Under the Finfluence

The Securities and Exchange Board of India has made its intentions crystal clear by getting on the offensive in its fight against unregistered financial influencers or finfluencers. But it must tread a fine line

BY **ASHISH RUKHAIYAR**

ILLUSTRATION BY **NILANJAN DAS**

IT IS A TRUTH, almost universally acknowledged, that technological change is always a few steps ahead of regulations. The capital markets are no exception, which is why regulators the world over are a busy lot as they try to keep pace with the changes.

Whether it is India's own Securities and Exchange Board of India (Sebi), the Securities and Exchange Commission (SEC) of the US, the Financial Conduct Authority (FCA) in the UK, or the Australian Securities & Investments Commission (ASIC), one particular concern appears to be on top of their minds—the growing influence of financial influencers, or finfluencers.

Put simply, these are individuals who influence the financial investment decision of a person or entity by doling out content typically through social media platforms like YouTube, Instagram, Telegram, or X (formerly Twitter).

In India, finfluencers barged onto the capital markets arena in 2020, when they received a significant boost after the Covid-19 pandemic and

A LOT AT STAKE

The modus operandi of finfluencers has caught everyone's attention

- Many finfluencers fudge their trading record to attract more followers
- Influencers with a huge following can make a lot of money with every video
- Earnings can be through Google advertisements, collaborations, affiliate partnerships
- The higher the number of views for the video, the higher the income through Google ads
- As part of collaborations and partnerships, influencers promote a product or service
- Such promotion could get them a referral fee, a lump sum fee or even a share of profit

Sebi Chief Madhabi Puri Buch has been quite vocal on this issue...

"SEBI'S APPROACH IS TO UNTANGLE A COMPLEX ISSUE BECAUSE IF IT IS COMPLEX, YOU CAN'T PUT YOUR ARMS AROUND IT. OUR OBJECTIVE WILL BE TO UNTANGLE IT..."

December 2022

...Even Union Finance Minister Nirmala Sitharaman has highlighted concerns

"A STRONG SENSE OF CAUTION IS REQUIRED IN EACH ONE OF US TO MAKE SURE WE DOUBLE CHECK, COUNTER CHECK, [AND] DON'T GO AS A FLOCK INTO SOMETHING"

April 2023

SEBI'S LINE OF THINKING

1. Enforcement action against unregistered finfluencers will not suffice
2. Need to disrupt revenue model so that perverse incentives reduce
3. Sebi-registered intermediaries cannot engage with any unregistered finfluencers
4. Registered finfluencers should properly display registration number, investor grievance redressal helpline
5. Criminal case to be filed if unregistered finfluencer found to be impersonating or committing fraud

SOURCE SEBI

subsequent lockdowns. Confined to the comfort of their homes and relieved from the drudgery of the daily commute, salaried professionals suddenly found time for side hustles or trading in the markets, leading to a huge increase in the number of retail investors in the stock market, who either sought to make a quick buck or were forced to reconsider their investment approach considering the uncertainty that suddenly enveloped them.

And the market obliged. After a steep plunge in March 2020, it rallied stupendously for the rest of the year, fuelling the increase in first-time investors. That, in turn, created a hunger for investment advice, and finfluencers filled the breach. Cut to 2023, and some of the top finfluencers have attained cult status, boasting follower counts that dwarf those of some of the biggest brokerage firms.

But as is the case with such booms, there has also been an ugly side to this. The massive growth of the financial advice business has attracted millions of self-proclaimed experts who are doling out clickbait and catchy content to attract viewers while giving their own vested interests a preference over those of their followers. In light of this, Sebi has been forced into taking a slew of measures, from punishing those who have flouted the rules to issuing a consultation paper on bringing in new rules to regulate this space.

THE UNHOLY NEXUS

The content provided by finfluencers could be advice for investing in the stock market, financial planning, or just about anything related to investments. But finfluencers can also include people who create content aimed solely at investor education and awareness while staying away from recommendations or advice. This difference is important to understand the regulatory dilemma.

The side that Sebi is looking to regulate is the one that deals with direct investment advice and the potential conflicts of interest there.

"The problem as it stands today is that the finfluencer community has been co-opted by discount broking platforms to market and increase trading velocity. This is creating a conflict of interest within the finfluencer community that the investor is not aware of," says Gaurav Rastogi, Founder and CEO of Kuvera, an online wealth management platform.

"What investors think is genuine advice could just be clickbait to download a broking app or to trade more with their existing trading app. This conflict of interest is bad for the investor... Clear disclosure on who pays the finfluencer and how much is a must-have in this situation," adds Rastogi.

This nexus between companies or market intermediaries and dubious influencers is the capital markets regulator's biggest concern.

Social media is replete with instances of investors complaining about being misled by the influencers who put out their trading track record, but more importantly, fake huge amounts of profits made on stocks or strategies that they share through their channels on YouTube and Telegram, among other platforms.

Vijay Chandok, MD and CEO of ICICI Securities, one of the largest full-service brokerage firms, says that while many finfluencers started with the noble intention of increasing financial education, many veered towards doling out stock tips and mis-selling, even faking their own performance.

"With time, a section of influencers began posing as stock experts and pushing stock tips and mis-selling without adequate disclosures. There are [several] instances where these influencers have breached ethics by faking returns (to gain more followers) or participating in 'pump and dump' schemes, enriching only themselves," says Chandok.

To be sure, collaborations and partnerships between some top finfluencers and leading broking firms, mutual funds, and other regulated market intermediaries are relatively transparent.

It is the lesser-known ones and their nexus that are the crux of the problem, as the influencer might not be disclosing that he or she is getting a cut from a brokerage for leading investors to the firm's platform.

Or at times, the finfluencer might be luring investors by sharing fake profit screenshots and convincing the investor to share their trading account login credentials only to engage in manipulative trades or pump up volume in illiquid stocks to show a temporary but artificial price rise.

In fact, many influencers are known to charge hefty fees to offer "premium" investment advice through subscription to their Telegram channels, and these fake profit and loss (P&L) statements help them attract more subscribers. And such fees are over and above the other arrangements that they enter into with market intermediaries—referral fees for promoting a brand, platform, or service; profit sharing by pushing volume or getting new clients through their videos; or lump sum compensation that could run into lakhs. Interestingly, this trend has not gone unnoticed, and a section of market participants are trying to put in place countermeasures through which at least the menace of fake P&L statements or screenshots can be addressed.

COUNTER MEASURES

"We have incorporated verified P&L on our platforms, which allows users to share real-time trading performance with 100 per cent accuracy and transparency," says Tejas Khoday, Co-founder and CEO of FYERS, a new-age online trading and investment platform.

UNREGISTERED ADVISORS, BEWARE!

Sebi has passed nearly a dozen orders against unregistered investment advisors since November 2022

Sebi action included combination of market ban, monetary penalty, and refund of investor fee, among other things

In May, Sebi barred P.R. Sundar, a finfluencer with over a million followers on YouTube, from the securities market for one year

Sundar was also ordered to disgorge fees along with interest amounting to ₹6.08 crore

"We also make sure that they disclose any conflicts of interest and work with us to create content in the best interests of the trading community," adds Khoday.

Nithin Kamath, Founder and CEO of Zerodha, the biggest brokerage firm, has also highlighted similar measures. "We launched verified P&L at Zerodha to bring accountability, given all the fake P&L screenshots and videos shared on social media to peddle courses, advisory services, trading accounts, and other financial products," he recently said in a post on employment-focused social media platform LinkedIn. Kamath, who himself has one million followers on LinkedIn, added that his firm has even tried to plug a gap through which finfluencers could still potentially game the system.

He said since Zerodha allows clients to enter a buy price for stocks transferred from other brokers, one could "potentially game verified P&L by entering a lower buy price for transferred stock and showing higher equity profits in verified P&L."

Kamath, in a post on August 31, said that his platform has stopped showing the P&L for transferred stocks on the verified P&L page. "This is because there's no way for us to verify if the buy price entered by the customer is accurate," he said.

The crux of the problem still remains the growing number of unregistered influencers as Sebi or any other regulatory body has no jurisdiction there.

CONCRETE ACTION

And that brings us to the regulator's measures. In this regard, Sebi Chairperson Madhabi Puri Buch, the first woman to head the regulatory body, has taken the lead. On many occasions, she has highlighted the regulatory concerns around finfluencers mis-selling products.

Sebi's most high-profile action came in May, when it barred P.R. Sundar, a top finfluencer with over a million followers on YouTube, from the securities market for a year for allegedly providing advisory services like daily stock investment and trading calls without the requisite registration. It directed him to disgorge the fees that he had charged, along with interest, which amounted to a little over ₹6 crore.

But that was just one prominent move in a series that began in November. So far, the regulator has passed nearly a dozen orders against alleged violators. While banning most of them from the securities market for a specified period, the regulator has also ordered the wrongdoers to refund all the money collected as fees from investors.

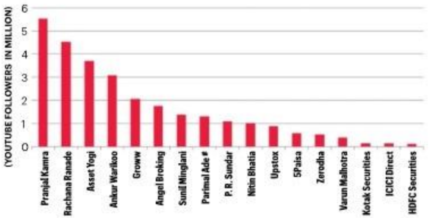
Entities like Bourse India Investment Advisor, Gunjan Verma, Rocket Tips, Kuber Capital, Sure Shot Future Advisory Services, and Crude Oil Tipswala, among others, have faced regulatory ire.

More recently, the watchdog issued a consultation paper in which it proposed restricting the association of Sebi-registered intermediaries and regulated entities

THE BIG LEAGUE

▸ **FINFLUENCER FOLLOWER COUNTS DWARF THOSE OF BROKERAGE FIRMS**

▸ **THERE IS ONLY ONE BROKERAGE FIRM IN THE TOP FIVE**



SOURCE YOUTUBE
#PARIMAL ADE HAS THREE YOUTUBE CHANNELS

with unregistered finfluencers.

"No Sebi-registered intermediaries/regulated entities or their agents/representatives shall, directly or indirectly, have any association/relationship in any form, whether monetary or non-monetary, for any promotion or advertisement of their services/products, with any unregistered entities (including finfluencers)," stated the consultation paper.

Interestingly, the regulator has also reached out to content creator platforms that offer influencers back-end support like community management and monetisation. The regulator has asked such platforms to ensure that they allow only registered financial influencers, and the effect is already visible.

Vivek Yadav, Co-founder and CEO of Cosmofeed, one of the largest content creator platforms in the country, says the last few months have been a great learning curve and the market regulator has been working in the right direction. "We introduced a slew of features to enhance the safety of the end consumer, including a Sebi Registration Badge that differentiates a verified creator from an unverified one so that consumers can make informed decisions. Before granting the verified badge, our team diligently verifies and confirms the licences of finfluencers," says Yadav.

Similarly, Ananya Singhal, Co-founder and COO of Rigi, another content creator platform, feels that in the evolving financial content landscape, regulators like Sebi and the Advertising Standards Council of India (ASCI) are proactively shaping an ecosystem rooted in trust and transparency.

"Aligned with this vision, we at Rigi are continuously refining our code of conduct, ensuring it mirrors the progressive directives set by the regulators... we are committed to collaborating closely with influencers, Sebi, and the public to create a future where knowledge thrives in an environment of trust," says Singhal.

But, experts also say the regulator must perform a fine balancing act so that its framework does not kill genuine finfluencers by overburdening them with compliance requirements.

THE BALANCING ACT

"Financial influencers today have a significant say in the financial decisions of retail investors," says Sumit Agrawal, Founder, Regstreet Law Advisors.

"Sebi, while bringing necessary regulations, should not overlook the role played by these influencers in increasing financial literacy of the masses and should balance the different roles played by them," adds Agrawal, who was formerly part of Sebi's legal department.

What International Regulators are Doing

- The International Organization of Securities Commissions (IOSCO) is holding discussions on unregistered finfluencers
- In December 2022, SEC charged eight influencers in a $100 million stock manipulation scheme
- The UK's FCA has a mechanism for finfluencers to check if they are eligible to promote a product
- Australia's ASIC mandates Australian financial services (AFS) licence for finfluencers

"... FINFLUENCERS NOT REGISTERED WITH THE... REGULATOR MAY NOT HAVE THE REQUISITE...EXPERTISE ON THE SUBJECT. WORSE... THEY MAY NOT DISCLOSE ANY POTENTIAL CONFLICT OF INTEREST..."

SEBI CONSULTATION PAPER

"CELEBRITIES SHALL NOT FORM PART OF ADVERTISEMENTS...'CELEBRITY' MEANS AND INCLUDES ANY PERSON...WHO IS AN INFLUENCER WITH MORE THAN 10 [LAKH] FOLLOWERS/SUBSCRIBERS ON ANY SOCIAL MEDIA PLATFORM..."

NSE'S REVISED CODE OF ADVERTISEMENT FOR BROKERAGES

"There are instances where these influencers have breached ethics by faking returns (to gain more followers) or participated in 'pump and dump' schemes"

VIJAY CHANDOK
MD & CEO, ICICI SECURITIES

"The challenge comes when influencers start talking about regulated securities. That has to be countered but regulations should not be anti-business"

MUKUL MALIK
FINFLUENCER WITH 3.7 MILLION FOLLOWERS ON YOUTUBE

"New regulations could help prevent conflicts of interest and recommendation bias. However, it is also essential to balance regulation and innovation"

TEJAS KHODAY
CO-FOUNDER & CEO, FYERS

In a similar context, Mukul Malik, a top finfluencer who runs the YouTube channel 'Asset Yogi' that boasts over 3.7 million followers, says concerns related to unregistered finfluencers must be tackled with regulations, while ensuring that those are not "anti-business".

"The whole industry is getting painted with the same brush in a negative way. Not everyone is running a pump-and-dump scheme or has bad intentions. Indicating or hinting that stocks should be purchased or sold in any manner whatsoever has to be treated as advice," adds Malik, whose firm is registered with Sebi as a Research Analyst (RA). To that extent, market participants believe that the Sebi consultation paper, which, among other things, proposes to bar regulated intermediaries from working with unregistered influencers, is a step in the right direction.

According to a senior Sebi official, the intention is to cut the "oxygen supply", i.e., funding, of unregistered finfluencers who are effectively doing what only a Sebi-registered investment advisor (RIA) or RA is permitted to do. "It cannot be one change or one regulation. It has to be a bunch of changes," says the official, speaking on the condition of anonymity. "Some of them (unregistered finfluencers) might be getting funding from our own regulated entities. If you have a finfluencer who says that they trade through a specific platform, then there is a high possibility that he or she is getting an incentive of some kind. Where we see videos that have clearly misleading or fraudulent content, for instance, 98 per cent probability of making money or how do you become a *crorepati* with ₹5 lakh, which are outlandish, we will take action," says the official.

In what would indeed be good news for the genuine finfluencers, the Indian capital markets watchdog is clear on what constitutes a potential violation. Akin to what its Australian counterpart has done, Sebi is clear that it has no problem with influencers working on investor education and awareness.

"Some videos are actually well-managed, and they do not say anything wrong. They give caveats; they do not give recommendations as such; those we will not touch," said the Sebi official quoted above. He, however, adds: "If you give recommendations, if you make false promises, if you make misleading promises, if there are inducements to trade, then we will come after you."

It's now up to Sebi to ensure that the rules are structured in such a way that genuine influencers do not feel the burden of compliance while violators are not left unpunished.

Strike the right balance, as they say. BT

@ashishrukhaiyar