



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

SEBI/HO/IMD/IMD1/DF1/P/OW/2021/13006

June 21, 2021

iFast Financial India Private Limited
1, Ground Floor, Raheja Titatnium,
Western Express Highway,
Goregaon East, Mumbai - 400063

Dear Sir,

Sub: Request for interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 by iFAST Financial India Pvt Ltd ("IFAST")

1. This has reference to your letter dated February 01, 2021 and March 12, 2021 and clarification email dated April 23, 2021, seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letters under reference, you have, *inter-alia*, stated that iFast Financial India Private Limited is registered with SEBI as an Investment Adviser ("IA") with Registration No. INA000000763.
3. In view of the above, you have sought an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following:
 - i. It is clear from Regulation 15(2) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "IA Regulations") that an Investment Adviser ("IA") cannot receive any consideration from any person other than the client, in respect of underlying products or services for which advise is provided. It is clear from regulation 22A(1) of the IA Regulations that an Investment Adviser who provides investment advice to his client can provide implementation services provided he does not earn anything directly or indirectly from such implementation.
 - a) If an advisory client of IA approaches the IA to recommend any service which the IA is not qualified to provide such as tax planning or overseas investments, can the IA recommend such a service to the client to the best of his knowledge and earn referral fee (fully disclosed to client) from the entity whom he has referred to the client for such service?



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- b) Since an IA who is also a Stock Broker is disallowed to charge any implementation fee, he is thereby disallowed to charge brokerage in direct equities. However, to comply with the requirements of the Indian Contract Act, 1882, any contract without consideration is void and therefore a broker is required to charge brokerage on equities traded through him. Can the brokerage be zero or nominal 1 paisa?
- ii. As per provisions of regulation 6(m) of the IA Regulations, 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.
- a) Is an NRI (Non Resident Indian) or Person of Indian Origin (PIO) required to apply for the individual RIA license if he is providing advice to investors outside of India who are keen to invest in India?

With respect to the above query and under regulation 6(m), does the term "foreign citizen", include NRIs(Non Resident Indians) and PIOs (Person of Indian Origins)? If yes, is an NRI or PIO required to apply for an individual RIA license if he wishes to provide investment advisory services to foreign nationals and/or NRIs/PIOs, who are keen to invest in India?

- b) Can an NRI/PIO (meeting the educational, certification and experience criteria) join a Corporate RIA as a person associated with Investment Advice without having setting up an office in India to service his/her clients in India?

With respect to the above query and to elaborate: In case a foreign citizen i.e. an NRI or a PIO, proposes to undertake investment advisory services and service his/her clients in India, can he join a Corporate RIA as a Person Associated with Investment Advice, instead of setting up an office in India and undertaking investment advisory services through such office.

- iii. As per Regulation 7(1) and 7(2), an individual investment adviser or a Principal Officer and Person associated with Investment Advice (PAA) of a Non Individual Investment Adviser has to have specified qualification, at all times. Further, as per clause 2 (iv) of the 'Guidelines for Investment Advisers' issued by SEBI in September 2020, 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.



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- a) Is an overseas degree related to finance sufficient to meet the educational criteria without having to obtain the post-graduate diploma? For example, can B.Sc. degree in Banking & Finance from the University of London be considered sufficient for meeting the educational and qualification requirements under regulation 7(1)?
- b) Is existing PAA above the age of 50 years be eligible to avail the exemption under clause 2(iv) of the 'Guidelines for Investment Advisers' issued by SEBI in September 2020?
- c) Can following courses be considered as valid Educational Qualification under Regulation 7(1):
- course from The Institute of Cost Accountants of India, formerly known as ICWAI (Institute of Cost & Works Accountants of India)
 - LLB or LLM (Bachelor's in Law and Masters in Law)

4. Our Comments

The submissions made in your letter and email have been considered. Without necessarily agreeing with your analysis, our response on the queries raised in your communications, are as under:

4.1. In regards to query 3.i.a), the following is informed:

- a) Regulation 2(1)(l) of the IA Regulations defines an investment advice as under:

"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;

Regulation 2(1)(m) of the IA Regulations defines Investment Adviser as under:

"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;

Regulation 22A(1) of the IA Regulations provides as under:

Investment adviser may provide implementation services to the advisory clients in securities market:

Provided that investment advisers shall ensure that no consideration including any commission or referral fees, whether embedded or indirect or otherwise, by whatever name called is received; directly or indirectly, at investment adviser's group or family level for the said service, as the case maybe.



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- b) Thus, in terms of the IA Regulations, an IA can undertake an activity of providing investment advice for a consideration and the same cannot be construed to include any referral fees as envisaged at query above.

4.2. In regards to query 3.i.b), it is informed that the provisions of Regulation 22A do not envisage the charging of any implementation fees. It is clear that lawful consideration is a necessary ingredient for a valid contract and should be something in which the law attaches some value. The said requirements are being fulfilled in the current framework and hence there is no requirement for IAs to collect the nominal fees since this would be squarely against the requirement of the IA Regulations.

4.3. In regards to query 3.ii.a), the following is informed:

- a) As per the provisions of regulation 4(i) of the IA Regulations, *"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;"*
- b) Thus, persons including Non-Resident Indians / Persons of Indian Origin are not required to seek registration under the IA Regulations, if they provide investment advisory to exclusively clients based out of India (excluding NRIs and PIOs).
- c) With regards to whether the term "foreign citizen" under Regulation 6(m), includes NRIs and PIO, it may be noted that the term foreign citizen would include a PIO but may not include an NRI. Moreover, a foreign citizen and an NRI would be required to apply for an individual RIA registration and comply with the provisions of the IA Regulations if he wishes to provide investment advisory services to any person based in India as per the requirements of Regulation 6(m).
- 4.4. In regards to query 3.ii.b), it is informed that if any NRI or a PIO intends to offer investment advisory to clients in India, registration under Regulation 3 of the IA Regulations, is mandatory. In case such NRI or PIO desires to join any non-individual IA as a PAA, all clients on-boarded by such PAA shall be considered as clients of the non-individual IA and not of such NRI or PIO. Also, the non-individual IA will be required to ensure that the advice provided to the clients is in compliance with the IA Regulations.

4.5. In regards to query 3.iii.a), the following is informed:

- a) Regulation 7(1)(a) of the SEBI IA Regulations, 2013 provides as under:



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“An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times –

- (a) *A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) 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 a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute”

- b) As per the aforesaid provisions, an applicant desirous of obtaining registration has to satisfy the specified criteria for educational qualifications which includes professional qualification or post graduate degree or a post graduate diploma (of minimum 2 yrs duration) from Indian / foreign universities or a CFA charter from the CFA Institute. Thus, a foreign graduate degree will not satisfy the specified criteria for educational qualification since it does not fulfill the specified eligibility criteria under the IA Regulations.

4.6. In regards to query 3.iii.b), the following is informed:

- a) With respect to qualification and certificate requirements for IAs and persons associated with investment advice, Regulation 7(1) of the IA Regulations, 2013 provides as under:

“(1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times -

- (a) *A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) 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 a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;*



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(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

(c) Persons associated with investment advice shall meet the following minimum qualifications, at all times -

(i) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and

(ii) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management:

Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and experience requirements within three years.

Provided further that the requirements at clauses (a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board. "

- b) Further, clause 2(iv) of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 provides as under:

"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."

- c) Thus, as per the provisions of the IA Regulations read with Circular dated September 23, 2020, existing individual IAs above fifty years of age (as on September 30, 2020) are not required to comply with the qualification and experience requirements specified under Regulations 7(1)(a) and 7(1)(b) of the IA Regulations, subject to such IAs holding NISM accredited certifications and complying with other conditions as specified under Regulation 7(2) of the IA Regulations at all times. However, the aforesaid exemption is not applicable for PAA with non-individual IAs.

4.7. In regards to query 3.iii.c), the following is informed:

As per Regulation 7(1)(a) of the IA Regulations, an applicant desirous of getting registration as an IA is *inter-alia*, required to have a professional qualification or post

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graduate degree or a post graduate diploma (of minimum 2 yrs duration) finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from recognized Indian / foreign universities/institution/association. Accordingly, it is informed as under:

- a) A course from The Institute of Cost Accountants of India (ICMAI) formerly known as ICWAI (Institute of Cost & Works Accountants of India) will be covered under the professional qualification as specified under Regulation 7(1)(a) of the IA Regulations.
 - b) An educational qualification in law including LLB or LLM (Bachelor's in Law and Masters in Law) is not specified under Regulation 7(1)(a) of the IA Regulations as a qualification.
5. This above position is based on the information furnished in your letters under reference. Different facts or conditions might lead to different interpretation. Further, this letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought in your letters under reference with respect to the SEBI (Investment Advisers) Regulations, 2013 and do not affect the applicability of any other law and requirements of any other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

Manaswini Mahapatra