

# **WIRC of ICAI**

**Workshop on MF Industry, PMS, Capital  
Markets & Investment Advisors**

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## **Present SEBI Regulations for Mutual Fund Distributors & Investment Advisors and Role of AMFI & Future SRO**

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# **SEBI Regulations for Mutual Fund Distributors**

**Mutual Fund Distributors (MFDs) need to fulfil following two requirements before being employed or engaged in the sale and/or distribution of mutual fund products :**

- Obtain the relevant NISM Certification; AND**
- Register with Association of Mutual Funds in India (AMFI).**

**All MFDs need to adhere to the Code of Conduct laid down by SEBI / AMFI.**

# CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS

**SEBI vide its circular dated June 26, 2002 has made the Code of Conduct prescribed by AMFI compulsory for MF Distributors.**

1. Take necessary steps to ensure that the clients' interest is protected.
2. Adhere to SEBI Mutual Fund Regulations and guidelines issued from time to time related to selling, distribution and advertising practices. Be fully conversant with the key provisions of the Scheme Information Document (SID), Statement of Additional Information (SAI) and Key Information Memorandum (KIM) as well as the operational requirements of various schemes.

## **CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS**

3. Provide full and latest information of schemes to investors in the form of SID, performance reports, fact sheets, portfolio disclosures and brochures and recommend schemes appropriate for the client's situation and needs.
4. Highlight risk factors of each scheme, avoid misrepresentation and exaggeration and urge investors to go through SID/ KIM before deciding to make investments.
5. Disclose to the investors all material information including all the commissions (in the form of trail or any other mode) received for the different competing schemes of various Mutual Funds from amongst which the scheme is being recommended to the investors.

## CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS

6. Abstain from indicating or assuring returns in any type of scheme, unless the SID is explicit in this regard.

7. Maintain necessary infrastructure to support the AMC's in maintaining high service standards to investors, and ensure that critical operations such as forwarding forms and cheques to AMC's/registrars and despatch of statement of account and redemption cheques to investors are done within the time frame prescribed in the SID/SAI and SEBI Mutual Fund Regulations.

Note : SID should be read in conjunction with SAI and not in isolation.

# CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS

8. Avoid colluding with clients in faulty business practices such as bouncing cheques, wrong claiming of dividend/redemption cheques, etc.
9. Avoid commission driven malpractices such as :
  - (a) recommending inappropriate products solely because the intermediary is getting higher commissions therefrom.
  - (b) encouraging over transacting and churning of Mutual Fund investments to earn higher commissions, even if they mean higher transaction costs and tax for investors.
10. Avoid making negative statements about any AMC or scheme and ensure that comparisons if any, are made with similar and comparable products.

# CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS

11. Ensure that all investor related statutory communications (such as changes in fundamental attributes, loads, exit options and other material aspects) are sent to investors reliably and on time.
12. Maintain confidentiality of all investor deals and transactions.
13. When marketing various schemes, remember that a client's interest and suitability to their financial needs is paramount and that extra commission or incentive earned should never form the basis for recommending a scheme to the client.

## CODE OF CONDUCT FOR INTERMEDIARIES OF MUTUAL FUNDS

14. Intermediaries will not rebate commission back to investors and avoid attracting clients through temptation of rebate/gifts etc.

15. A focus on financial planning and advisory services ensures correct selling and also reduces the trend towards investors asking for pass-back of commission.

16. All employees engaged in sales and marketing should obtain AMFI certification. Employees in other functional areas should also be encouraged to obtain the same certification



# SEBI Regulations for Mutual Fund Distributors

- Till May 2010, MFDs were required to (i) obtain a certification from AMFI by passing AMFI Certification Examination and (ii) obtain registration from AMFI in terms of SEBI Circulars dated September 25, 2001, November 28, 2002, April 03, 2003 and February 04, 2004.
- Vide Notification dated May 31, 2010, SEBI decided that from June 1, 2010, the certification examination for persons employed or engaged in mutual fund distribution would be conducted by National Institute of Securities Markets (NISM) under regulation 3 (1) of the (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (“Certification Regulations”, for brevity).

# SEBI Regulations for Mutual Fund Distributors

- Thus, the MFDs are now required to obtain NISM's certification by passing 'NISM Series V-A : Mutual Fund Distributors Certification Examination'.
- After clearing the NISM Certification MFD needs to register with AMFI and obtain AMFI Registration Number (ARN) .

# **SEBI Regulations for Mutual Fund Distributors**

## **Grandfathered Category**

**As per regulation 4 (3) of the Certification Regulations, persons who are aged 50 years & above and persons who have at least 10 years' experience in the securities markets in the sale and/ or distribution of mutual fund products as on May 31, 2010, have an option of obtaining the NISM certification either by passing the NISM certification examination or qualifying for Continuing Professional Education (CPE) certificate by attending a one-day CPE program conducted by NISM or its accredited CPE service providers.**

# **SEBI Regulations for Mutual Fund Distributors**

## **Employee Unique Identity Number (EUIIN)**

The SEBI circular of September 13, 2012 also stipulates that employees engaged in selling and marketing of mutual fund products on behalf of corporates and individual ARN holders are also required to be registered with AMFI by obtaining “Employee Unique Identification Number” (EUIIN) in addition to the AMFI Registration Number of the distributor.

The application form for mutual fund schemes to have a provision for disclosing the EUIIN of such sales personnel along with the ARN of the distributor.

AMFI has till date issued over 1.1 lakh EUIINs of which 53% are individual distributors and 47 % are employees of corporates engaged in selling and marketing of mutual fund products on behalf of corporates employees .

# SEBI Regulations for Mutual Fund Distributors

## New Cadre of Distributors

- SEBI has vide its circular no. CIR/IMD/DF/21/2012 dated September 13, 2012 permitted a new cadre of distributors, such as postal agents, retired government and semi-government officials (Class III and above or equivalent) with a service of at least 10 years, retired teachers with a service of at least 10 years, retired bank officers with a service of at least 10 years, and other similar persons (such as Bank correspondents) as may be notified by AMFI/AMCs from time to time, to sell units of “simple and performing mutual fund schemes”.
- Simple and performing mutual fund schemes are defined in the circular as diversified equity schemes, fixed maturity plans (FMPs) and index schemes that have returns equal to or better than their scheme benchmark returns during each of the last 3 years.

## **SEBI Regulations for Mutual Fund Distributors**

- **The new cadre of distributors require a simplified form of NISM certification, namely, Passing certificate of "NISM-Series-V-B: Mutual Fund Foundation Certification Examination" or Certificate of having attended one day "NISM Mutual Fund Foundation CPE Program", as specified by NISM**
- **They also need to register with AMFI and obtain ARN and EUIN, like regular distributors .**

# **SEBI Regulations for Mutual Fund Distributors**

**Payment of Commission by investor directly to the distributor :**

**SEBI Circular No. SEBI/ IMD/ CIR NO. 4/ 168230/ 09 dated June 30, 2009 on “Mutual Funds- Empowering investors through transparency in payment of commission and load structure” stipulates that the upfront commission to distributors will be paid by the investor directly to the distributor, based on his assessment of various factors including the service rendered by the distributor.**

# **SEBI Regulations for Mutual Fund Distributors**

## **Disclosure of Commission**

**In order to empower the investors through transparency in payment of commission and load structure, SEBI has, in the same circular, mandated that the distributors shall disclose all the commissions (in the form of trail commission or any other mode) payable to them for the different competing schemes of various mutual funds from amongst which the scheme is being recommended to the investor.**



## Transaction Charges :

- As per SEBI circulars dated August 22, 2011 and September 13, 2012 MFDs are allowed to be paid Transaction charges
- Transaction charges allowed @Rs.100/- per subscription for existing investors and @Rs.150/- per subscription for new investors, for subscriptions of Rs.10,000/- and above.
- In case of SIPs, the transaction charges are applicable only if the total commitment through SIPs amounts to Rs.10,000/- and above. In such cases, the transaction charges shall be recovered in 3-4 installments.
- No transaction charges allowed on transactions other than purchases/ subscriptions relating to new inflows.

## Transaction charges - Opt In or Opt Out

- Transaction charges allowed to be paid to the distributors, who opt for levying such transaction charges out of the amount invested by the investor
- Earlier MFDs were had an option to either Opt in or Opt out of levying transaction charges, at distributor level across all types of product across all Mutual Funds.
- MFDs are now allowed to opt in or opt out of levying transaction charges on the basis of type of the product, which will be valid across all Mutual Funds.

# Mis-selling of units of a Mutual Fund Schemes

**Through a Gazette Notification dated December 11, 2012,** SEBI has brought mis-selling of Mutual Fund Schemes under the ambit of Fraudulent and Unfair Trade Practices.

Mis-selling is defined as sale of units of a Mutual Fund Scheme by any person, directly or indirectly by :

- making a false or misleading statement, or
- concealing or omitting material facts of the scheme, or
- concealing the associated risk factors of the scheme, or
- not taking reasonable care to ensure suitability of the scheme to the buyer

# **Role of AMFI in respect of Mutual Fund Distributors**

- **AMFI has been carrying out the following functions in relation to MF Distributors as per SEBI Regulations:**
- **Till May 2010, AMFI used to conduct the AMFI Certification Examination through NSE / BSE / ICM / CIEL.**
- **With effect from 1 June 2010, this function was assigned to NISM by SEBI, by a Gazette Notification dated May 31, 2010.**
- **AMFI has been issuing AMFI Registration Numbers (ARN) to intermediaries since the year 2002. without ARN, they cannot undertake distribution of mutual fund products.**
- **AMFI introduced AMFI Code of Conduct for MF Distributors in the year 2002.**

# Role of AMFI

- **Monitoring of adherence to Code of Conduct, including suspension of MF Distributors and stoppage of payment of commission by way of disciplinary action arising out of fraud or breach of Code of Conduct.**
- **Constitution of AMFI ARN Committee since 2002 -**

**The Committee deals with various relevant issues such as review of code of conduct, matters relating to MF Distributors including carrying out disciplinary actions against MF Distributors for fraud or breach of Code of Conduct**

# Role of AMFI

- **Implementation of Know Your Distributors (KYD) process from September 1, 2010 , including carrying out of biometrics of MF Distributors**
- **Conducting due diligence process for certain set of MF Distributors on behalf of the mutual fund industry pursuant to SEBI circular of dated August 22, 2011 requiring all asset management companies to conduct due diligence on MF Distributors to ensure that they meet the ‘fit and proper’ criterion.**

# Role of AMFI

- **Interactive meetings with various associations of MF Distributors on quarterly basis.**
- **Resolving operational issues faced by MF Distributors.**
- **Developing system and procedures for dissemination of data on AMFI website to comply with requirements prescribed/mandated by SEBI.**
- **Issuing 'Best Practice Guidelines' relating to various operational, risk, valuation, investor awareness and MF Distribution matters.**

# **SEBI Investment Adviser Regulations, 2013**



# SEBI Investment Adviser Regulations, 2013

SEBI had, on 26 September 2011, issued a concept paper and draft regulations for Investment Advisers for public comments. After considering comments and suggestions received from various stakeholders, SEBI has, on 21 January 2013, notified **SEBI (Investment Advisers) Regulations, 2013** [‘The IA Regulations’, for brevity], effective from 20 April 2013.

# SEBI Investment Adviser Regulations

## Applicability

Any individual, company, body corporate, partnership firm or LLP which provides 'investment advice' (including 'financial planning') for a 'consideration' to clients or other persons or group of persons including any person who holds himself as an IA will be regulated by SEBI IA Regulations.

Such persons will require mandatory registration with SEBI.

# SEBI Investment Adviser Regulations

- **The IA Regulations stipulates mandatory registration of Investment Advisers.**
- **As per the IA regulations, a mutual fund distributor represents the AMC & IA represents client. Hence IA's are restricted from receiving anything from the AMC's. In the existing set-up there can be potential conflict of interest issues, since distributors receive income from both AMC & client.**
- **To eliminate this conflict of interest & to avoid misselling by distributors with an intent to earn more commissions, the distribution and advisory segment has been segregated in the IA regulations.**

# Key Definitions

## 1. Investment Adviser

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 *for consideration* .

## 2. Investment Advise

Investment Advise means any advice:

- relating to investing in, purchasing, selling or otherwise dealing in securities or investment products;
- on investment portfolio containing securities or investment products including; whether written, oral or through any other means of communication for the benefit of the client and includes Financial Planning.

**Investment Advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public, is not considered as Investment Advice.**

# Key Definitions

## 3. Financial Planning

**Financial planning means analysis of clients' current financial situation, identification of their financial goals and developing and recommending financial strategies to realise such goals.**

## 4. Consideration

**Consideration means any form of economic benefit including noncash benefit, received or receivable for providing investment advice.**

## Registration of IA

- Mandatory to obtain certificate of registration from SEBI to act as Investment Adviser .
- Registration Fees are nominal.
- Registration Valid for 5 years from the date of issue of certificate of registration and renewable.

# Eligibility Criteria

## Qualification and capital adequacy criteria

- **Professional qualification or post-graduate degree/ diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance. Alternately, a graduate in any discipline with an experience of not less than 5 years relating to advice in financial products or securities or fund, asset or portfolio management would also qualify.**
- **In case the applicant is a firm, all partners in the firm and in case the applicant is a body corporate, all representatives of such body corporate would need to meet the qualification criteria.**
- **Net worth of not less than Rs.25 lakh in case of body corporates, and net tangible assets of not less than Rs.1 lakh in case of individuals and firms.**

# Eligibility Criteria

**Where the applicant is a bank or NBFC, it should be permitted by RBI to act as IA and the application should be made through a subsidiary or separately identifiable department or division (SIDDD).**

**Where the applicant is a body corporate, other than a Bank or NBFC, the application should be made through a SIDDD.**

**Where an entity incorporated outside India proposes to undertake IA services, the application should be made by the subsidiary in India of such foreign entity**

**Where a foreign citizen proposes to undertake IA services, the applicant should set up an office in India and undertake IA services through such office.**



# Exempt Persons

- 1. Any person giving general comments in good faith in regard to trends in the financial or securities market or economic situation where such comments do not specify any particular securities or investment product;**
- 2. Insurance agent or broker registered with IRDA offering investment advice solely in insurance products;**
- 3. Pension adviser registered with PFRDA offering investment advice solely on pension products;**
- 4. Distributor of mutual funds, who is a member of a self-regulatory organisation recognised by SEBI or is registered with an association of asset management companies of mutual funds, providing investment advice to its clients incidental to its primary activity;**
- 5. Any advocate, solicitor or law firm, who provides investment advice to their clients incidental to their legal practice;**
- 6. Member of ICAI, ICSI, ICWAI, Actuarial Society of India or any other professional body as may be specified by the SEBI, who provides investment advice to their clients incidental to their professional service;**

# Exempt Persons

- 7. Stock Broker, sub-broker, Portfolio manager and Merchant banker registered with SEBI who provide investment advice to their clients incidental to their primary activity.**
- 8. Existing portfolio manager offering only investment advisory services may apply for registration under SEBI IA Regulations after expiry of the current certificate of registration as a portfolio manager;**
- 9. Fund manager of a mutual fund, AIF or any other intermediary or entity registered with SEBI;**
- 10. Any person who provides investment advice exclusively to clients based out of India other than to NRI and PIO;**
- 11. Any representative and partner of an investment adviser which is registered under SEBI IA Regulations;**
- 12. Any other person as may be specified by SEBI.**

# Disclosures to Client

Following disclosures are required to be made by IA to its 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 by clients;
- any consideration by way of remuneration or compensation or in any other form, 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;
- 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, if any, received or receivable by the investment adviser;
- holding or position, if any, in the financial products or securities which are subject matter of advice;
- 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;
- all material facts relating to the key features of the products or securities, particularly, performance track record.

# General Obligations and responsibility

- **Disclosure of conflict of interest, acting in fiduciary capacity, adhering to confidentiality obligations, following KYC norms, always acting on the basis of the advice of the client and following the elaborate code of conduct prescribed under the Regulations;**
- **Obtaining the prior approval of SEBI for any change in control;**
- **Ensuring risk profiling of clients and provide investment advice accordingly;**
- **Adhering to a stringent disclosure regime as provided in the Regulations;**
- **Appointing compliance officers, where the Investment Adviser is a body corporate; and**
- **Putting in place a system of investors grievance redressal – disputes to be settled by the relevant regulator, if it relates to a financial product or by an arbitrator/ombudsman authorized or appointed for the purpose by the relevant regulator.**

# Segregation of Business

- **IA Regulations require Banks, NBFCs and corporates providing Investment Advice along with other services including distribution or execution of Investment Advice to do the following:**
- **Segregate the distribution or execution business from the Investment Advisory business;**
- **Not obligate the client to avail distribution or execution services offered by the Investment Adviser;**
- **Maintain an arm's length basis between its Investment Advisory business and distribution and execution business;**
- **Ensure that all payments by a client for distribution and execution will have to be made directly to such services provider, and not through the Investment Adviser.**

# **Self Regulatory Organization (SRO)**

# **SRO for Distributors of Mutual Fund Products**

**As per Securities and Exchange Board of India (Self Regulatory Organizations) Regulations, 2004, a Self Regulatory Organization (SRO) means an organization of intermediaries which is representing a particular segment of the securities market and which is duly recognised by SEBI, but excludes a stock exchange.**

# Role of SRO

**The Role of SRO is to regulate the distributors of mutual fund products, portfolio management products etc. so as to prevent misselling and to protect investors interest, SEBI plans to appoint a SRO which would**

**The SRO will form rules and regulations for distributors, hear investor complaints against distributors among many others.**

**The SRO would also aid SEBI to ensure a cordial relationship between mutual fund houses and distributors and broad-basing the MF industry.**



# Functions and Obligations of SRO.

- 1) A SRO shall always abide by the directions of SEBI.**
- (2) The SRO shall be responsible for investor protection and education of investors or its members and shall ensure observance of Securities Laws by its members.**
- (3) The SRO shall specify standard of conduct for its members and also shall be responsible for the implementation of the same by its members.**
- (4) The SRO shall conduct inspection and audit of its members, on regular basis, through independent auditors.**
- (5) The SRO shall submit its annual report to SEBI.**
- (6) The SRO shall treat all its members and the applications for membership in a fair and transparent manner.**
- (7) The SRO may collect admission and membership fees from its members for carrying out the purposes of these regulations.**

**8) The SRO shall promptly inform SEBI of violations of the provisions of the Act, the rules, the regulations, the directions, the circulars or the guidelines by any of its members.**

**(9) The SRO shall conduct screening and certification tests for its members, agents and such other persons as it may determine.**

**(10) SRO shall conduct training programmes for its members or agents and also conduct awareness programmes for securities market investors.**

**(11) The SRO shall make endeavors for introduction of best business practices amongst its members.**

**(12) The SRO shall act in utmost good faith and shall avoid conflict of interest in the conduct of its functions.**

**(13) The SRO shall comply with the norms of corporate governance as applicable to listed companies.**

**(14) The SRO may discharge such other functions and obligations as may be specified by SEBI, from time to time.**

**Thank You For Your Attention**