regulations, 2013 mandates risk profiling and suitability for all categories of clients.
- b. In order to further enhance the risk profiling and encompass suitable factors in case of non-individual clients, IA shall use the investment policy as approved by board/management team of such non-individual clients for risk profiling and suitability analysis.
- c. The discretion to share the investment policy/relevant excerpts of the policy shall lie with the non-individual client. However, IA shall have discretion not to onboard non-individual clients if they are unable to do risk profiling of the non-individual client in the absence of investment policy.

(ix) Display of details on website and in other communication channels

In order to protect the interest of investors and bring more transparency in the functioning of investment advisers, IAs shall display the following information prominently on its website, mobile app, printed or electronic materials, know your client forms, client agreements and other correspondences with the clients:



- Complete name of Investment Adviser as registered with SEBI,
- Type of Registration-Individual, Non-Individual,
- Registration number, validity of registration,
- Complete address with telephone numbers,
- Contact details of the Principal Officer –contact no, email id etc.,
- Corresponding SEBI regional/local office address.

3. Applicability

Client level segregation of advisory and distribution activities, agreement and fees to be charged are aligned together. IA shall ensure compliance with measures stated above at clause 2(i), 2(ii) and 2(iii) latest by April 01, 2021.

Compliance with measures referred above at clause 2 (vi), 2(viii) and 2(ix) shall be ensured latest by January 01, 2021. Further timelines have been specified under clause 2(iv), 2(v) and 2(vii).

4. This circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of and to regulate the securities market.
5. The circular is available on SEBI website at www.sebi.gov.in under the categories "Info for – Investment Advisers" and "Legal framework - Circulars".

Yours faithfully,

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Annexure-A

Investment Adviser shall ensure that the following terms and conditions are incorporated in the Investment Advisory Agreement:

1. Appointment of the Investment Adviser: In accordance with the applicable laws, client hereby appoints, entirely at his / her / its risk, the Investment Adviser to provide the required services in accordance with the terms and conditions of the agreement as mandated under Regulation 19(1)(d) of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
2. The agreement shall clearly provide for in the first page:
 - (a) the 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 Investment Adviser along with the fee structure and mechanism for charging and payment of fee.
 - Based on our written request to the Investment Adviser, an opportunity was provided by the Investment Adviser to ask questions and interact with ‘person(s) associated with the investment advice’”.
 - (b) Declaration from the Investment Adviser that:
 - Investment Adviser shall neither render any investment advice nor charge any fee until the client has signed this agreement.
 - Investment Adviser 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 Investment Adviser.
 - Investment Adviser 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 specified under Investment Adviser Regulations and relevant circulars issued thereunder. (to be specifically mentioned here)
 - (d) Fees charged to the client. (to be specifically mentioned here)



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 Securities and Exchange Board of India (Investment Advisers) Regulations, 2013. The Investment Adviser shall act in a fiduciary capacity towards its clients at all times.
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 Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and its amendments, rules, circulars and notifications.
 - (b) Compliance with the eligibility criteria as specified under the Investment Adviser 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 records i.e. client-wise KYC, risk assessment, analysis reports of investment advice and suitability, terms and conditions document, related books of accounts and a register containing list of clients along with dated investment advice and its rationale in compliance with the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
 - (f) Provisions regarding audit as per the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
 - (g) Undertaking to abide by the Code of Conduct as specified in the Third Schedule of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
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 AUA 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.
6. Risk Factors: A detailed statement of risks associated with each type of investment covering the standard risks associated with each type of investment in securities and investment products.



7. Validity of advisory services: Minimum period if any, and provision for renewal, if any, along with terms and conditions for such renewal.
8. Amendments – The agreement may be amended by mutual written consent of the parties.
9. Termination – This Agreement may be terminated under the following circumstances, namely-
 - (a) Voluntary / mandatory termination by the Investment Adviser.
 - (b) Voluntary / mandatory termination by the client.
 - (c) Suspension/Cancellation of registration of Investment Adviser by SEBI.
 - (d) Any other action taken by other regulatory body/ Government authority.

In case of a voluntary termination of the agreement, the client would be required to give a 30 days prior written notice while the Investment Adviser would be required to give a 30 days prior written notice.

In case of suspension of the certificate of registration of the IA, the client may be provided with the option to terminate the agreement.

10. Implications of Amendments and termination: The implications of Amendment, Termination and assignment, 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, etc. shall also be provided in detail.
11. Relationship with related parties: The Investment Adviser to clearly declare that it is carrying on its activities independently, at an arms-length basis with its related parties. Disclosures of conflicts to be made.
12. 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 Adviser who are individuals:
 - a. to represent that they shall not provide any distribution services.
 - b. to represent that the family of an individual Investment Adviser shall not provide distribution services to the client advised by the individual Investment Adviser, for securities and investment products.



- c. to represent that they shall not provide investment advisory services, for securities and investment products, to a client who is receiving distribution services from other family members;
- (iii) The Investment Adviser (non-individual);
- a. to represent that they shall not provide any distribution services, for securities and investment products, either directly or through their group to an advisory client.
- b. to represent that they shall not provide investment advisory services, for securities and investment products, either directly or through their group to the distribution client;
13. 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.
14. 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 implementation of investment advice.
15. No conflict of interest: The Investment Adviser to clearly declare that it will disclose all conflicts of interest as and when they arise and not derive any direct or indirect benefit out of the client's securities/investment products.
16. Maintenance of accounts and confidentiality:
- Investment Adviser shall be responsible for maintenance of client accounts and data as mandated under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
17. Terms of fees and billing:
- (a) Provide specific details on the following:
- (i) The quantum and manner of payment of fees for investment advice rendered.
- (ii) Fee modalities and periodicity, by attaching a detailed fee schedule to the agreement;
- (iii) Illustration(s) on how the fee will be determined;
- (iv) whether payment to be made in advance;
- (v) type of documents evidencing receipt of payment of fee;
- (vi) Periodicity of billing with clear date and service period.



- (b) The payment of fees shall be through a 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 shall not be accepted in cash.
18. Liability of Investment Adviser. The agreement 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.
19. 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.
20. 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.
21. 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 agreement must set out the full name, PAN and contact details of such Obligor. The agreement 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.
22. 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 specified under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
23. Adherence to grievance redressal timelines: Investment Adviser shall be responsible to resolve the grievances within the timelines specified under SEBI circulars.



24. Severability

If any provision of this Agreement shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Agreement shall not be affected thereby

25. Force Majeure.

The Investment Adviser shall not be liable for delays or errors occurring by reason of circumstances beyond its control, including but not limited to acts of civil or military authority, national emergencies, work stoppages, fire, flood, catastrophe, acts of God, insurrection, war, riot, or failure of communication or power supply. In the event of equipment breakdowns beyond its control, the Advisor shall take reasonable steps to minimize service interruptions but shall have no liability with respect thereto

26. Miscellaneous.

Each party agrees to perform such further actions and execute such further agreements as are necessary to effectuate the purposes hereof
