

26 August 2024

Submitted via SEBI Portal

ASIFMA Response to SEBI Consultation Paper on Review of Regulatory Framework for Investment Advisors and Research Analysts

<u>SEBI proposal</u>	<u>Level of agreement</u> (strongly agree/agree/partially agree/disagree/strongly disagree)	<u>Comments</u>	<u>Rationale</u>
<p>Proposal 2: Relaxation in eligibility requirements for IAs and RAs – minimum qualification – para 4.8.1</p>	<p>Partially agree</p>	<p>We agree with relaxing the eligibility criteria as a whole. Additionally, we suggest expanding the proposal to include considering graduates:</p> <ul style="list-style-type: none"> a) from certain disciplines which are relevant to the roles of RA; and b) who have graduated from universities outside of India, to be also qualified. <p>If the above suggestions are not suitable, in the alternative we advocate for the graduate experience requirement in 7(1)(iii) as prescribed under SEBI (Research Analysts) Regulations, 2014 be reduced from 5 years to 1.</p>	<p>To further expand talent pool</p>

<p>Proposal 4: Relaxation in eligibility requirements for IAs and RAs – certification – para 4.8.2</p>	<p>Partially agree</p>	<p>We agree with relaxing requirements regarding NISM certification and would like to request confirmation on how the “incremental changes” are determined.</p> <p>In response to sections 4.4 and 4.5, if the above suggestions proposed in our response to proposal 2 are not adopted by SEBI, then we disagree with removal of the experience requirement, and advocate the existing requirement remain but be reduced from at least five years to one year.</p>	<p>For easy of doing business</p>
<p>Proposal 5: Relaxation in eligibility requirements for IAs and RAs – net worth – para 4.8.3</p>	<p>Disagree</p>	<p>RAs which are registered as non – individual / entity RAs should be allowed to continue with the net worth requirement as per current regulations instead of having a separate lien marked to stock exchange /RAASB.</p> <p>Please refer below draft regulatory language for consideration.</p> <p><u>Individual RA:</u> <i>Individual RAs to maintain a deposit lien marked to stock exchange recognized as IAASB/RAASB for such a sum as may be specified by SEBI from time to time. The amount of deposit lien to be maintained by Individual RAs is as follow:</i></p> <ul style="list-style-type: none"> • <i>Up to 150 clients: 1 lakh</i> • <i>150 to 300 clients: 2 lakh</i> • <i>300 to 1,000 clients: 5 lakhs</i> • <i>1,000 and above clients: 10 lakhs</i> 	<p>Most of our members provide research as an ancillary, value-added service to their global clients without any separate monetary consideration for the provision of research booked in the RA entity. Therefore, it is difficult for our member firms to separate the research clients and create the lien amount. In many circumstances, research services clients of other business divisions are therefore not considered clients of research.</p> <p>An institutional firm /a non-individual entity should be provided with an option to either maintain net worth or have an option to create lien in favour of stock exchange /RAASB.</p>

		<p><u>Non-individual / entity RA:</u> <i>Non-individual /entity RAs can either maintain the (i) net worth of INR 25 Lakhs (INR 2.5 million) or (ii) deposit lien marked to stock exchange recognized as RAASB for such a sum as may be specified by SEBI from time to time. The amount of deposit lien to be maintained by non-individual /entity RAs is as follow:</i></p> <ul style="list-style-type: none"> • <i>Up to 150 clients: 1 lakh</i> • <i>150 to 300 clients: 2 lakh</i> • <i>300 to 1,000 clients: 5 lakhs</i> • <i>1,000 and above clients: 10 lakhs</i> 	
<p>Proposal 6: Section 5 - Allowing registration as research analyst</p>		No comments	
<p>Proposal 7 : Section 6 - Registration as Part-time investment adviser/research analyst</p>		No comments	
<p>Proposal 8: Section 7 - Relaxations in</p>	Partially agree		For clarity

<p>designation of 'principal officer'</p>		<p>Can SEBI clarify the proposed obligations and responsibilities of a Principal Officer under the RA Regulations.</p>	
<p>Proposal 9: Section 8 – Allowing Appointment of independent professionals as Compliance Officer</p>		<p>No comments</p>	
<p>Proposal 10: Section 9 - Clarity in activities that can be undertaken by IAs - scope of investment advice</p>		<p>No comments</p>	
<p>Proposal 11:</p>	<p>Partially agree</p>	<p>We would urge SEBI to hold off on implementing disclosure requirements at this</p>	<p>We suggest RAs can adopt section 10.5 on a non-prescriptive risk-based approach, relative to the different</p>

<p>Section 10 - Use of Artificial Intelligence ('AI') tools in RA services</p>		<p>time given that the technology is rapidly evolving.</p> <p>We would also submit that IAs and RAs provide different services and they should provide the appropriate levels of transparency and disclosure to clients around their specific use of AI for servicing their clients. We suggest that RAs can adopt section 10.5 on a risk-based approach, depending on the use case and the level at which AI is used in the IA and RA activities.</p> <p>RAs are already subject to comprehensive regulatory requirements mandating disclosure and mitigation of conflicts sufficient to address the challenges posed by AI.</p> <p>We suggest that this risk-based approach be clarified in the final language of section 10.5.</p>	<p>services they provide and depending on the use case and the level at which AI is used in the IA and RA activities and the types of clients they are serving. For low-risk use cases, for example, if an AI tool is used to summarise/translate news articles or internal documents or other internal usage, or in a <i>de minimis</i> manner, which the investment advisor or research analyst would use as one of his/her many resources to establish his/her advice/research report, there should be no need to disclose the use of AI to clients. By contrast, if AI is being used for risk profiling or suitability, then full disclosure may be warranted.</p> <p>It may be too early to mandate disclosure requirements regarding AI use as AI is still developing and we future use cases cannot be predicted. In addition to the risk-based approach, we would suggest SEBI to include limitations that if the use of AI is either purely internal or <i>de minimis</i>, it does not need to be disclosed.</p>
<p>Proposal 12: Section 11 - Flexibility to IAs to</p>		<p>No comments</p>	

change the modes of charging fee to clients			
<p>Proposal 13:</p> <p>Section 12 - Relaxation in requirement for corporatization by individual IAs</p>		No comments	
<p>Proposal 14:</p> <p>Section 13 - Definitions of 'research analyst'</p>	Disagree	<p>Section 13.2:</p> <p>We understand that – based on section 13.2 which proposed to modify the definition of 'research analyst' to persons providing research services 'for consideration' – the business model where our members are not charging any fees for the provision of research to clients, would be out of scope for the proposed new definition of 'research analyst', and specifically out of scope for all sections of the proposed framework and Annexures that make reference to fees/considerations.</p> <p>Can SEBI please confirm our understanding.</p> <p>Specifically, the proposed definition of "research services" to include services "for consideration including non-cash benefit,</p>	<p>Section 13.2:</p> <p>ASIFMA members' research analyst entities typically provide stock broking and merchant banking and banking services in addition to research services to their clients.</p> <p>The typical business model involves research being provided as integrated and ancillary service to clients of other business lines within the entity and its global affiliates. Accordingly, the research divisions of our members would not directly onboard clients, or directly charge fees or any other monetary consideration for the provision of research services.</p>

received or receivable, directly or indirectly, in any form, whether from client or otherwise," is too broad and could capture internal arrangements such as transfer pricing. We suggest that any sections relating to proposed fees/ consideration and specific terms and conditions be made exempt for research analyst entities that provide research as an ancillary service.

Section 13.3:

In response to section 13.3, we respectfully submit that the proposed requirements relating to "model portfolios" as set out in Annexure B appear to be more applicable to portfolios recommended by IAs or broking for trading with/through them, and may not be appropriate when applied to "portfolios" mentioned in research reports which are typically intended to illustrate certain themes mentioned in the report and do not constitute individual recommendations of the securities in the basket.

We would also submit that the mere inclusion of portfolios which comprise India listed securities and which does not include individual recommendations on those

Section 13.4:

Research services could also include other research products such as calls, conferences depending on the firm.

		<p>securities, should not be considered to be in scope of the RA Regulations.</p> <p>Section 13.4:</p> <p>The definition of 'research services' should be clearer and simpler to assess the requirement.</p>	
<p>Proposal 16:</p> <p>Section 14 - Clarity in identification of 'persons associated with research services'</p>	<p>Partially agree</p>	<p>We submit that the definition of 'persons associated with research services' should be restricted to staff within the research division who are involved in formulating research views and interact externally regarding those research views. For example, research divisions may include supervisory analysts/editors who are involved in reviewing research reports and other communications to ensure they comply with applicable laws and regulations. It would be unnecessary and onerous for such teams to be considered persons associated with research services under the proposed regulatory framework for RAs.</p> <p>Secondly, we are unclear on the implications of introducing the definition of 'persons associated with research services' under the RA Regulation. The Consultation Paper under section 14.1 merely proposed the suggested definition of 'persons associated with research services' but does not set out the regulatory expectations for such persons.</p>	<p>Our member firms' equity sales/ equity traders, etc., operating under Stock Broking license in the ordinary course of business disseminate and speak with clients about the Research Reports published by the research analyst of the RA entity. Similarly, our member firms' bankers / investment bankers also act as client relationship managers for corporate clients who may also receive the research reports from the Research Division. Also, for global Stock Broking firms, there are global business units who may also disseminate the research reports to their clients. None of the aforesaid non-research business divisions prepare or provide any recommendation pertaining to any of such research reports. The research division functions independently to produce the research reports. Further, staff such as equity sales/equity traders are already covered under the Stock</p>

		<p>Can SEBI please clarify the intention and expectations.</p>	<p>Broking registration whereas Investment Bankers are covered under the Merchant Banking registration. Hence, we submit that it would be redundant and onerous to have these persons be subject to the Research Analyst Regulations as well.</p> <p>Apart from Research Analysts, all client/public facing persons are staff members from non-research divisions like stock broking/ investment banking should be out of scope from the definition of ' persons associated with research services', as they reach out to clients under their respective licenses.</p> <p>Further, staff belonging of such non-research business operate in an independent manner and the suggestion to include this staff in the definition of 'persons associated with research services' seems to contradict with the existing provision of maintaining arm's length relationship between research, merchant banking and brokerage services divisions. This</p>
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			new definition could lead to confusion and inconsistency in approach.
Proposal 17: Section 15 - Exemption to Proxy Advisers from RAASB framework		No comment	
Proposal 18: Section 16 - Eligibility of 'partnership firm' for registration as RA and certification requirement for its partners		No comment	
Proposal 19: Section 17 - Fees chargeable to clients by RAs	Partially agree	Please refer below draft regulatory language for consideration. <i>Provided that [this section] shall not apply to [research analysts] that provide research services as an ancillary service without separate consideration.</i>	Research is an integrated and ancillary service provided to clients without any separate monetary consideration, and therefore this should not be applicable.
Proposal 20:	Partially agree	While we agree with the intent to segregate research activities from other business	The regulatory intent can be better achieved by ensuring there are

<p>Section 18 - Client-level segregation of research and distribution services by RAs</p>		<p>activities carried by within the same entity so as to ensure the independence of research views produced by the research division, we respectfully submit that the proposal to implement this segregation at the client level would not be workable in practice.</p> <p>As explained in our response to proposal 14, research services are typically provided as ancillary services to clients of other businesses within the same entity/group, and the research departments of our members do not directly onboard clients.</p> <p>We therefore suggest to provide exemption of the client level segregation requirements for research services that are provided to clients as an ancillary service without any separate monetary consideration booked in the RA entity.</p> <p>In addition, the provision in the consultation paper specifically exempts the client level segregation requirement in case the research services are provided exclusively to institutional clients.</p> <p>Please refer below draft regulatory language for consideration.</p> <p><i>RAs providing research services exclusively to institutional clients, accredited investors, family</i></p>	<p>appropriate information barriers and other controls between research and other businesses within the same entity so as to maintain confidentiality of unpublished research views and independence of the research analysts some of which are already laid out in the existing RA Regulations.</p> <p>ASIFMA members' research analyst entities provide stock broking, merchant banking and research services to their clients. The research divisions cater to clients of other business including global business divisions and do not undertake KYC (onboard) specifically for research services. As part of our members' global offering, Research is an integrated ancillary service to clients provided without any monetary consideration booked in the RA entity specifically for provision of research services.</p> <p>Annexure A ('Client-level segregation of research and distribution services by RA's), section 3(ii) mentions that 'A client can either be a research services client where no distributor consideration fee is received at the</p>
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		<p>electronic platform and we hope that SEBI can confirm in the final Regulation.</p> <p>2) In addition to institutional clients and accredited investors, we suggest that family offices and large corporates should also be exempted from the client segregation requirements.</p>	
<p>Proposal 21 : Guidelines for recommendation of 'model portfolio' by RAs (Para 19) and Annexure B</p>	<p>Partially agree</p>	<p>In response to section 19.1, we disagree as the requirements would be unnecessary and onerous to comply with, and are more akin to activities that involve selling these products as opposed to the discussion of baskets in the context of providing research views. Please also refer to our response to proposal 14.</p> <p>Can SEBI clarify whether Model Portfolio includes sector weightings and screens. Also, we assume that these requirements apply to Model Portfolios that consist purely of securities within the definition of securities under the RA Regulations, and excluding ADRs for example. Please can SEBI clarify.</p>	<p>Many ASIFMA members operate a global research business where clients are able to access research reports produced by the business globally. Disclosures also follow a global standard in compliance with global regulations. In this regard, it would be impractical to require compliance with these guidelines to the extent that the model portfolios are not specifically targeted at Indian retail clients.</p>

<p>Proposal 22: Section 20 – Disclosure of terms and conditions of services to client</p>	<p>Disagree</p>	<ol style="list-style-type: none"> 1) We suggest that the disclosures of terms and conditions should be limited to RAs dealing with retail clients. 2) Alternatively, we suggest to include the link of T&Cs/MITC as part of the Research Report and also on the research webpage and we hope SEBI can confirm this is acceptable. 3) Can SEBI clarify the definition of “client of RA” under section 20. Research reports including India research reports published by international firms are distributed to clients worldwide and those client relationships can be owned by other departments of the firm and not a client of Research. 	<ol style="list-style-type: none"> 1) There is an inherent difference between IA and RA as has been also adequately set out by SEBI at the start of the paper. An RA simply sets out his view on the securities which are subject matter of research report and does not take into account the individual circumstances of the recipients of the report. Hence there is no fee charged for adding someone to the recipient list of research report. As such, it is onerous and not logical to ask such recipient to sign or acknowledge MITC in specific terms. Some RAs have T&Cs agreed on the research portal on a deemed consent basis 2) Given that our members RA entities are part of a global organisation,
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Research services are a global offering catering to all types of recipients of research including prospective clients. Therefore, access to Research materials across jurisdictions is provided through a centralised portal. Hence obtaining T&Cs from research recipients (who are not subjected to KYC) will be very onerous specifically for India research reports only and will undermine ease of doing business.

<p>Proposal 22: Section 20 Terms and conditions and Annexure C</p>	Disagree	<p>Annexure C: We suggest it should be up to the RAs to determine the actual terms and conditions as applicable to them and commensurate with the type and nature of the service being provided.</p> <p>With respect to Point 3 of Annexure C, regarding client information and KYC, it is</p>	<p>Annexure C: We agree it is important for RAs to disclose to the recipients the T&Cs of the usage of their research services, so that the recipients can make informed decisions as to whether to accept the research services or not. We submit that RAs should be able to determine what these T&Cs are, instead of having to adopt the mandatory terms and</p>

		<p>proposed to that KYC should not be mandatory since Research is an ancillary service to domestic and international clients of broking division.</p> <p>With respect to Point 5 of Annexure C, regarding consideration and mode of payment, it is proposed to include term 'if applicable' since no separate fees are charged for provision of research services.</p> <p>With respect to Point 13 of Annexure C, regarding optional centralised fee collection mechanism, it is proposed to include term 'if applicable' since no separate fees is charged for provision of research services.</p>	<p>conditions as stipulated in Annexure C which may not be entirely relevant to the RA. For example, for RAs who do not charge a fee for their research services, points 5, 8, 9 and 13 in Annexure C would not be relevant. In addition, RAs are already governed by SEBI (Research Analysts) Regulations and the related circulars to provide certain disclosures (such as disclosures around conflicts of interest, the RA's registration information and related disclaimer). Additional T&Cs would be primarily commercial.</p> <p>As long as no fee is proposed to be taken from the recipients of the research report, there should not be a requirement to undertake KYC or to sign agreement or to disclose MITC.</p> <p>Even as a stock broker for custodian settled clients, the KYC is undertaken by the custodian and brokers rely on the same.</p>
<p>Proposal 22: Para 20.4</p>	<p>Partially agree</p>	<p>Section 20.4</p> <p>It is proposed to include term 'if applicable' since this should not apply to research services that are provided as a ancillary service to</p>	<p>For clarity.</p>

		clients without any separate monetary consideration booked in the RA entity.	
<p>Proposal 22:</p> <p>Section 20.5: client consent for terms and conditions</p>	Partially agree	<p>Section 20.5:</p> <p>In addition to Digilocker and Aadhaar-based e-signature, would like to ask SEBI to consider alternative methods that achieve the same purposes but are more cost efficient to implement for global firms using global platforms.</p> <p>Separately, for domestic institutional clients to obtain Digilocker/Aadhar-based consent may not be feasible as it needs to be through Authorised signatories. We suggest that the minimum mandatory terms and conditions (“MMTC”) shall be waived for custody-settled clients in line with the stock broking regulations.</p>	<p>Section 20.5:</p> <p>Without prejudice to our earlier request to not have recipients of research reports to sign agreements or do KYC or disclose MITC, we submit that the recipients of research reports based in India are typically not eligible to obtain Digilocker enabled Aadhaar based e-signature as they are either not individuals or being individuals or are individuals that are not eligible to obtain Aadhar as foreign nationals.</p> <p>Some RAs offer their research reports via a password-protected electronic platform. Clients need to be granted access to such platform by the RA to access the research reports. T&Cs are disclosed to the clients when they request access to such platform, and the granting of access is conditional upon their acceptance of the T&Cs electronically. Such process is equivalent to clients providing consent by signing,</p>

			<p>and we suggest it should be accepted as client consent being obtained.</p> <p>As long as no fee is proposed to be taken from the recipients of the research report, there should not be a requirement to undertake KYC or to sign agreement or to disclose MITC.</p>
<p>Proposal 23: Section 21 - KYC Requirements and maintenance of record</p>	<p>Partially agree</p>	<p>We agree that KYC is only required to be performed by RAs for clients that pay a fee specifically for their research services.</p> <p>It would be useful if SEBI can provide a clarification that the KYC requirements shall not apply if the research services are offered as ancillary service to clients without any separate monetary consideration.</p> <p>Section 21.6 – Maintain records of communication</p> <p>Our interpretation is that the requirement to maintain records of communication with the client/prospective client would only apply to clients paying a fee for research. Can SEBI please confirm our understanding.</p> <p>For those fee-paying clients in scope of section 21.5, we request that SEBI clarifies the retention period and suggest it should be 5 years in line with the PMLA.</p>	<p>As long as no fee is proposed to be taken from the recipients of the research report, there should not be a requirement to undertake KYC or to sign agreement or to disclose MITC.</p> <p>Section 21.6 – Maintain records of communication</p> <p>For clarity and ease of doing business</p>

		<p>Separately, for the fee-paying RA clients in scope, we suggest that that section 21.6 should be restricted to only maintenance of electronic and physical records and exclude communication through any other channel such as phone.</p>	
<p>Proposal 24: 22.1 Circumstances under which a person is required to obtain registration as RA</p>	<p>Disagree</p>	<p>Section 22.1: Can SEBI please confirm our understanding that a person providing RA services on Indian securities without specific allocation of fees is out of scope for registration under the SEBI (Research Analysts) Regulations. We also request clarity on existing firms holding SEBI RA licences and continue to provide value- added free services to its stock broking/ investment banking clients. Section 22.7: We propose that the existing requirement specified in paragraph 4 of the existing RA regulations, in relation to entering into agreement with a registered Research Analyst or research entity to enable offshore analysts</p>	<p>Section 22.1: For clarity Section 22.7: Given that our members' RA entities are part of a global organisation, there are research analysts who are sector experts covering stocks across multiple countries including India. In order to retain such arrangement, it is proposed that the existing requirement in the RA Regulations of entering into agreement with a registered Research Analyst or research entity should continue. SEBI may consider introducing additional obligations on the local registered research analyst (who can be either a subsidiary or group/associate company</p>

		<p>of the group or otherwise to cover Indian securities, should continue to apply.</p>	<p>of the offshore entity providing Research on Indian Securities) or strengthen the agreement with the offshore entity, to ensure compliance with SEBI Research Analyst regulation so far as the offshore research analyst is concerned. It will be extremely cumbersome and onerous for the offshore research analyst or entity to obtain certificate of registration under RA regulations. This will negatively impact the existing ease of doing business.</p>
<p>Proposal 25: Section 23 - Compliance audit requirements for RAs</p>	<p>Disagree</p>	<p>Section 23.3: Suggest to remove section 23.3. If 23.3 is kept, in relation to 23.3(i), we suggest to revise the due date of the annual audit compliance from sixty days (31st May) to 153 days (August 31st) to avoid conflict with various other regulatory and audit filings which are due on 31st May such as the Half Yearly Internal Audit, Risk Based Supervisions, monthly returns etc. for other licenses such as stock broking, merchant banking.</p> <p>Section 23.4:</p>	<p>Section 23.3: We submit that the existing annual research audit (section 25.3 in the existing RA regulations) covers research activities conducted offshore that includes India listed securities. The Initial Data Request shared by auditors during their audits also calls for information/ reports which are issued by the overseas entities covering India listed securities. Overseas entities here refer to those firms with whom the onshore entity has an agreement in place per extant regs. Thus, the requirements outlined in section 23.3</p>

		<p>Suggest to remove section 23.4</p>	<p>do not have any value-add and reduce ease of doing business for both the offshore and onshore entities covering Indian listed securities and we suggest they be removed from the final Regulations.</p> <p>Section 23.4:</p> <p>Research Services are provided to eligible clients through dedicated internal portal with login credentials. These services are not available publicly and hence publication of audit report which is confidential in nature on a public domain is detrimental to our members' interests.</p> <p>Compliance Audit reports of regulated intermediaries such as Stock Brokers, Mutual funds/ depositories participants etc are not generally made available to the public or clients. Compliance status is provided to clients upon request.</p>
<p>Proposal 26: Section 24 - Clarity in applicability of RA Regulations to</p>	<p>Partially agree</p>	<p>A clear definition or illustration on what would constitute a trading call provider would be helpful to take a uniform interpretation across the industry.</p>	<p>Our understanding is that there are sales and traders within the Broking division in the same entity which holds licences of Stock Broking, Research Analyst. Such equity sales and traders</p>

trading call
providers

issue "trading calls" that are not under the purview of RA regulations as those are considered "sales commentary" which is an incidental part of stock broking services. These are subject to separate regulatory requirements. Can SEBI please confirm our understanding.

Also, based on the reading of the consultation paper it is not clear if a research report consisting of a directional call / research analyst view / opinion / recommendation on a particular security, say a share price will fall or rise with the price target, would this constitute a trading call?