FIN-FLUENCERS VS. NON-FINANCIAL INFLUENCERS

[*Rakhi Nargolkar is a final year student at SVKM's Jitendra Chauhan College of Law, Mumbai.*]

Keywords: Finfluencers, influencer marketing, non-financial influencer.

Introduction

The years, 2021 and 2022 witnessed a widespread desire for quick and easy financial gains. The main driving force behind this shift was the pandemic– a period characterized by low interest rates, government assistance packages, and shifts in investment patterns. As a result of these changes, a new class of digital influencers emerged known as '*Finfluencers*.' As influencers, regardless of their niche, hold considerable sway over their followers, this article seeks to examine the influencers in the financial industry, draw comparison with influencers in other sectors and jurisdiction, and address the need for protecting consumers and markets from the risk associated with misinformation, manipulation, and profit-driven or self- interested recommendations.

Should finfluencers be regulated when other influencers are not?

Unlike many other influencers such as lifestyle influencers, tech- influencers, etc., who promote products or services from personal experience or preferences, finfluencers provide financial advice and recommendations to vulnerable investors who do not understand the risks involved. These recommendations directly impact people's economic stability and life-savings. Consumers tend to trust them for their supposed expertise, and this trust can be easily exploited. Lifestyle influencers typically promote products or experiences that are generally less complex and have fewer negative consequences if consumers make poor choices. The GameShop short squeeze incident gained widespread attention when finfluencers on Reddit, Twitter, and other social media platforms encouraged retail investors to buy shares, leading to extreme price volatility and losses to inexperienced investor. Similarly, the rise of online trading platforms and the influence of finfluencers contributed to the Robinhood Rally in 2020 and, the impact of Elon Musk, whose tweets influenced even the non-investors to venture into cryptocurrencies like Dogecoin.

Other industries may have regulations, but the stringency of these regulations is often lower than in finance due to the varying degrees of harm involved. When a lifestyle influencer promotes a low-quality clothing brand, the consequences revolve around a wasted purchase, which, while frustrating, is not inherently financially devastating. In contrast, finfluencers can impact their follower's financial stability by offering investment advice or endorsing financial products.

Why SEBI regulates finfluencers?

The financial industry is highly complex compared to other industries, which is why stricter regulations are warranted for finfluencers. Securities Exchange Board of India (**SEBI**) regulations ensure that finfluencers provide accurate and well-researched information, protecting investors from misleading advice. The Supreme Court in the matter of *SEBI v. Kishore R. Ajmera,* observed the need of the SEBI Act and its accompanying regulations to boost investors' confidence in the Capital/Securities Market. All such measures are intended to pre-empt manipulative trading and check all kinds of impermissible conduct.

SEBI provides for qualifications[1] and registration[2] that are necessary for investment advisors. Many finfluencers lack financial education, professional credentials and registration, their advice is based on personal opinions rather than sound financial principles which is mandatorily required for investment advisors to have. Jitender, the proprietor of Bigprofitbuzz, was found to be providing investment advisory services in contravention of SEBI regulations governing Investment Advisers 2013, and Research Analysts, 2014. These regulations prohibit such activities, irrespective of whether the individual is categorized as an influencer or not. This creates a regulatory gap, as influencers are evading the scrutiny that registered financial advisors and analysts are subject to. Without these regulations, influencers can claim to be a financial advisor or analyst without adhering to the standards and ethical guidelines that registered professionals are held to, exposing investors to fraudulent practices.

In recent years, SEBI has issued interim orders and reached settlements with finfluencers, such as *Nasiruddin Ansari* for giving buy or sell recommendations using the alias '*Baap of Chart,*' disguising it as educational training courses in the securities market, *P. R. Sundar,* for providing investment advisory packages through Telegram without registering with SEBI, *Svarnim Trade Udyog Limited,* for market abuse by pump-and-dump scheme, involving stock recommendations via the social media platform Telegram, *Sadhna Broadcast Limited* for assisting in creating trading volumes, spreading false and misleading YouTube videos, and inducing unsuspecting investors to purchase the *Sadhna* scrip at elevated prices, in violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, and *Sharpline Broadcast Limited* for engaging in manipulative and unfair trade practices, through paid promotions on their YouTube channels.

Finfluencers have a large number of followers and they influence market behaviour which could lead to market manipulation, pump-and-dump schemes, etc. SEBI as a regulatory oversight prevents these practices. An interim order was issued in the case of market manipulation of shares involving five small-cap companies through circulation of Bulk SMSs to induce investors. *Mr. Hanif Shekh*

[1] § 7, Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.
[2] § 3, *Ibid*.

was the master mind behind the scheme to lure and, or induce public investors to buy scrips. Although not a finfluencer per se, there is a need to control individuals who can manipulate the financial markets.

Hidden Ties: The Case for Transparent Endorsements

Influencers may have undisclosed conflicts of interest when promoting products or services. This happens when influencers are financially compensated, receive free products, or have a personal or business relationship with the companies they are endorsing, yet fail to transparently disclose these connections to their audience. Olivia Jade, a fashion and beauty vlogger, was accused of failing to disclose her relationship with *Glossier*, a beauty and skincare company when she promoted their products in sponsored posts on her social media platforms. Similarly, the Securities and Exchange Commission settled charges against professional boxer Floyd Mayweather Jr., music producer DJ Khaled and businessman John McAfee for failing to disclose payments they received for promoting investments in Initial Coin Offerings. Celebrity endorsement can influence investor behaviour, and for similar reasons SEBI prohibits celebrity endorsement to promote a scheme of a specific Mutual Fund house. Furthermore, SEBI expressed its views to the Parliamentary Standing Committee on banning celebrity endorsement of cryptocurrency.

Protecting Consumers or Followers?

All influencers are subject to the Consumer Protection Act, 2019, to address misleading advertisements, so it is not true that only finfluencers are being regulated. Influencers from other industries are also bound by regulations. The guide on '*Endorsements Know-hows! - for celebrities, influencers and virtual influencers on social media platforms*' issued under the Ministry of Consumer Affairs (**MCA**) seeks to prevent misleading advertisements on social media platforms. Finfluencers are also subject to these guidelines. Moreover, in a move to increase accountability of finfluencers, the Advertising Standards Council of India (**ASCI**) has published the '*Guidelines for Influencer Advertising in Digital Media*' and '*Guidelines for Advertising and Promotion of Virtual Digital Assets and Linked Services*.'

Conversely, influencers in other domains, often operate in niches where there is a lack of specific regulatory bodies. Health and wellness influencers are an exception due to the risks associated with health-related advice, which is why some jurisdictions have begun to regulate them more closely. To prevent the misinterpretation of medical information and to discourage self-diagnosis and self-treatment, which is dangerous in the absence of professional guidance, laws are necessary to counteract the influence of health fads or trends that lack scientific validity, which lead followers to make health decisions based on popular but unsubstantiated advice. Moreover, the protection of vulnerable audiences, such as those with chronic illnesses, mental health concerns, or limited access to healthcare, is essential to prevent them from making uninformed or detrimental health choices. This step was taken by MCA after consultations with the Ministry of Health, Ministry of Ayush, the Food Safety and Standards Authority of India, and ASCI.

In the case of *Marico Ltd. v. Abhijeet Bhansali*[3], the Court observed in relation to social media influencing:

> *"A word of caution which I believe is required in the context of the present case. Today, social media influencing is one of the most impactful and effective ways of marketing and advertising. A social media influencer who has or claims to have a sound knowledge on what they claim their niche is and uses that knowledge to influence people in believing and subscribing to the same set of ideas or thoughts they are trying to propagate on social media, have the power to influence people, to change attitudes and mindset...... In today's time, when people from all over the world are harnessing the potential of social media influencing, there is a need to understand what these responsibilities are and why they matter so much. Social Media Influencers, whether their audience is significant or small, impact the lives of everybody who watches their content. They do have a responsibility to ensure what they are publishing is not harmful or offensive."*

Conclusion

Regulations should be enacted for each sector, keeping pace with the nature of influencer marketing trends, and built upon an industry-specific understanding. Especially in areas such as health and wellness to combat the proliferation of health-related misinformation; beauty and cosmetics to prevent the promotion of unsafe products and deceptive advertising on unrealistic beauty standards; environmental conservation to promote sustainability and convey information about eco-friendly practices. Similarly, pharmaceuticals, food and nutrition demand regulatory oversight to prevent unqualified endorsement or advice of medications by non-professionals, while gambling and gaming require regulations to protect the vulnerable audience from addictive behaviour.

Finfluencers possess the ability to manipulate pricing causing market volatility which in turn affects fund raising, corporate governance, increases SEBI scrutiny, etc, this negatively impacts stock pricing, provokes regulatory litigation, distorts market competition, disrupts strategic mergers and acquisitions, etc. Information by influencers is directly reflected in the stock prices, hence, there is a pressing need to reassess the substance of stock prices and ensure the parties accountable who shape

---

[3] *Marico Ltd. v. Abhijeet Bhansali*, 2020 SCC OnLine Bom 60.

this information. While all influencers operate under the umbrella of consumer protection laws, the severity of consequences in the financial sector sets finfluencers apart.