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Navigating the Impact of Finfluencers: Regulatory Hurdles and Implications for Corporate Governance

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ABSTRACT

Ever noticed cheat codes on making millions overnight or ever felt a sudden rush to embrace the world of entrepreneurship after binge-watching Shark Tank? These intriguing scenarios serve as entry points into the captivating realm of financial influencers, commonly known as "finfluencers." Leveraging digital platforms, these individuals disseminate financial advices and investment strategies, wielding considerable sway in the digital age. Through notable cases involving individuals like Mr. P R Sundar and his Mansun Consultancy Private Limited alongside other cases who have exemplified the ramifications of misleading financial advice within the finfluencer sphere, the paper delves into the rise of the Securities and Exchange Board of India's (SEBI) consultation paper outlining guidelines to govern these activities.

This paper scrutinizes, before these guidelines are approved and set into motion, critical loopholes that necessitate addressing. These gaps in regulation pose significant challenges to effective enforcement and risk mitigation in the rapidly evolving realm of digital financial advice.

Furthermore, the implications of these regulatory developments extend beyond mere compliance. They intersect with broader considerations of corporate governance, as they fundamentally influence market integrity, investor protection, and transparency. As such, the efficacy of these guidelines not only impacts the activities of individual finfluencers but also shapes the broader corporate governance landscape within the financial industry. The paper thus undertakes and aims for an analysis of the multifaceted implications arising from the regulation of finfluencers and its interface with corporate governance frameworks.

Keywords: *Finfluencers, SEBI's regulations, Corporate Governance, Compliance, Challenges.*

I. INTRODUCTION

With the upsurge of digitalization, even influencers are now recognized as legitimate

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professionals, earning compensation ranging from 14,000 to 4 lakhs per post[2]. The onset of the COVID-19 pandemic resulted in a prolonged surge of individual investors participating in the stock market, eager to capitalize on the remarkable upswing known as the COVID bull market. Consequently, an increasing number of retail investors are turning to social media influencers for financial guidance rather than seeking advice from licensed professionals. [3]

The evolution in the digital world highlights their importance in marketing strategies and has become increasingly evident that being an influencer is a legitimate career path. With thousands of citizens scrolling over social media at all times of the day, the influence wielded by influencers has become a powerful force shaping their decisions, opinions, lifestyle practices, and consumer behavior.

Among these influencers are modern-day investment angels who impart the knowledge of information that many people want to hear – How do I get rich? Where do I invest my money? These angels are none other than financial influencers or as the internet likes to call it, “finfluencers”. They dominate conversations on social media about the finest stocks, best assets, and maximizing wealth. Offering some pearls of wisdom and a few thought-provoking insights to followers is the first step, and as these numbers increase, the strategies get more ruthless.[4]

Unlike traditional financial advisors who are subject to stringent regulatory oversight and professional standards, finfluencers often operate in a regulatory grey area where the lines between genuine financial education, promotional content, and financial advice blur. [5]This lack of regulatory clarity not only exposes investors to potential risks but also undermines market integrity and investor confidence.

The reliability of these wise words of wisdom have been under the radar, and through various cases such as the PK Kanoria case, the legitimacy are now questioned. The unregulated nature of social media platforms and the potential conflicts of interest inherent in finfluencer

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[2] Pragati Singh, Is Being a Social Media Influencer a Viable Career Option?, Careers360, (last updated Jul 21, 2023, 3:33 PM IST), https://www.careers360.com/careers/articles/is-being-a-social-media-influencer-a-viable-career-option

[3] Namita Shetty Garg Adya, End of the Party for Sin (Fin) Fluencers? SEBI’s Regulatory Crackdown on Finfluencers, India Corporate Law, Cyril Amarchand Mangaldas, (September 13, 2023), https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers

[4] Suprita Anupam, Can SEBI Clear The Murky Waters Of Finfluencers In India?, Inc42 Media (Oct. 16, 2023), https://inc42.com/features/can-sebi-clear-the-murky-waters-of-finfluencers-in-india/ (last visited May 5, 2024)

[5] Suryansh, Need For Regulation Of “Finfluencers” By SEBI, Live Law, (18 July 2023, 1:58 PM) https://www.livelaw.in/lawschoolcolumn/finfluencers-sebi-stock-market-reserve-bank-of-india-advertising-standards-council-of-india-hnlu-232998

relationships raise concerns regarding investor protection and market integrity.

The intersection of finfluencers and corporate governance raises fundamental questions about the responsibilities of companies in engaging with these influential figures. As finfluencers wield significant sway over their followers, their endorsements and recommendations can have profound implications for corporate reputation.

Through a comprehensive analysis into different cases that triggered SEBI's intervention, the challenges that it holds and the interface with corporate governance, we hence navigate the impact of finfluencers.

II. Finfluencer and their influence

As the Securities and Exchange Board of India (SEBI) describes it, financial influencers, often dubbed as 'finfluencers,' are individuals who disseminate insights and guidance across diverse financial realms, including securities investment, personal finance management, banking products, insurance considerations, real estate investment, and more. They leverage social and digital platforms to reach their audience, wielding significant power to shape the financial choices and behaviors of their followers.[6]

Finfluencers, if seen in the good light, have a pivotal role in bridging the gap between financial literacy and investment knowledge in India. By offering accessible, engaging, and relevant content, finfluencers empower individuals to navigate the complexities of the financial markets and achieve their long-term financial objectives.

The widespread appeal of these concise videos that finfluencers post, ranging from 10 to 20 minutes in length, can be attributed to India's relatively low financial literacy rate of 27 percent, as reported by the National Centre for Financial Education's 2019 survey. Consequently, novice investors, particularly those residing in remote areas, are naturally drawn to these finfluencers. This phenomenon also elucidates why certain videos, such as "A Beginner's Guide to Investing in Shares," "Generating Steady Income from Gold," or even "Accumulate 2.5 crores in 20 years! How?" garner the highest viewership.[7]

On the other hand, some finfluencers impart great influence by utilizing their platforms responsibly by sharing their failures and how they overcame them, aiming to be relatable to their followers. [8]This transparency not only enhances credibility but also fosters trust and

[6] Securities and Exchange Board of India, Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers), 4, (2023)

[7] Ashish Rukhaiyar, Rise of Finfluencers, Business Times, https://www.businesstoday.in/interactive/immersive/rise-of-the-finfluencers

[8] Krithi D. Ramaswamy, 'Finfluencers in India: New Paradigms of Financial Trust and Authority' in S. De, A.

loyalty among their audience.

While finfluencers have the potential to positively influence financial literacy and investment knowledge in India, their actions must align with regulatory requirements and ethical standards. Without proper oversight and adherence to regulatory standards, finfluencers risk misleading their followers and potentially engaging in unlawful activities.

A notable finfluencer in this realm is P.R. Sundar, along with his consultancy firm, Manson Consultancy Firm, boasting a substantial following of over 1 million individuals. Despite lacking registration with SEBI, they provided investment advisory services to their audience. This triggered SEBI's intervention. Mr. PR Sundar and his business were punished by SEBI for their actions in contravention of IA Regulations [9] In the end, SEBI agreed to a settlement of INR 46.80 lakh and a disgorgement of around INR 6.07 crore for regulatory infractions. As part of the settlement agreement, Mr. PR Sundar and his business also committed to abstaining from the purchase, sale, or exchange of securities for a period of one year[10] Hence this influence can have negative ramifications when not accompanied by regulatory compliance. Mr. Sundar's provision of investment advisory services without SEBI registration prompted regulatory intervention, highlighting need for SEBI's intervention.

Another such case is the Sadhna Broadcast Limited and Sharpline Broadcast Limited case, where the promoters, in collusion with YouTube creators, disseminated false and misleading content to artificially inflate interest in the company's shares. SEBI passed an interim order in this case which highlighted the detrimental impact of such fraudulent practices on market integrity and investor protection[11]. This influence and the manipulation thereby created of stock prices through misleading information not only undermines investor confidence but also facilitates profit-taking at the expense of unsuspecting investors.

Similarly, three administrator of telegram channels were booked under SEBI for involving in stock manipulation. They had to later pay 5.83 Cr under an order passed under Section 15HA of Securities and Exchange Board of India (SEBI) Act[12]

Finfluencers play a vital role in disseminating financial education and empowering individuals,

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Arya, M. Young, D. Ramesh, & J. Pal (Eds.), SOCIAL MEDIA AND SOCIETY IN INDIA, 133, 136

[9] Settlement Order in the Matter of Mansun Consultancy Pvt. Ltd., SO/AA/EFD2/2023-24/7081 [May 25, 2023]

[10] Badrinarayanan K. S 5367, PR Sundar, His Associates Settle SEBI Case by Agreeing to Pay ₹6.55 Crore, BusinessLine (May 6, 2023, 8:14 PM), https://www.thehindubusinessline.com/markets/pr-sundar-his-associates-settle-sebi-case-by-agreeing-to-pay-655-crore/article66897396.ece

[11] Interim Order in the Matter of Stock Recommendations using Youtube in the scrip of Sadhna Broadcast Limited, WTM/AN/ISD/ISD-SEC-1/24333/2022-23 [March 2, 2023].

[12] Final Order in the Matter of Stock Recommendations using Social Media Channel (Telegram), WTM/AN/ISD/ISD-SEC-3/25879/2023-24 [April 26, 2023].

their influence must be exercised responsibly and in compliance with regulatory requirements. At the contrary, these instances demonstrate how finfluencers, in collusion with other entities, exploited their platforms to disseminate false and misleading information, manipulate stock prices, and unlawfully profit at the expense of investors. The mentioned case triggered the intervention by the market regulator, emphasizing the pressing need to adapt and refine the regulatory regime to effectively protect investors from the risks associated with finfluencing.

III. SEBI'S INTERVENTION

The unregulated nature of finfluencer activities through the abovementioned cases have raised concerns about the potential for misinformation, conflicts of interest, and market manipulation. Recognizing these risks, SEBI has intervened to establish guidelines and safeguards to protect investors and maintain market integrity.

In addition to enforcing enforcement measures against individuals who violate SEBI laws, the recommendations put forward by SEBI were designed to disrupt the business model of unregistered finfluencers and so lessen the perverse incentives that exist within the ecosystem. The SEBI's Regulatory Interventions are:

Prohibition of Associations with Unregistered Entities: SEBI prohibits registered intermediaries and regulated entities from having any association or relationship, whether monetary or non-monetary, with unregistered entities for the promotion or advertisement of their services/products. This restriction aims to prevent conflicts of interest and ensure that investors receive advice from qualified and regulated sources.

Refraining from Sharing Information: Entities registered or regulated by SEBI, stock exchanges, or AMFI refrain from sharing any confidential information of their clients with unregistered entities. This safeguard aims to protect investor privacy and prevent misuse of sensitive information for unauthorized purposes.

Disclosure Requirements for Finfluencers: Finfluencers registered with SEBI or recognized regulatory bodies must prominently display their registration number, contact details, and investor grievance redressal helpline, and make appropriate disclosures and disclaimers on their posts. By adhering to SEBI's code of conduct, finfluencers are expected to uphold transparency and professionalism in their interactions with followers.

Compliance with Advertisement Guidelines: SEBI mandates that registered entities and finfluencers comply with advertisement guidelines issued by SEBI, stock exchanges, and recognized supervisory bodies. These guidelines aim to prevent misleading or deceptive advertising practices and promote fair and transparent communication with investors.

Prohibition to pay any commission: SEBI has placed prohibition on registered intermediaries and regulated entities from disbursing any trailing commission based on the number of referrals as a referral fee. However, it will allow for limited referrals from retail clients and the payment of fees for such referrals by stockbrokers.

Lastly, Direction to Report in case of Impersonation and Fraud: SEBI's directive for registered intermediaries to actively disassociate themselves from any unregistered entity exploiting their name, product, or service. These intermediaries are obligated to take prompt actions to alert the relevant enforcement agency and pursue appropriate legal measures, including filing cases under Section 420 of the Indian Penal Code, 1860, in cases of impersonation and fraud, as deemed necessary.[13]

These interventions in regulating finfluencers represent a proactive approach to addressing emerging challenges in the digital era of financial communication. By imposing restrictions on associations with unregistered entities, enhancing disclosure requirements, preventing the unauthorized sharing of confidential information, reporting when needed and limitation on paying untrailing commission, SEBI aims to strengthen investor protection and promote trust and confidence in the Indian financial markets.

However, effective implementation and enforcement of these regulations will be crucial to ensuring their efficacy and achieving the desired outcomes of market integrity and investor welfare. As the view of financial communication continues to evolve, ongoing vigilance and adaptation of regulatory frameworks will be essential to keep pace with emerging risks and safeguard the interests of investors in India.

IV. ASCI'S EXTENDED GUIDELINES

The restrictions established by SEBI have been expanded by the Advertising Standards Council of India (ASCI). Influencers must publicly show their identity, qualifications, and registration number in accordance with ASCI's mission. To offer further financial advice, influencers must meet certain requirements. These include holding a company secretaryship, being a professional chartered accountant, and having a license from the Insurance Regulatory and Development Authority of India (IRDAI). Influencers are also obliged to follow any disclosure guidelines frequently provided by financial industry authorities.[14]

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[13] Securities and Exchange Board of India, Consultation paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers), 5, (2023)

[14] Guidelines for Influencers Advertising in Digital Media, Advertising Standards Council of India [May 27, 2021]

In promotional material, influencers are required to prominently disclose their qualifications and registration/certification details. This includes superimposing them on visuals or stating them upfront in the starting of videos, stating them upfront in text-based posts or blogs, and calling them out at the beginning of advertising content in podcasts or purely audio mediums. [15] These disclosures are mandated to ensure transparency and inform consumers about the influencer's credentials before engaging with the content.

V. Challenges

As the primary regulator of securities markets in India, SEBI now has the complex task of balancing investor protection with fostering an environment conducive to innovation and accessibility in the realm of financial influencer marketing.

In the past, influential people have objected to the notion of regulation and sought solace in the Indian constitution's provisions pertaining to freedom of speech, expression, commerce, and profession. [16] With these being one of the arguments, such other arguments could be that since anybody with internet access may view their content, their channel subscribers are not their clients. [17]

SEBI faces the burden of monitoring and determining the nature of content uploaded by finfluencers. The sheer volume of creators producing content makes it challenging for regulators to effectively clamp down on misleading or inappropriate content.

Furthermore, the qualification requirements set by the Advertising Standards Council of India (ASCI) may create barriers to entry for aspiring financial influencers. This could limit diversity and innovation in the industry by excluding talented individuals who lack traditional qualifications but possess valuable insights. Finding the right balance between investor protection and fostering an environment for financial influencers to thrive is crucial for SEBI.

Verifying the credentials of influencers claiming qualifications such as chartered accountancy or company secretaryship poses a challenge for SEBI. False claims or inadequate qualifications

[15] Ibid.

[16] Madhushree Goswami, Rise of the Finfluencers: Who Are They and Why Are They Under SEBI’s Lens?, The Quint, (19 Dec 2022, 2:39 PM IST), https://www.thequint.com/explainers/why-are-finfluencers-under-sebi-lens-finance-influencer-social-media#:~:text=%22Financial%20blogs%20attract%20the%20highest,the%20finfluencers%2C%22%20she%20added.

[17] Kirthana Khurana, Finfluencers as Investment Advisors - Time to Rein Them In? (Convergence and divergence of Kleinian surface groups2023-07-20), https://deepblue.lib.umich.edu/handle/2027.42/1753-8416epblue.lib.umich.edu/handle/2027.42/177341

may go undetected, undermining the integrity of the regulation.

SEBI's definition of "investment advice" under the IA Regulations fails to distinguish between advice intended to influence and mere educational content. This ambiguity could inhibit finfluencers from providing valuable educational content to their audience.[18]

Despite it's role in promoting ethical advertising practices, the Advertising Standards Council of India (ASCI) faces limitations in its enforcement capabilities. As an independent, voluntary self-regulatory organization, ASCI lacks statutory authority to formulate binding rules for the public or relevant industries. While it has developed mechanisms for lodging complaints against non-compliance with its guidelines, enforcing compliance remains a challenge. [19] The Delhi High Court's observation in the case of Procter and Gamble Home Products Private Limited v Hindustan Unilever Limited proves this limitation.[20]

In addressing this challenge, it is crucial to enhance investor education and protection efforts. The Investor Education and Protection Fund Authority established under Section 125 of the Companies Act 2013 can play a significant role in this regard. The Authority should expand its scope to include awareness about finfluencer scams.

Specifically, the Authority should educate investors about the risks associated with following advice from unverified or unregistered finfluencers. This includes providing information on common tactics used in finfluencer scams, such as promoting fraudulent investment schemes or engaging in market manipulation. By raising awareness about these risks, investors can make more informed decisions and avoid falling victim to financial fraud.

Furthermore, the Authority should undertake initiatives to educate the public about finfluencers themselves. This could involve providing guidance on how to evaluate the credibility of finfluencers, including checking for relevant qualifications, verifying registration or certification details, and scrutinizing disclosure practices.

VI. INTERFACE WITH CORPORATE GOVERNANCE

The interface between corporate governance and finfluencers is multifaceted and requires careful consideration. Firstly, the rise of finfluencers challenges traditional corporate

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[18] Namita Shetty Garg Adya, End of the Party for Sin (Fin) Fluencers? SEBI's Regulatory Crackdown on Finfluencers, India Corporate Law, Cyril Amarchand Mangaldas, (September 13, 2023), https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers

[19] Smita Jha, Nikita Nagori and Viti Bansal, Finfluencers In The Crosshairs: SEBI's Regulatory Clampdown, Khaitan and Co., (12 October 2023) https://www.khaitanco.com/thought-leaderships/Finfluencers_In_The_Crosshairs_SEBIs_Regulatory_Clampdown

[20] Procter and Gamble Home Products Private Limited v Hindustan Unilever Limited, SCC OnLine Del 7072

governance mechanisms, such as disclosure requirements etc, which may not adequately address the unique risks posed by fraudulent finfluencers. Companies and regulators need to reassess these mechanisms to ensure they remain effective in the context of finfluencer influence.

Moreover, the preferences of younger generations for sustainability issues highlight an opportunity for finfluencers to advocate for more responsible corporate practices. Finfluencers and retail investors can potentially drive a shift towards sustainable business decisions, aligning with broader societal expectations. However, this also introduces challenges, as companies must navigate the risks associated with influencer partnerships and ensure transparency and integrity in their engagements with finfluencers.[21]

Companies must proactively engage with finfluencers, aligning with those who prioritize transparency and ethical practices, while regulators should consider updating governance mechanisms to address the evolving picture of financial communication and investor behavior shaped by finfluencers.

In navigating the impact of finfluencers on corporate governance, companies must acknowledge the significant influence that these individuals wield in shaping investor perceptions and market sentiment. Proactive engagement with finfluencers can ensure accurate representation and effective communication of corporate strategies and performance, thereby enhancing transparency and accountability. Moreover, companies must exercise caution when partnering with finfluencers, as associations with individuals lacking credibility or engaging in unethical practices can pose reputational risks. Aligning with reputable influencers who prioritize transparency and integrity can bolster a company's reputation and foster trust among investors.

VII. CONCLUSION

The paper has shed light on the evolving landscape of financial communication and investor engagement, particularly in the context of the rise of finfluencers. These individuals wield significant influence over investor perceptions and market sentiment, presenting both opportunities and challenges for corporate governance practices and regulatory frameworks.

Regulators, such as the Securities and Exchange Board of India (SEBI) and the Advertising Standards Council of India (ASCI), have introduced guidelines and interventions to address the risks associated with finfluencers, including restrictions on associations with unregistered

[21] Kamalnath, Akshaya. "FINFLUENCERS AND OTHER TECH DISRUPTIONS-IMPLICATIONS FOR CORPORATE LAW.", (2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4786107

entities, disclosure requirements, and qualification standards. However, effectively navigating the impact of finfluencers on corporate governance requires proactive engagement from companies, regulators, and investors alike.

Companies must recognize the power of finfluencers and take measures to ensure transparency, integrity, and accountability in their engagements with them. This includes aligning with reputable influencers who prioritize ethical practices and providing clear and accurate information to investors. Regulators, on the other hand, must continuously assess and adapt regulatory frameworks to address emerging risks and opportunities in the digital age of financial communication.

Furthermore, enhancing investor education and protection efforts, such as through the Investor Education and Protection Fund Authority, is crucial in mitigating the risks associated with finfluencers and empowering investors to make informed decisions. By raising awareness about finfluencer scams and educating the public on evaluating finfluencers' credibility, regulators can help safeguard investor interests and promote trust and confidence in the financial markets.

In essence, while the rise of finfluencers presents challenges to corporate governance and regulatory oversight, it also presents opportunities to harness the power of social media and retail investor activism for positive change. By working collaboratively to address these challenges and capitalize on these opportunities, stakeholders can contribute to a more transparent, accountable, and sustainable financial ecosystem for all.

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