CHAPTER

TWENTY

FINFLUENCERS AS INVESTMENT ADVISORS—TIME TO REIN THEM IN?

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We live in an era in which, thanks to the digital revolution having catalyzed the media ecosystem, social media have taken center stage and become a significant part of all walks of life. One of the most significant developments has been the growth of financial influencers on platforms like YouTube, Instagram, Facebook, and WhatsApp, among others. Colloquially referred to as finfluencers, these social media influencers often dish out investment tips and recommendations without much professional experience in an environment devoid of mandatory disclosures. What makes matters worse is that these influencers are neither duly registered nor licensed to offer investment advice. This paper considers arguments for and against regulating financial influencers on social media in India. After exploring the regulatory regime already existing in some leading countries, the writer endeavors to identify the regulatory gaps in India and the desirability of bridging these gaps through suitable steps at the level of the market regulator, the Securities and Exchange Board of India, and the Advertising Standards Council of India. The paper concludes with recommendations to address this deficit through necessary regulatory interventions.

Introduction

Scrolling through my YouTube homepage, I have often come across thumbnails of videos that say, "the simple trick to double your money" or "how to make USD 500 a day trading stocks". Social media has transformed from being a platform to watch travel and music videos to a source of information on finance and investments. The lawyer in me wonders how sophisticated investment advisors' advice is followed by disclaimers that often run into several pages while YouTubers get away with giving free unsolicited financial advice without any such warnings. We hear similar disclaimers whenever we watch or hear insurance or mutual fund advertisements on television, social media websites, or radio. So, why treat online content creators differently?

Post-pandemic, India has witnessed the mushrooming of social media influencers and influencer marketing. Influencers often dish out investment tips and recommendations without much professional experience. Usually, influencers are sponsored by companies to talk about their products. This menace came into the spotlight in March 2023 when the Securities and Exchange Board of India ("SEBI") barred an Indian company from using YouTube channels to manipulate stock prices. In the instant case, specific videos on YouTube communicated false and misleading news to viewers and recommended that they buy the company's shares in order to earn extraordinary profits. This was followed by an increase in the price and trading volume of the scrip of the listed company. The participating entities were also barred from trading in the capital markets for their involvement in stock manipulation schemes. [3] The market turbulence caused by such "pump and dump" schemes has been a global phenomenon and has led to the introduction of a series of regulations across geographies. [7]

While stock market manipulation is an age-old phenomenon, digital media platforms have recently become the safe haven for such activities. Influencers are increasingly disseminating unverified information, which goes against India's broad contours of securities regulation. As the viewership of such financial influencers (also termed "finfluencers") on YouTube and other similar platforms increases, there is a possibility that less sophisticated investors may fall into the trap of bad or motivated advice and invest in stocks that may not turn out to be suitable investments.

The finfluencers are gaining popularity because of the nature of the videos and content they put out on their channels. Retail investors are not well versed with the financial jargon and thus are unable to comprehend the information available online or in newspapers on the stocks they are interested in investing. [3] They also lack the capacity to do the necessary due diligence. Content creators often use simple words and upload content in a mix of regional languages, which makes it easier for viewers to understand. Moreover, this content is available free of cost, thus providing greater accessibility to the masses. [8]

Traditionally, financial services and financial advisory space have been regulated through laws and regulations, including consumer protection and corporate laws. According to the SEBI guidelines, entities involved in the business of giving investment advice must be mandatorily registered with SEBI, and advisors are required to meet specific educational and professional qualifications. SEBI has laid down a code of conduct that such entities need to adhere to before disclosing any relevant information and giving investment advice. Many finfluencers, however, are not licensed financial advisors yet provide similar advice to the masses. The risks they potentially pose to customers and the financial market are areas of concern and merit prompt and effective regulatory measures. At the time of writing this paper, SEBI is in the process of releasing a set of regulations for influencers providing financial advice on social media websites, including Twitter, YouTube, Instagram, and Facebook. [6,7] The aim of this paper is to understand the need for such regulations and define their broad forms. My argument is that financial advice given by social media influencers should be regulated and that they must follow a code of conduct that is similar to the code otherwise applicable to other (mostly offline) financial advisers.

ARGUMENTS AGAINST REGULATION

As per statistics, as of 2022, the influencer marketing industry in India was valued at over INR 12 billion and is expected to be around INR 26 billion by 2026. Nearly 55 million urban Indians were direct consumers of influencers of various kinds as of 2022. [4] Thus, as a profession, influencer marketing is lucrative and would attract more Indians in the near future. On the one hand, this profession may provide a decent livelihood to people who seek value in having the liberty to work from home, enjoy time flexibility, and communicate with the masses in their regional languages. On the other hand, as this profession grows, the reach of influencer marketing is also going to expand, thus affecting the lives and content consumption of millions of users.

Influencers in the past have taken umbrage at the idea of regulation and have taken refuge under the articles related to freedom of speech and expression and of trade and profession, enshrined in the Indian constitution. [8] They may also claim that the information provided by them is unsolicited, free of cost, based on their experiences, and meets the terms and conditions of the specific website.

Furthermore, the subscribers of their channels are not their clients, as anyone who has access to the internet can watch their content.

Although the art of content creation should be respected, the sector cannot exploit that veneer to sway investment decisions through its content or commentary. These promotional videos should be treated as being akin to financial advertising, and thus adequate disclosures should be in place to inform the viewers of the risks involved in such transactions. A potential impediment for regulators could be distinguishing between videos that provide financial education to the audience and those that provide financial advice. Moreover, who bears the burden of monitoring and ascertaining the nature of the content uploaded by the finfluencer? For regulators, clamping down on thousands of financial creators who regularly produce content could also be challenging and financially burdensome.

Securities regulation in any country works on the principle of investor protection through a mechanism of adequate and timely disclosures. Following the same argument, I advocate for greater disclosures in this space rather than censorship of such content. Besides, such disclosures shall restrict the growth of unscrupulous persons, paving the way for a greater following of genuine finfluencers.

ARGUMENTS IN FAVOUR OF REGULATION

Lack of regulation and oversight in the digital world can be dangerous, particularly as regards its inability to keep a check on flimsy financial strategies that are neither ethical nor foolproof. Seeking advice from an experienced, registered financial adviser is always safer than turning to a self-proclaimed online financial guru. To quote a recent example, according to the data released by the Advertising Standards Council of India, influencer ads constituted more than 92 per cent of the misleading cryptocurrency advertisements examined by the regulator in early 2022. In the same vein, SEBI also submitted a proposal to the Parliament's Standing Committee on Finance to consider banning celebrities and public figures from endorsing cryptocurrencies. [11]

Many finfluencers often lack the credibility and authority of a certified financial professional. Since there are no prerequisite qualifications for making a social media account, anyone can claim to be an advisor. Even though the host channels may garner a lot of interest and may have subscribers running into lakhs, it is crucial to check the credibility and professional experience of the finfluencers before following their advice. Sponsorship for videos constitutes the primary source of income for content creators. Creators may be promoting a product, service, or investment in order to receive commission or compensation. These affiliations may color their financial advice, leading to wrong or incomplete information for the viewers. The finfluencer may not have conducted the requisite due diligence before advertising a particular financial avenue. In case the investments fail, the investor could lose a large portion of their invested capital. Further, to make the matter worse and as observed in the recent case mentioned above, often the comments section of such videos is disabled, making it difficult to protect or forewarn innocent investors.

Many influencers claim in their videos that they guarantee profits within a few days, which entices their viewers to the markets and impels them to invest. As there is a lack of regulatory oversight, social media platforms have advisors ranging from unqualified to super-experienced.

The viewers are left to themselves to decide whose advice they would want to follow. In case the influencers are regulated, at least the viewers can tread with confidence while deciding about their investments. The viewers, who are often gullible investors, should ideally be cautioned regarding the nature of the advice being disseminated by the influencers and also about the source of information. Based on this, they can be best placed to take a call on whether they would want to follow the advice or not.

Recommendations

(I) SEBI Regulations

In Australia, finfluencers face a risk of penalties and imprisonment for up to five years in case they provide financial advice without a prior license. The Financial Market Authority of New Zealand also issued a 'Guide to Talking About Money Online' in January 2021 to provide tips for both consumers and social media influencers engaging in related activities. The Monetary Authority of Singapore has also warned social media content creators against posting false or misleading statements and other activities that may constitute market abuse under securities laws. [1,2]

On similar lines, SEBI should lay down specific rules for financial influencers. In case they provide independent financial advice, that should come with a disclaimer that the stock market is risky and that the investors should do their own research before investing. Further, in case any false or misleading information is disseminated by the influencers, there should be strict penalties in place.

In case they are being sponsored by specific companies to talk about their investment products, the same should be disclosed clearly in the videos. At the same time, a clear distinction has to be made between financial education and financial advice, and these terms should be unambiguously defined. YouTube has proved to be a game-changer in the field of financial literacy as well. Thus, the uploading of financial education videos should rather be encouraged by SEBI. However, investment advice needs to be brought under regulatory scrutiny.

(II) Steps to be taken by the ASCI and the Consumer Affairs Ministry

ASCI should also come up with guidelines with respect to financial advertising on social media platforms. A standard operating procedure should be laid down for influencers regarding the disclosures about the risky nature of investments in stock markets and that financial advisors on social media are not “registered investment advisors” [6]. In case the video is not sponsored, a disclaimer should be included indicating how investment advice is an opinion based on personal research and due diligence. Measures should also be undertaken by the ASCI and the Central Consumer Protection Authority to curb false advertising on such platforms to curb stock market manipulation.

Conclusion

There is no denying the fact that social media and influencers are having an ever-increasing impact on people’s decision-making. Although finfluencers can contribute to improving the general public’s financial literacy, they also pose several risks regarding investor protection and financial stability. The financial and sectoral regulators need to urgently address this. Though the guidelines for finfluencers across jurisdictions vary, one unmissable common feature is the requirement for meeting the minimum qualifications for giving financial advice. Cross-sector collaboration is also necessary to mitigate the risks to investors and the Indian capital market.

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