

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 6 | Issue 5

---

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Navigating the Digital Currents: Unmasking the Mirage of Financial Influencers

---

SHRUTI TEJWANI<sup>1</sup>

## ABSTRACT

*In today's digital world, we have seen a shift from traditional advertising to a new group of online figures known as social media influencers. In the finance realm, they are often called "finfluencers". These individuals have built large followings and offer financial advice on platforms like Telegram, YouTube and Instagram. They mainly target people who are new to investing and looking for guidance in stock market investing.*

*However, there's a worrying trend where some of these finfluencers manipulate stock prices and give the advice to benefit themselves, often at the expense of unsuspecting investors. This has become a concern for regulators whose main job is investor protection. This article highlights that the existing regulatory framework struggles to effectively regulate finfluencers and suggests strategies that the Securities and Exchange Board of India (hereinafter "SEBI") can use to address these challenges and safeguard the interests of investors as the financial world continues to evolve in the digital age.*

**Keywords:** *Financial Influencers, Need for Regulatory Framework, Stock Manipulation, Investor Protection.*

## I. INTRODUCTION

In an era defined by the rapid evolution of digital media and the far-reaching power of the internet, the traditional approach to advertising and promotion has taken a back seat. The spotlight has now shifted to a new breed of online personalities known as social media influencers. These individuals with their vast following, have become the go-to collaborations for various businesses aiming to capture the attention of the wide audience. Riding the wave of change, the finance industry has intriguingly ventured into this realm giving rise to what we now know as financial influencers or more colloquially 'finfluencers'.

These finfluencers wield substantial online clout, particularly among novice investors seeking financial guidance in an accessible and relatable manner. Through platforms like Telegram, YouTube, Instagram and others they aim to dispense knowledge and information about the world of the stock market investing. Taking advantage of their wide-reaching follower count

---

<sup>1</sup> Author is a student at Amity University, Chhattisgarh, India.

and easy public access, these influencers often manipulate investors by providing advice that impacts stock prices, all with the aim of making profits through unethical means.

The unchecked rise of these financial influencers is a major concern for the market regulator, the SEBI which has been established for the purpose of investor protection.

## II. ADDRESSING THE REGULATORY VOID IN THE FINFLUENCER LANDSCAPE

An incident that vividly exemplifies the tactics of these financial influencers emerged when SEBI took action against the operators of the Bullrun2017 telegram channel<sup>2</sup>. These individuals, misrepresenting themselves as research analysts, were found to have swayed over 50,000 followers by promoting small-cap stocks, only to sell them later at inflated prices.

In another case, SEBI has issued interim order cum show-cause notices<sup>3</sup> to 135 entities from participating in the securities market due to their alleged involvement in manipulating the shares of five small-cap companies. SEBI has issued impounding orders amounting to 126 crores towards wrongful gains made by these entities.

There are critical gaps in the existing regulatory framework. Regulation 2(1)(l) of the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013<sup>4</sup> (“IA Regulations”) outlines ‘investment advice’. The proviso to this regulation excludes publicly available advice disseminated through mediums like newspapers, magazines and electronic platforms. Consequently, financial influencers using social media platforms remain largely untouched by these regulations, evading proper scrutiny and accountability.

Regulation 2(1)(m) of the IA Regulations<sup>5</sup> defines ‘investment adviser’ “*as any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or groups of persons and includes any person who holds out himself as an investment adviser by whatever name called.*”

Now, the crucial element in this definition is “who for consideration. This part of the regulation is vital when differentiating between someone who qualifies as an investment adviser and someone like a Finfluencer. Finfluencers typically provide financial advice without charging a fee, it’s often freely available to the general public. Due to this distinction, one could argue that finfluencers don’t meet the criteria outlined in this definition of the investment adviser.

---

<sup>2</sup> Sahyaja S, *SEBI Bars Six Individuals From Market For Stock Manipulation Through Telegram*, BQ Prime, 27 April, 2023.

<sup>3</sup> Mauriya Udyog Ltd., 7 NR Retail Ltd, Darjeeling Ropeway C o. Ltd., GBL Industries Ltd., and Vishal Fabrics Ltd., In re Order dated 19-06-2023.

<sup>4</sup> Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (India)

<sup>5</sup> Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 (India)

The challenges of regulating these influencers lie in the complexity of covering a diverse spectrum of investors who lack privileged insights. This complexity creates an elusive “grey area” within which influencers operate. It is a realm where the line between ethical guidance and manipulative tactics blurs, rendering actions that could impact stock prices almost immune to consequences.

Another concerning dimension involves the webinars organised by these influencers seemingly aimed at educating investors about the stock market. Yet, beneath the façade of education, they talk up specific stocks with the intention of manipulating their prices and making illicit gains.

### **III. STRATEGIES FOR REGULATING FINANCIAL INFLUENCERS**

#### **1. Cross-Jurisdictional Analysis**

Australia's regulations provide a comprehensive framework this is why SEBI should consider Australian regulations when designing a framework for financial influencers.

The Australian Securities and Investments Commission (ASIC) has introduced "Information Sheet 269<sup>6</sup>" to offer guidance to both fin-influencers and Australian Financial Service (AFS) license holders who may authorize fin-influencers to provide financial services under their license. In Australia, there are primarily two key obligations for influencers to follow: licensing and adhering to good practices, and making proper disclosures.

According to Australian law, conducting a financial services business without an AFS license is against the law, as outlined in the Corporations Act 2001<sup>7</sup>. This law comes with strict penalties for non-compliance, including hefty fines and even imprisonment for up to five years. Regulatory Guide 36 (RG 36)<sup>8</sup> lays down instructions for obtaining an AFS license. RG 36.57 and RG 36.58 explain that individuals and organizations providing financial services must possess an AFS license unless they fall under an exemption specified in Section 911A(2)<sup>9</sup> (or related regulations). For instance, a representative of a licensee can offer financial services without needing an AFS license. Ignoring these requirements might lead to breaking the law.

Regulatory Guide 234 (RG 234)<sup>10</sup> offers insights into advertising financial products and services, including credit, to prevent violations of consumer protection and financial services

---

<sup>6</sup> <https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/discussing-financial-products-and-services-online/>.

<sup>7</sup> Corporations Act, 2001 (Australia) [http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol\\_act/ca2001172/](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ca2001172/).

<sup>8</sup> Australian Securities and Investment Commission Regulatory Guide 36 Licensing : Financial Product Advice and Dealing (2016) <https://download.asic.gov.au/media/wdnk4aja/rg36-published-8-june-2016-20220328.pdf>.

<sup>9</sup> Corporation Act, 2001 (Australia) [http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol\\_act/ca2001172/s911a.html](http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ca2001172/s911a.html).

<sup>10</sup> Australian Securities and Investment Commission Regulatory Guide 234 (2012) (Australia) <https://download.asic.gov.au/media/rkzj5nxb/rg234-published-15-november-2012-20211008.pdf>.

laws. This also covers the Design and Distribution Obligations<sup>11</sup> that came into effect in October 2021. It's important to be cautious while revealing information about returns, features, benefits, and risks (RG 234.33–RG 234.46), giving warnings, disclaimers, qualifications, and fine print (RG 234.47–RG 234.53), and avoiding certain terms and phrases (RG 234.91–RG 234.104).

Regulatory Guide 244<sup>12</sup> serves as a guide for financial advisors to offer quality information and advice about financial products to retail clients. It includes information on general advice and scaled advice. While factual details about a financial product's features or terms and conditions can be shared, presenting it in a way that suggests a recommendation to invest or not can lead to a violation of the law. For example, if a financial influencer titles a video "Invest in these 3 stocks for strong performance," it likely qualifies as providing financial product advice.

Fin influencers engaging in financial product transactions must provide truthful and substantiated statements, along with disclosing potential risks. For instance, claiming that holding shares for a long time is similar to depositing money in a bank account without highlighting risks can be misleading.

## **2. Looking into the Measures Proposed by International Organisation of Securities Commission (hereinafter, “IOSCO”)**

As the world of retail marketing and distribution becomes more digital, the IOSCO Board believes that both national and international regulators should have stronger abilities to handle the growing risks and challenges. To achieve this, IOSCO has released a Report on Retail Distribution and Digitalisation<sup>13</sup> that suggests various steps that its member countries can think about when creating the rules for online offerings and marketing aimed at the general public.

The report talks about the concept of ‘digital veil’. “Digital Fraudsters hide behind the digital veil that makes it difficult for the regulators to locate and take action against them.”

The IOSCO “Policy toolkit<sup>14</sup>” represents a comprehensive and well-structured approach. These measures are crafted to address the challenges posed by influential figures and their potential impact. The toolkit places a significant emphasis on safeguarding the interests of consumers

---

<sup>11</sup> Australian Securities and Investment Commission, Design and Distribution Obligations: Significant Dealing Notification Requirements, <https://asic.gov.au/regulatory-resources/financial-services/design-and-distribution-obligations-significant-dealing-notification-requirements/>.

<sup>12</sup> Australian Securities and Investment Commission, Regulatory Guide 244, (2012) (Australia) <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-244-giving-information-general-advice-and-scaled-advice/>.

<sup>13</sup> International Organisation of Securities Commissions Report on Retail Distribution and Digitalisation (2022) <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD715.pdf>

<sup>14</sup> International Organisation of Securities Commissions Report on Retail Distribution and Digitalisation (2022) at pg 3 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD715.pdf>

and mitigating the potential risks associated with misinformation or harmful practices.

The proposed toolkit encompasses a range of critical aspects including, the need to incorporate suitable filtering mechanisms when guiding consumers through the onboarding process, a framework of management accountability for the accuracy of information shared, regulatory capacity for effective oversight of the rapidly evolving online activities, comprehensive staff qualification and licensing requisites for those involved in online marketing and clear and unequivocal disclosure protocols regarding the entities responsible for offering financial products and services.

Furthermore, IOSCO's "Enforcement Toolkit"<sup>15</sup> includes proactive detection techniques that can swiftly identify potential irregularities, thereby pre-empting possible harm. Additionally, it provides regulators with powers to promptly intervene when websites are utilized for conducting unauthorized and potentially harmful financial activities.

### **3. Collaborating with the Advertising Standards Council of India (hereinafter, "ASCI")**

Another potentially effective avenue for SEBI could involve exploring a collaborative venture with the ASCI. An exemplar of such collaboration can be seen in the recent memorandum of understanding (MoU) forged between the Financial Conduct Authority ("FCA") in the United Kingdom and the Advertising Standards Authority<sup>16</sup>. This MoU distinctly outlines the roles and responsibilities each entity assumes in overseeing advertisements concerning financial markets. Noteworthy is the FCA's proactive stance, evident in its utilization of its website to disseminate alerts, release comprehensive reports on financial promotions, and even engage with influential figures to educate them about their obligations in the domain of financial influence. By drawing inspiration from the FCA's strategies, SEBI could potentially initiate a similar alliance with the ASCI. This collaborative effort could nurture educational initiatives directed at finfluencers, thus fostering responsible practices and integrity within the industry.

### **4. Endorsement Knowhows for Financial Influencers**

The Department of Consumer Affairs has also stepped in by providing guidelines known as Endorsement Know-hows<sup>17</sup> for influencers. These guidelines aim to ensure that influencers

---

<sup>15</sup> International Organisation of Securities Commissions Report on Retail Distribution and Digitalisation (2022) at pg 4 <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD715.pdf>.

<sup>16</sup> FCA and ASA team up with Sharon Gaffka to warn fin-fluencers of risks of promoting illegal 'get rich quick' schemes dated 06-04-2023 <https://www.fca.org.uk/news/press-releases/fca-asa-sharon-gaffka-warn-finfluencers-illegal-get-rich-quick-schemes>.

<sup>17</sup> Department of Consumer Affairs, Endorsement Know-hows for Celebrities, influencers and virtual-influencers on social media platforms [https://consumeraffairs.nic.in/sites/default/files/filefield\\_paths/Endorsement\\_Know-](https://consumeraffairs.nic.in/sites/default/files/filefield_paths/Endorsement_Know-)

inform their audience about any vested interest they may have in the content they are sharing. Influencers are required to be transparent about these relationships by using specific words or tags like #AD or “paid content”. These disclosures are a way to responsibly guide their audience and protect consumer rights.

#### **IV. CONCLUSION**

In the dynamic realm of financial markets, where digital influence holds sway, a robust regulatory framework is paramount. These rules are essential to maintain integrity and transparency in the digital landscape. While it might seem restrictive such regulations serve to weed out dishonest actors, creating a safer environment for both creators and their audiences. The IOSCO’s proposed measures, offer a clear strategy to address the impact of finfluencers. Global examples like Australian regulations set string precedents with its guidance for finfluencers and AFS licensees.

In the view of these global advancements, by assimilating wisdom from these international endeavors, SEBI should recalibrate its regulatory framework to uphold the interests of investors effectively. This entails a comprehensive review of existing regulations to effectively regulate finfluencers. By doing so, SEBI can effectively usher in an era of enhanced investor protection and confidence.

\*\*\*\*\*