

CIRCULAR

SEBI/HO/MIRSD/ MIRSD-PoD-1/P/CIR/2025/11

January 29, 2025

To,

All registered Intermediaries

All recognized Stock Exchanges

All recognized Clearing Corporations

All registered Depositories

**BSE Limited (Administration and Supervisory Body for Investment Advisers and
Research Analysts- IAASB/RAASB)**

Sir / Madam,

**Sub: Details/clarifications on provisions related to association of persons
regulated by the Board, MIs, and their agents with persons engaged in
prohibited activities**

1. Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2024, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Fourth Amendment) Regulations, 2024 and Securities and Exchange Board of India (Depositories and Participants) (Second Amendment) Regulations, 2024 have been published in the Official Gazette on August 29, 2024.
2. These regulations inter alia provide that persons regulated by the Board, MIs (stock exchanges, clearing corporations, depositories), and agents of such persons/MIs shall not have any direct or indirect association with another person who-

- (i) provides advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, unless the person is registered with or otherwise permitted by the Board to provide such advice or recommendation; or
- (ii) makes any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, unless the person has been permitted by the Board to make such a claim.

The person regulated by the Board (including recognised stock exchanges, clearing corporations and depositories) is required to ensure that any person associated with it or its agent does not engage in the activities mentioned in clauses (i) or (ii) above.

It has been clarified that the term “another person” shall not include a person who is engaged solely in investor education, provided that such a person does not, directly or indirectly, indulge in any activity as referred to in clauses (i) or (ii) above.

3. In this regard, the details/clarifications on the provisions are provided in the form of frequently asked questions at **Annexure A**. This is intended to provide guidance for compliance to persons regulated by the Board, MIs, and their agents on their association with another person.
4. This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulation 36 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, Regulations 50 of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 and Regulation 96 of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, to protect the interests of investors in securities market and to promote the development of, and to regulate the securities market.

5. This circular is available on the SEBI website at www.sebi.gov.in under the category "Legal →Circulars".

Yours faithfully,

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Annexure A

1. Which regulations provide provisions for association of persons regulated by the Board, MIs, and their agents with another person engaged in prohibited activities?

Regulation 16A of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations'), Regulation 44B of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ('SECC Regulations') and Regulation 82B of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 ('DP Regulations') provide the provisions on association of persons regulated by the Board, MIs, and their agents with another person engaged in prohibited activities (hereinafter referred to as "the regulations" or "these regulations" in this circular).

2. Who is a 'person regulated by the Board' for these regulations?

The term 'Person regulated by the Board' is defined in Intermediaries Regulations as-

- (a) a person registered with the Board under section 12 of the Act;
- (b) an asset management company of a mutual fund registered with the Board;
- (c) investment manager of an alternative investment fund or infrastructure investment trust registered with the Board;
- (d) manager of a real estate investment trust registered with the Board;

SECC Regulations and DP Regulations have similar provisions on association with another person, as in Intermediaries Regulations, for recognised stock exchanges, clearing corporations and registered depositories (MIs) respectively.

In this circular, hereinafter, for the ease of reference, person regulated by Board as defined under Intermediaries Regulations and MIs are collectively referred to as "persons regulated by the Board."

3. Who is an agent of persons regulated by the Board?

As per section 182 of the Indian Contract Act, 'agent' is a person who is employed to do any act for another, or to represent another in dealings with third persons. Whether a person is an agent of another person regulated by the Board is fact specified. Some examples of agent are: Employees, Mutual Fund Distributors, Authorised Persons of stock brokers etc.

4. What are the restrictions on persons regulated by the Board and their agents on their association with another person?

Persons regulated by the Board and their agents shall not have any direct or indirect association with another person who is engaged in any of the two activities not permitted by the Board. These two prohibited activities are:

- (i) providing advice or any recommendation, directly or indirectly, in respect of or related to a security or securities, without being registered with or otherwise permitted by the Board to provide such advice or recommendation; and
- (ii) making any claim, of returns or performance expressly or impliedly, in respect of or related to a security or securities, without being permitted by the Board to make such a claim.

5. What constitutes an association between persons regulated by the Board and their agents with another person?

The “association” for the purposes of these regulations shall mean the association in the nature of transaction involving money or money’s worth or referral of a client or interaction of information technology systems or any other association of similar nature or character, by any name called.

6. Whether persons regulated by the Board are responsible to ensure that the persons with whom they associate do not engage in abovementioned two prohibited activities?

Yes. It is the responsibility of the persons regulated by the Board to ensure that any person associated with them or their agent, directly or indirectly, does not engage in any of the abovementioned two prohibited activities, directly or indirectly. However, such responsibility shall be with respect and to the extent of their association.

Example: If a broker is availing tax advisory services from a tax advisor and his association with the tax advisor is limited to availing such services, the broker shall only have the responsibility to ensure, while availing such services, that such tax advisor is not engaged in prohibited activities.

7. Are there any restrictions on persons regulated by the Board and their agents to associate with another person who is engaged in investor education?

Investor education is not one of the two prohibited activities under these regulations. However, it must be ensured by the persons regulated by the Board that such person providing education does not engage in any of the abovementioned two prohibited activities, directly or indirectly.

8. What distinguishes education and advice/recommendation?

A person engaged solely in education shall mean that such person is not engaged in any of the two prohibited activities. Such person should not be using the market price data of the preceding three months to speak/talk/display the name of any security including using any code name of the security in his/her talk/speech, video, ticker, screen share etc. indicating the future price, advice or recommendation related to security or securities.

9. Whether the professional services provided by the person regulated by the Board to another person (e.g. an unregistered IA), like opening of his personal demat account or trading account, amount to association of such person with such another person?

There is no restriction on any person in availing the professional services offered by persons regulated by the Board, or their agents such as demat account or trading account services provided that such services/accounts are not used for any of the abovementioned two prohibited activities, directly or indirectly.

Example: Any person can avail demat account services from any depository participant without any restriction. Such demat account of a person with DP shall not amount to association of a DP with that person. However, in case such demat account is used to engage in aforesaid two prohibited activities, directly or indirectly, depository participant shall take appropriate necessary action to deactivate/discontinue the services for such demat account.

10. Whether stock brokers can avail services of another person who is engaged in any of the abovementioned two prohibited activities?

Persons regulated by the Board including stock brokers can not avail services of another person who is engaged in any of the abovementioned two prohibited activities, directly or indirectly.

11. Whether the Mutual Fund Distributors (MFDs), Authorised Persons (APs), Portfolio Management Services Distributors (PMS Distributors) and Alternative Investment Fund Distributors (AIF Distributors) are required to comply with these regulations for their association with another person?

MFDs, APs, PMS Distributors and AIF Distributors are agents of Asset Management Companies (AMCs), stock brokers, portfolio managers and investment manager of AIFs respectively. AMCs, stock brokers, stock brokers, portfolio managers and investment manager of AIFs being persons regulated by the Board are responsible to ensure compliance of their agents with these regulations.

12. What are the consequences of violation of these regulations for persons regulated by the Board and their agents?

As per Regulation 16B of Intermediaries Regulations and Regulation 82C of DP Regulations, SEBI may, in case of violation of any of the provisions of Regulation 16A of Intermediaries Regulations and Regulation 82B of DP Regulations respectively, take such action as it may deem fit including action under Chapter V of Intermediaries Regulations. Such action may include the enquiry, adjudication or an order under Section 11B of SEBI Act, 1992.

Further, in terms of Regulations 44C of SECC Regulations, SEBI may, in case of violation of any of the provisions of Regulation 44B of SECC Regulations, take such action as it may deem fit including action as provided under regulation 49 of SECC Regulations. Such action may include adjudication or an order under Section 11B of SEBI Act, 1992.

Potential actions could include penalty, suspension/cancellation of registration, debarment etc.

13. Can SEBI registered intermediaries make any payment to or receive payment from or share or receive any client information from or with another person engaged in any of the abovementioned two prohibited activities, directly or indirectly?

For the purposes of these regulations, “association” means-

- (a) a transaction involving money or money’s worth;
- (b) referral of a client;
- (c) interaction of information technology systems;
- (d) any other association of a similar nature or character.

Sharing client information is of similar nature as of “referral of a client”. Hence, making any payment or receiving payment or sharing any client information from or with any person shall amount to “association” under these regulations, and is not permitted.

Thus, such intermediaries are prohibited to make any payment or receive payment or share any client information from or with another person engaged in any of the abovementioned two prohibited activities, directly or indirectly.

14. Whether persons regulated by the Board and their agents are allowed to associate for their branding/marketing/promotional activities with another person?

The persons regulated by the Board and their agents are allowed to associate for their branding/marketing/promotional activities with another person provided that such another person is not engaged in any of the abovementioned two prohibited activities, directly or indirectly.

15. Can SEBI regulated entities and their agents associate with another person who is promoting consumer products from the sectors such as banking, financial services, and insurance, which are not regulated by SEBI?

Some of the products which are not under the purview of SEBI may come under the jurisdiction of some other regulatory authority. Hence, regulatory provisions of such other regulatory authority shall be applicable. However, persons regulated by the Board shall ensure that they and their agents shall not associate, directly or indirectly, with another person if such another person is engaged in any of the abovementioned two prohibited activities, directly or indirectly.

e.g. if a broker associates with a person (who is promoting insurance product) engaged in any of the two prohibited activities, it would be violation of the SEBI regulations since the Intermediaries Regulations prohibit any association, directly or indirectly, with another person engaged in any of the two prohibited activities.

16. Do the following amount to violation under the regulations?

a) Advertising/branding/lead generation through a marketing agency by any name.

The same shall amount to violation of the regulations if the person regulated by the Board or its agent indirectly ends up in getting associated with an entity engaged in any of the two prohibited activities.

- b) **Association through digital platforms where person regulated by Board or its agent has control on where any advertisement/content appear.**

No, if a person regulated by Board or its agent does not, directly or indirectly, end up in getting associated with an entity engaged in any of the two prohibited activities. Since the person or its agent has control on where its advertisement/content appear, it can ensure that there is no such association.

- c) **Association through digital platforms where person regulated by Board or its agent has no control over the content/entity with whom it gets associated.**

The same shall amount to violation of the regulations if the person regulated by Board or its agent indirectly ends up in getting associated with an entity engaged in any of the two prohibited activities.

17. When will these regulations come into effect?

These regulations have come into force with effect from August 29, 2024. Persons regulated by the Board and their agents have been advised through a circular dated October 22, 2024 to terminate their existing contracts, if any, with persons engaged in any of the abovementioned two prohibited activities, directly or indirectly, within three months from the date of issuance of that circular. Hence, these regulations are already in force.
