

Public Comments

The consultation paper seeking comments/views from public on the draft IFSCA (Capital Market Intermediaries) Regulations, 2021 were issued by IFSCA on July 28, 2021.

The following comments have been received:

No.	Regulation No. [As per consultation paper]	Category	Draft Regulation	Proposed/Suggested Changes	Rationale
1	Reg - 4	Obligation to seek recognition	<p>4. (1) The following categories of intermediaries shall obtain a certificate of registration from the Authority prior to commencement of operations in an IFSC:</p> <p>(a) Broker dealers; Explanation: The broker dealers shall be eligible for registration as segregated nominee account providers with the recognised stock exchanges pursuant to compliance with the requirements specified by the exchanges and Authority from time to time.</p> <p>(b) Clearing members; Explanation: The clearing members shall be eligible for registration as segregated nominee account providers with the recognised clearing corporations pursuant to compliance with the requirements specified by the clearing corporations and Authority from time to time.</p> <p>(c) Depository participants; (d) Investment bankers; (e) Portfolio Managers; (f) Investment Advisers: investment fund or any other intermediary or entity, recognised by the Authority; (g) Custodians; and (h) Any other category of intermediaries, as may be specified by the Authority from time to time.</p> <p>(2) The following categories of intermediaries may obtain a certification of registration from the Authority for providing services for any financial product, financial services and financial institutions in an IFSC: (a) Credit rating agencies; (b) Debenture Trustees; (c) Account Aggregators; and (d) Any other category of intermediaries, as may be specified by the Authority from time to time.</p> <p>(3) A Banking Unit recognised by the Authority under the IFSCA (Banking) Regulations, 2020 shall be permitted to function as a banker to an issue in an IFSC, without any additional registration requirement, subject to compliance with the regulatory provisions that may be specified by the Authority from time to time.</p> <p>(4) Notwithstanding sub-regulations (1) to (3) above, the Authority may specify norms for authorization of capital market intermediaries for operating or providing services in an IFSC from time to time.</p>	<p>1. SEBI process requires each applicant TM/CM/PCM to first seek an NOC from SEBI. Upon receipt of the same only is the applicant required to apply for registration with SEBI. As there is no mention about seeking the NOC from the IFSCA, it is not clear whether this process step, which is also presently followed by the IFSCA, is not to be followed anymore by Stock Exchanges/Clearing Corporations while submitting applications for registration for TM/CM/PCM applications.</p> <p>2. The following intermediaries are not listed under this clause. It may be useful to consider these or clarify if there would be separate regulations/guidelines issued for their registrations. a. Registrars and Transfer Agents b. KYC Registration Agencies (either a composite one across capital markets/ banking /insurance/ pensions or multiple as contemplated by the Authority) c. Merchant Bankers</p> <p>3. To consider Inclusion of "Authorized Persons" in IFSC, in India (outside IFSC) or in a Foreign Jurisdiction, appointed by trading members/ broker dealers as their agent and are provided with access to the trading platform of recognized stock exchange.</p> <p>4. Similarly, to consider inclusion of Segregated Nominee Account Providers as well.</p>	
2	Reg 5	Application for registration	<p>5. (1) An entity desirous of obtaining a certificate of registration as a capital market intermediary in an IFSC shall submit an application form in the format provided in Part I of Schedule I to the Authority along with the application fees as specified by the Authority:</p> <p>Provided that the applicant seeking registration to act as a broker dealer or clearing member or depository participant shall make the application along with such additional information through the recognised stock exchange or recognised clearing corporation or recognised depository respectively.</p> <p>(2) The recognised stock exchange, the recognised clearing corporation, the recognised depository, as the case may be, shall examine the eligibility of the applicant in terms of these regulations, relevant Acts, regulations and the rules, bye-laws of the concerned stock exchange, clearing corporation, depository and forward the application with the application fees to the Authority along with its recommendation as early as possible but not later than thirty days of receipt</p>	<p>To consider inclusion of the following:</p> <ol style="list-style-type: none"> 1. A broker dealer/clearing member shall also be permitted to apply and act as a depository participant 2. A custodian registered with the Authority, operating either as a branch or a subsidiary at IFSC can apply for clearing membership of a recognised clearing corporation <p>A broker dealer of a recognised stock exchange, a clearing member of a recognised clearing corporation or any other entity as defined by the Authority from time to time, operating at the IFSC either as a branch or a subsidiary, can apply to the Authority for registration as a Custodian</p>	

			<p>of the complete application with the specified application fees.</p> <p>(3) Subject to approval by the concerned recognised stock exchange, and without any requirement of a separate certificate of registration, - (i) a registered clearing member may be permitted to act as a broker dealer; and (ii) a registered broker dealer may be permitted to operate in more than one stock exchange.</p> <p>(4) Subject to approval by the concerned recognised clearing corporation, and without any requirement of a separate certificate of registration, - (i) a registered broker dealer may be permitted to act as a clearing member in a clearing corporation; and (ii) a registered clearing member may be permitted to operate in more than one clearing corporation.</p> <p>(5) Subject to approval by the concerned recognised depository, a registered depository participant may be permitted to act as a participant of another depository without obtaining separate certificate of registration.</p> <p>(6) The provisions of these regulations, as applicable to the grant of registration shall also apply to an application for renewal of registration of a capital market intermediary, wherever applicable.</p>		
3	Reg 6	Structure	<p>6.A capital market intermediary seeking registration with the Authority shall be required to be present in an IFSC by establishing a branch or forming a company or LLP or body corporate or partnership firm or proprietorship firm or any other form as may be permitted by the Authority:</p> <p>Provided that the branch structure is permitted only for an intermediary which is already registered in India or a Foreign Jurisdiction for conducting similar activities or already registered with the Authority in any capacity:</p>	For abundant clarity, a specific mention to be made that a SEBI registered Trading Member or Clearing Member of domestic Exchange in India can seek registration with IFSCA as broker dealer/ Clearing Member by establishing a branch at IFSC and not necessarily having to form a separate entity at IFSC.	
4	Reg 9 -	Fit & proper person	<p>9.(1) A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel and controlling shareholders are fit and proper persons, at all times.</p> <p>(2) For the purpose of sub-regulation (1), a person shall be deemed to be a fit and proper person if, - (a) such person has a record of fairness and integrity, including but not limited to- (i) financial integrity; (ii) good reputation and character; and (iii) honesty. (b) such person has not incurred any of the following disqualifications – (i) the person has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against securities laws; (ii) a recovery proceeding has been initiated against the person by a financial regulatory authority and is pending; (iii) an order for winding up has been passed against the person for malfeasance; (iv) the person has been declared insolvent and not discharged; (v) an order, restraining, prohibiting or debaring the person from accessing or dealing in financial products or financial services, has been passed by any regulatory authority, and a period of three years from the date of the expiry of the period specified in the order has not elapsed; (vi) any other order against the person, which has a bearing on the securities market, has been passed by the Authority or any other regulatory authority, and a period of three years from the date of the order has not elapsed; (vii) the person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force; (viii) the person is financially not sound or has been categorized as a wilful defaulter;</p>	It may be useful to clarify if the promoter entity of an IFSC entity is declared a defaulter and/or is expelled by Indian stock exchanges, whether the IFSC entity and its Directors (whether also being a Director in the India entity or not) continues to be Fit & Proper.	

			(ix)the person has been declared a fugitive economic offender; or (x)any other disqualification as may be specified by the Authority.		
5	Reg 10	Registration requirements	<p>(2)In addition to sub-regulation (1), in respect of an application for registration as a portfolio manager or an investment adviser, the principal officer of the applicant shall have:</p> <p>(a)A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a CFA Charter from the CFA Institute;</p> <p>(b)An experience of at least five years in related activities in the securities market or financial products including in a portfolio manager, broker dealer, investment advisor, research analyst or fund management; and</p> <p>(c)A certification from any organization or institution or association or stock exchange which is recognized/ accredited by IFSCA or a regulator in an IFSC, India or Foreign Jurisdiction.</p> <p>(3)In addition to sub-regulations (1) and (2), in respect of an application for registration as a portfolio manager, the applicant shall have in its employment at least one person with the following qualifications:</p> <p>(a)a graduate from a university or an institution recognized by the Central Government or any State Government or a foreign university or qualification as mentioned in clause (a) of sub-regulation (2); and</p> <p>(b)experience of at least two years in related activities in the securities market or financial products: Provided that any employee of the portfolio manager who has decision making authority related to fund management shall have the same minimum qualifications, experience and certification as specified for the principal officer.</p> <p>(4)In addition to sub-regulations (1) and (2), in respect of an application for registration as investment adviser, all persons associated with investment advice of the applicant shall have:</p> <p>(a)a graduate from a university or an institution recognized by the Central Government or any State Government or a foreign university or qualification as mentioned in clause (a) of sub-regulation (2);</p> <p>(b)experience of at least two years in related activities in the securities market or financial products; and</p> <p>(c)certification as provided in clause (c) of sub-regulation (2) above.</p>	IFSCA may consider the following institutions as valid: GIFT-IFSC Branch unit of BSE Institute Limited; international institutes of repute across global financial centres which IFSCA would consider to be 'recognized', the NIFM etc.	
6	Reg -11	Simplified Application	<p>11.(1) Notwithstanding anything provided in this Chapter, an entity which is registered in India or a Foreign Jurisdiction, and the registration is valid, may apply for registration under the same category with a simplified application form specified in Part II of Schedule I, along with the application fees specified by the Authority, until March 31, 2022: Provide that such entity shall comply with the fit and proper and net worth requirements specified in these regulations.</p> <p>(2)The entity would be required to comply with all the provisions of this Chapter for continuing to operate as a capital market intermediary, within a period of 1 year from the date of registration.</p>	<p>It is suggested that the Reg 11(2) modified for inclusion of phrase given in italics below to enable intermediaries to meet the requirements, as applicable –</p> <p>- The entity would be required to comply with all the provisions of this Chapter for continuing to operate as a capital market intermediary, within a period of 1 year from the date of registration <u>or issue of these regulations whichever is later.</u></p>	
7	Reg 14	Surrender of registration	<p>A registered capital market intermediary may file an application with the Authority for surrender of its registration: Provided that a broker dealer or clearing member or depository participant shall make such application through the recognised stock exchange or recognised clearing corporation or recognised depository respectively.</p>	While the self-initiated surrenders by the broker dealers/clearing members is covered in this clause, a separate clause may be required pertaining to expulsions / declaration of defaulter / suspension by stock exchanges/clearing corporations/depositories.	

8	Chapter II	General		It is suggested to include sections pertaining to the below w.r.t which the Intermediaries may necessarily have to seek approvals from the IFSCA and the market infrastructure institutions: i)Change of Control of the registered intermediary (due to induction of new shareholders/change in shareholding of existing shareholders etc.) ii)Mergers / Amalgamations of IFSCA registered intermediaries iii)Takeover of an intermediary by other unrecognized entities or recognized intermediaries iv)Change in legal status of intermediary.	
9	Reg 24	Payment of Fees	A registered capital market intermediary shall pay fees as specified by the Authority from time to time.	It is suggested that for the sake of clarity, we mention the various fees in this clause - “...capital market intermediary shall pay the fees pertaining to registration, annual fees, turnover based fees and any other fees as may be specified by the Authority or the market infrastructure institutions from time to time...”	
10	Reg 25	Annual Audit	25.(1) A registered capital market intermediary shall conduct an annual audit in respect of compliance with these regulations. (2) A registered capital market intermediary shall conduct additional audits and submit such reports as may be specified by the Authority from time to time.	It may be noted that the broker dealers /clearing members stock exchanges /clearing corporations are required to conduct following audits and submit reports to the MIIs as per extant SEBI regulations as per applicable periodicities: <ul style="list-style-type: none"> • Internal Audit Report • System Audit Report • Cyber Security Report • Cyber Security Resilience Audit Report Separately, they are also required to submit the AI & ML report quarterly and the audited financial statements and net worth. It is understood that these are to be continued with; in which case it is suggested that Clause no. 25 may specify the same suitably. Alternatively, a circular may be issued pertaining to the same for adherence by broker dealers.	
11	Reg 27	Broker dealers and Clearing members	1) A registered broker dealer shall ensure compliance with the applicable laws, including byelaws of the recognised stock exchange. 2) A registered clearing member shall ensure compliance with the applicable laws, including bye-laws of the recognised clearing corporation.	Compliance with only the byelaws is mentioned. Compliance with the Rules and the Regulations of the MIIs also needs to be mentioned for abundant clarity and enable their enforceability	
12	Reg 33(d)	Portfolio managers- Category of Clients	33. A portfolio manager may have the following categories as clients: (a) a person resident outside India; (b) a non-resident Indian; (c) a non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted; and (d) an individual resident in India having a net worth of at least US Dollar one million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India.	To clarify on the Net worth requirement of 1 million in 33(d). Vide IFSCA clarificatory circular dated 19th February 2021 the net worth norm will not apply for resident individual	
13	Reg 46(d)	Investment advisers- Category of Clients	An investment adviser may have the following categories as clients: (a) a person resident outside India; (b) a non-resident Indian; (c) a non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted; and (d) an individual resident in India having a net worth of at least US Dollar one million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent	To clarify on the Net worth requirement of 1 million in 33(d) & 46(d). Vide IFSCA clarificatory circular dated 19th February 2021 the net worth norm will not apply for resident individual	

			allowed in the Liberalized Remittance Scheme of Reserve Bank of India.		
14	Chapter VI	Inspection		It is suggested that this chapter should cover inspections undertaken of the broker dealers/ clearing members by the market infrastructure institutions apart from the IFSCA.	
15	Reg 87 (2)	Repeal and Savings	87(1) On and from the commencement of these regulations, Chapter III of the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015 shall not apply in an IFSC. (2) On and from the commencement of these regulations, Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, Securities and Exchange Board of India (Underwriters) Regulations, 1993, Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994, Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, Securities and Exchange Board of India (Investment Adviser) Regulations, 2013 and Securities and Exchange Board of India (Stock-Brokers) Regulations, 1992, Securities and Exchange Board of India (Custodian) Regulations, 1996, Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 and Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 shall not apply in an IFSC.	As SEBI (Stockbrokers) Regulations 1992 will no longer apply to IFSC, relevant details of turnover based regulatory fee under Reg 8 and related schedules of the said stockbroker regulation viz., the components of turnover, penalty for delayed payment etc are to be incorporated by way of amendment to IFSCA circular on Fee structure for MIs and Participants dated 13th April 2021	
16	Regulation no :3	Definitions		Proposed Draft Regulations covered most of the intermediaries I/We Suggest for Inclusion of 1. Stock/Commodity Exchange (Like MCX, NSE) 2. Proposed regulation is silent on Depository 3. Underwriters 4. Sub-Brokers	1. Exchanges play a vital role in capital markets, IFSCA may include rules pertaining to Exchanges in the proposed IFSCA (Capital Market Intermediaries) Regulations, 2021 or it may bring separate regulations to set up exchanges (In the line of Bullion Exchange Proposed) 2. Though IFSCA has allowed Central Depository Services Limited (CDSL) for the operationalization of depository functions at GIFT-IFSC. We suggest to bring them under the proposed IFSCA (Capital Market Intermediaries) Regulations, 2021. 3. Underwriters play a crucial role in Public issue. We suggest to bring them under the proposed IFSCA (Capital Market Intermediaries) Regulations, 2021. 4. We suggest to include 'sub broker' in IFSCA (Capital Market Intermediaries) Regulations, 2021.
17	Regulation no:4.(1)	Obligation to seek recognition	4. (1) The following categories of intermediaries shall obtain a certificate of registration from the Authority prior to commencement of operations in an IFSC: (a) Broker dealers; Explanation: The broker dealers shall be eligible for registration as segregated nominee account providers with the recognised stock exchanges pursuant to compliance with the requirements specified by the exchanges and Authority from time to time. (b) Clearing members; Explanation: The clearing members shall be eligible for registration as segregated nominee account providers with the recognised clearing corporations pursuant to compliance with the requirements specified by the clearing corporations and Authority from time to time. (c) Depository participants; (d) Investment bankers; (e) Portfolio Managers;	4 (1) (a) include Sub-Brokers	Sub-Brokers are huge in number across India. They play an important role in markets.

			(f)Investment Advisers: investment fund or any other intermediary or entity, recognised by the Authority; (g)Custodians; and (h)Any other category of intermediaries, as may be specified by the Authority from time to time.		
18	Regulation no: 6.	Structure	A capital market intermediary seeking registration with the Authority shall be required to be present in an IFSC by establishing a branch or forming a company or LLP or body corporate or partnership firm or proprietorship firm or any other form as may be permitted by the Authority: Provided that the branch structure is permitted only for an intermediary which is already registered in India or a Foreign Jurisdiction for conducting similar activities or already registered with the Authority in any capacity.	A Mechanism need to be established for allowing new intermediaries in IFSC	In the dynamic financial world, new players may emerge anytime. Allowing them in IFSC will help in further extension of IFSC
19	Reg. 4(1)(f)	Exemption from registration as Investment Adviser	4. (1) The following categories of intermediaries shall obtain a certificate of registration from the Authority prior to commencement of operations in an IFSC: (f)Investment Advisers: Provided that the following persons shall not be required to seek registration as an investment adviser in IFSC: (i)any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product; (ii)any insurance agent or insurance brokers recognised by the Authority, who offers investment advice solely in insurance products; (iii)any pension adviser recognised by the Authority, who offers investment advice solely in pension products; (iv)any distributor of mutual funds providing any investment advice to its clients incidental to its primary activity; (v)any advocate, solicitor or law firm, who offers investment advice to its clients, incidental to their legal practice; (vi)any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Authority, who provides investment advice to their clients, incidental to his professional service; (vii)any broker dealer, portfolio manager or investment banker recognised by the Authority under these regulations, who offers investment advice to its clients, incidental to their primary activity; (viii) any fund manager, by whatever name called of a mutual fund, alternative investment fund or any other intermediary or entity, recognised by the Authority; (ix)any principal officer and person associated with advice of an investment adviser which is recognised by the Authority under these regulations; and (x)any other person as may be specified by the Authority.	As per clause (viii) of the proviso to draft regulation 4(1)(f), "any fund manager, by whatever name called of a mutual fund, alternative investment fund or any other intermediary or entity, recognised by the Authority" has been exempted. The same exemption should be made applicable for investment advice provided to certain investors such as a) Central and State Governments, b) Developmental agencies set up under the aegis of Government(s), c) funds set up by Government(s), d) Multilateral Agencies, e) Sovereign Wealth Funds, f) Qualified Institutional Buyers, g) Investors who are registered and regulated under a Financial Regulator in the country of their domicile. h) Investors who invest primarily in unlisted securities as permitted under IFSC regulations with a minimum investment of USD 1 Mn. i) Any other category of investors, as may be prescribed.	The Investment Adviser Regulations have been designed to safeguard the interests of retail investors, who lack the ability to conduct market research, assess the risk of a particular investment product and therefore have to rely on external advice for their investment decisions. This registration requirement may however create challenges for VC/PE fund managers desirous of providing services to offshore clients, due to application of circular no. SEBI/HO/IMD/DF1/CIR/P/2020 /182 dated September 23, 2020 issued by SEBI. Typically, during the investment period of the VC/PE funds, the fees are charged on commitment to support the expenses of the Fund Manager when portfolio is being gradually built. After the commitment period, the fees are charged on invested capital and at the end of the term, depending on performance, carry incentive is paid for achieving upside over committed returns. This has been the stated norm in the VC/PE Industry worldwide. The registration as investment adviser leading to applicability of circular and consequently the limitation on the ability of the VC/PE Fund manager, to charge bilaterally negotiated fees during the commitment period as well as to receive carry income from offshore clients, will affect the viability to operate as a Fund Manager within IFSC, and will be a deterrent for the VC/PE industry to grow in IFSC. Our submission is to allow the VC/PE Managers to operate in IFSC without registration as Investment Adviser.
20	Regulation 3(1) (j)	Custodial Service	(j)"custodial services" in relation to financial products means safekeeping of such financial products and providing services incidental thereto, and includes: a. maintaining accounts of such financial products; b. collecting the benefits or rights accruing to the client in respect of such financial products; c. keeping the client informed of the actions taken or to be taken by the issuer, having a bearing on the benefits or rights accruing to the client; and d. maintaining and reconciling records of the services;	Clarification required- Custodial service has been defined as service in relation to "financial products". Request you to incorporate definition of "financial products" in the regulation.	In India as per SEBI, custodian service is in relation to "Securities"; "Goods"; etc. and these words are defined in SEBI Securities Contracts (Regulation) Act, 1956. For clarity purpose the word "financial products" should be defined.

21	Regulation 3(1) (s)	Investment Banker	(s)"investment banker" means a person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;	In the Consultation Paper (CP) word "Investment Banker" has been used for Merchant Banker. Wherein in earlier IFSCA circular issued term "Merchant Banker" has been used. Accordingly, request to bring out consistency/ clarity in the proposed regulation.	As per IFSCA circular dated June 25, 2021, fees has been prescribed for "Merchant Bankers" in IFSC.
22	Regulation - 11	Simplified Application	11.(1) Notwithstanding anything provided in this Chapter, an entity which is registered in India or a Foreign Jurisdiction, and the registration is valid, may apply for registration under the same category with a simplified application form specified in Part II of Schedule I, along with the application fees specified by the Authority, until March 31, 2022: Provided that such entity shall comply with the fit and proper and net worth requirements specified in these regulations. (2)The entity would be required to comply with all the provisions of this Chapter for continuing to operate as a capital market intermediary, within a period of 1 year from the date of registration.	In case if any intermediary wants to apply for multiple licence than request if we can evaluate to issue some unified licence for all activities.	It will reduce hassle of applying multiple times and give operational ease.
23	Regulation – 12	Grant of registration	The Authority may, after considering the application and on being satisfied that the applicant has complied with the conditions laid down in these regulations and is eligible to act as a capital market intermediary, and upon receipt of registration fees (as specified by the Authority), grant registration to the applicant subject to the conditions as the Authority may deem fit.	Currently the registration certificate fees paid is for 3 years and then renewal fees are payable. Request to include a clause for making the registration fees valid for 7 years instead of 3 years. Renewal fees to be levied after 7 years as a temporary relief to the intermediary who are setting up in IFSC.	Considering the initial stages of business in IFSC, an early period relief in registration fees would be encouraging step for Intermediaries.
24	Regulation 10	Registration Renewal	Registration requirements The Authority shall take into account all matters which it deems relevant for grant of registration to a capital market intermediary.	Along with registration proposing to include framework for renewal of registration certificate.	Renewal registration certificate process is to be formalised.
25	Reg. 16	Maintenance of books of account, records and other documents	Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years	In the CP, it has been specified intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years. Request for reducing the minimum retention period to 8 years or 10 years.	SEBI for capital market intermediaries has prescribed Maintenance of books of account, records and other documents for a period of 5 to 8 years in various regulations. Thus, would request if the record retention period can be kept at 8 years or 10 years.
26	Regulation 25 (2)	Annual Audit	A registered capital market intermediary shall conduct additional audits and submit such reports as may be specified by the Authority from time to time	Request clarity on what kind of additional audit would be required also request if clarity can be provided that it can be conducted by internal auditor or external auditor.	For clarity to intermediaries request to provide specifications on the requirements of additional audit.
27	Regulation 23	Change in control	A registered capital market intermediary shall intimate the Authority within 15 days, in case of any change in control of the intermediary.	1.The timeline for intimation should be extended to within 30 days. 2.To provide more clarity "Control" definition should include change in the controlling interest in the body corporate. The Controlling interest should be defined as an interest, whether direct or indirect, to the extent of at least fifty-one per cent of voting rights in the body corporate	Request for keeping the timeline for change in control as within 30 days. Clarity to be provided in the definition of Control.
28	Chapter IV- Regulation 33 (d)	Portfolio Managers	A portfolio manager may have the following categories as clients: a) a person resident outside India; b) a non-resident Indian; c) a non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted; and d) an individual resident in India having a net worth of at least US Dollar one million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India.	In the categories of clients for Portfolio managers- Proposing to remove net worth requirement of USD one million to invest in funds offshore.	Definition for Qualified Resident Individual has been Omitted by Notification No. IFSCA/2020-21/GN/REG013, dated 5th July, 2021 and permitted that Individuals who are person resident in India are permitted to open, hold and maintain accounts in a freely convertible foreign currency, with a Banking Unit. It will lead to additional third-party confirmation.

29	Regulation 39 (2)	Portfolio Managers	(2) The discretionary portfolio manager shall invest funds of his clients in the securities listed or traded on stock exchanges, money market instruments, units of mutual funds and other securities in India, an IFSC or Foreign Jurisdiction as specified by the Authority from time to time.	In the CP issued by IFSCA, there is no specifications on resident individual investors while as per LRS guidelines of RBI, there are additional conditions: •The remittance shall be made only for making investments in IFSCs in securities, other than those issued by entities /companies resident (outside IFSC) in India. •Any funds lying idle in the account for a period up to 15 days from the date of its receipt into the account shall be immediately repatriated to domestic INR account of the investor in India.	Requesting to provide clarity for investment by resident individual through Portfolio Managers considering LRS guideline of RBI.
30	Regulation 76 (1)	Cross Border Business	A registered capital market intermediary undertaking cross-border business operations shall submit an annual certification from an external auditor to the Authority that the conditions specified in this Chapter and the regulatory requirements specified by the Authority from time to time, have been complied with, within 30 days of end of financial year.	A registered capital market intermediary such as "Banking units" can be exempt from submission of an annual certification from an external auditor to the Authority.	Since BUs/REs already need to comply with statutory audits and APR reporting, so proposing these entities can be made exempt for submission of an annual certification from an external auditor.
31	Regulation 76 (1)	Cross- Border Business	A registered capital market intermediary undertaking cross-border business operations shall submit an annual certification from an external auditor to the Authority that the conditions specified in this Chapter and the regulatory requirements specified by the Authority from time to time, have been complied with, within 30 days of end of financial year.	Annual certification submission timeline should be extended as 120 days from end of Financial Year. Clarity required- Request to provide format for annual certification.	Getting the audit completed at the end of financial year and then submitting the certificate within timeline of 30 days would be operational difficult. Request for revising the timeline to 120 days from end of Financial Year.
32	Regulation 5, 6, 7 & 10	Registration Process		The Authority may authorise a Company Secretary in Practice (PCS) to certify the Form for processing an application for registration as a capital market intermediary. PCS will certify that an applicant seeking registration as capital market intermediaries under regulations 5, 6, 7& 10, has complied with the conditions laid down in regulations and is eligible for operating as capital market intermediary, governed by the provisions of these regulations and any other regulations that have been formulated by the Authority. This certification in form of a 'Certificate of Compliance' will provide assurance to the Authority about the fulfilment of conditions mentioned in the Form and will assist in faster disposal of applications for registration as a capital market intermediary. The ICSI may provide the draft format of the Certificate of Compliance upon hearing from your good office.	A Company Secretary is well versed with memorandum of association, articles of association, byelaws, and ownership and governance structure of a company or LLP or body corporate or partnership firm or proprietorship firm or any other form and can ascertain requirements relating to the structure, shareholding, net worth, etc. required for the formation of a capital market intermediary in the above mentioned forms. The certification by a PCS will give necessary assurance to the Authority while registering a capital market intermediary as the Authority will not be required to review each aspect threadbare which will speed up the process of approval. Company Secretary is widely acclaimed for the understanding of laws not only from a legal perspective but also from a management and technical perspective. Company Secretary is provided with exhaustive exposure by the ICSI through coaching, examination, rigorous training and continuing professional development programmes and is governed by the Code of Conduct as prescribed in the Company Secretaries Act, 1980. A Company Secretary in Practice (PCS) renders various services viz. certification/ attestation, compliance, advisory, representation and arbitration, conciliation services and the other services as prescribed under Section 2(2) of the Company Secretaries Act,

					<p>1980 to the corporations, body corporates, societies, trusts, associations, enterprises, undertakings, etc.</p> <p>A PCS is authorised to undertake the following certification and audit services:</p> <p>to certify Registration along with Article of Association, Memorandum of Understanding, Details of Promoters/ Partner/ Shareholder, Net worth, Paid up Capital, Foreign Direct Investment in the company for the purpose of Application for Grant of Unified License (Virtual Network Operators)/ Authorisation for Additional Services {Department of Telecommunications (Access Service Cell) [Notification No. 800- 23/2011-VAS (Vol. II)]}</p> <p>to certify that the applicant has complied with all the requirements relating to registration fees, share capital, deposits and other requirements of the Insurance Regulatory and Development Authority Act, 1999. [IRDA (Registration of Indian Insurance Companies) Regulations, 2016 (Regulation 10)]</p> <p>to conduct due diligence under Regulation 10 (3) of the SEBI (Delisting of Equity Shares) Regulations 2021</p> <p>to certify the Shares held by inactive shareholders under Proviso to Regulation 21 (a) of the SEBI (Delisting of Equity Shares) Regulations 2021</p> <p>to provide certificate of compliance under Regulation 13 , 26 (3), 27 (4) & 36 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021</p> <p>to issue Certificate in case of the Indian company accepting the investment from a foreign investor, thereby confirming compliance of Companies Act, 2013 and other matters. [As per Para 9(1)(B)(i) of Schedule 1 to Notification No. FEMA 20/2000-RB dated May 3, 2000]</p> <p>to certify that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls /allotment services under Regulations 40(9) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.</p> <p>to certify compliance of conditions of Corporate Governance under Schedule V, Clause E of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.</p>
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33	Regulation 9	Fit and proper requirement	<p>9.(1) A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel and controlling shareholders are fit and proper persons, at all times.</p> <p>(2) For the purpose of sub-regulation (1), a person shall be deemed to be a fit and proper person if, -</p> <p>(a) such person has a record of fairness and integrity, including but not limited to-</p> <p>(i) financial integrity;</p> <p>(ii) good reputation and character; and</p> <p>(iii) honesty.</p> <p>(b) such person has not incurred any of the following disqualifications –</p> <p>(i) the person has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against securities laws;</p> <p>(ii) a recovery proceeding has been initiated against the person by a financial regulatory authority and is pending;</p> <p>(iii) an order for winding up has been passed against the person for malfeasance;</p> <p>(iv) the person has been declared insolvent and not discharged;</p> <p>(v) an order, restraining, prohibiting or debaring the person from accessing or dealing in financial products or financial services, has been passed by any regulatory authority, and a period of three years from the date of the expiry of the period specified in the order has not elapsed;</p> <p>(vi) any other order against the person, which has a bearing on the securities market, has been passed by the Authority or any other regulatory authority, and a period of three years from the date of the order has not elapsed;</p> <p>(vii) the person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;</p> <p>(viii) the person is financially not sound or has been categorized as a wilful defaulter;</p> <p>(ix) the person has been declared a fugitive economic offender; or</p> <p>(x) any other disqualification as may be specified by the Authority.</p>	<p>It is submitted that fit and proper criteria for shareholders may be removed since it will be cumbersome to carry out this exercise they are covering 'Controlling shareholder' only.</p> <p>A PCS may be authorised to certify the disqualifications as mentioned in Regulation 9 (b) for directors, and Key Managerial Person of a capital market intermediary.</p>	<p>A PCS possess requisite technical knowledge and expertise under Companies Act, RBI Act, SEBI Act and rules and regulations made thereunder to ascertain disqualifications of directors and KMPs.</p> <p>A PCS is authorised to certify that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by SEBI/Ministry of Corporate Affairs or any such statutory authority under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Schedule V, Part C of Clause (10)(i)]</p>
34	Regulation 25	Annual Audit	<p>(1) A registered capital market intermediary shall conduct an annual audit in respect of compliance with these regulations.</p> <p>(2) A registered capital market intermediary shall conduct additional audits and submit such reports as may be specified by the Authority from time to time.</p>	<p>A PCS may be authorised to conduct the audit of capital market intermediaries in respect of compliance with these regulations.</p>	<p>In the context of Capital Markets, capital markets intermediaries are an important constituent of overall governance framework. Being an important link between regulators, investors and issuers, they are expected to ensure that their internal controls are so efficient that</p>

				<p>they ensure effective investor service at all times and provide regulators comfort as to the compliance of regulatory prescription. It is in this direction that SEBI has authorised PCS to undertake internal/yearly/concurrent audit of various capital market intermediaries.</p> <p>Recognitions to Company Secretaries in Practice (PCS)</p> <p>The Company Secretary has been recognized to carry out audit, certification of documents etc. under the following provisions/Regulations/ Laws:</p> <p>To conduct internal audit of various SEBI registered intermediaries such as Registrar to an Issue and Share Transfer Agent, Stock Brokers/Trading Members/Clearing Members, Credit Rating Agencies, Investment Advisers, Research Analysts etc.</p> <p>To conduct Internal Audit of Depository Participants</p> <p>To conduct Concurrent Audit in case of Demat Account Opening, Control, Verification of Delivery Instruction Slips.</p> <p>Certificate regarding Reconciliation of Share Capital i.e. reconciliation of total issued capital, listed capital and capital held by depositories in dematerialized form under Regulation 76 of the SEBI (Depositories and Participants) Regulations, 2018.</p> <p>Certificate in the form of PAS-6, for every unlisted public company in respect of Reconciliation of Share Capital i.e. reconciliation of total issued capital, listed capital and capital held by depositories in dematerialized form under sub-rule (8) of rule 9A of the Companies (Prospectus and Allotment of Securities Rules, 2014.</p> <p>To conduct Secretarial Audit under Section 204 of the Companies Act, 2013 and Regulation 24A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 certifying that the company has complied with all the applicable laws.</p> <p>To conduct Internal Audit of the Companies as per section 138 of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014.</p> <p>To issue Annual Secretarial Compliance Report to every listed entity and its material unlisted subsidiaries incorporated in India on compliance of all applicable SEBI Regulations and circulars/ guidelines issued thereunder [Regulation 24A (2) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.</p> <p>To act as Registered Valuer and to issue valuation reports for asset class of Securities or Financial Assets under the Companies (Registered</p>
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35	Regulation 26	Appointment of Designated Officer	A registered capital market intermediary shall, for the purpose of enforcing compliance with regulatory requirements, appoint a senior management person as Designated Officer.	It is requested that 'a Company Secretary' qualification may be considered for appointment of Designated Officer/Compliance Officer.	<p>The IFSCA has reposed confidence on the profession of Company Secretaries and has recognized the Company Secretary as 'Compliance Officer' to be appointed under Regulation 130 of the IFSCA (Issuance and Listing of Securities) Regulations, 2021.</p> <p>Regulators such as SEBI, IRDAI, Petroleum and Natural Gas Regulatory Board (PNGRB) have mandated the appointment of Company Secretary as Compliance Officer since he possess adequate skill and expertise for discharging the duties as Compliance Officer.</p> <p>A Company Secretary is a competent professional and possesses exhaustive exposure in the Companies Act, SEBI laws, FEMA, corporate funding, mergers and acquisitions, management, accounting, finance, resolution of corporate disputes, etc. He is thoroughly conversant with the technicalities and substantive provisions of the law.</p> <p>A Company Secretary is well versed with compliances, filing and disclosure requirements under the Companies Act, FEMA, SEBI laws and other legislations applicable to a company.</p> <p>A Company Secretary plays a vital role in compliance with the various applicable laws. Since compliance is a prime issue, it is necessary that such tasks are undertaken by qualified professionals having adequate knowledge and practical experience.</p> <p>A Company Secretary acts as adviser to the Board in various matters relating to disclosure, compliances, risk management, business policy, strategy and planning, IPR and taxation matters.</p> <p>Company Secretary in employment acts as Compliance Officer, Advisor, KMP, Corporate Risk Manager, Chief Governance Officer, Corporate Planner and Strategic Manager, etc.</p> <p>A Company Secretary discharges secretarial functions with regards to organizing Board and general meetings, keeping minutes of meeting, recording approved share transfers, corresponding with directors and</p>

					<p>shareholders, maintaining statutory records, filing necessary returns with Registrar of Companies, etc. Company Secretaries are recognized for employment as under:</p> <p>Designated as Compliance Officer under Regulation 6 of SEBI {Listing Obligations and Disclosure Requirements (LODR)} Regulations, 2015.</p> <p>Compliance Officer under Regulation 27 (4) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.</p> <p>Designated as Compliance Officer under Regulation 30 of the Petroleum and Natural Gas Regulatory Board (Gas Exchange) Regulations, 2020.</p> <p>Designated as Compliance Officer under IRDAI (Corporate Governance) Guidelines for Insurers in India [Clause 11.4.2]</p> <p>As per Regulation 16(1)(d) of SEBI (LODR) Regulations 'Senior management' shall specifically include Company Secretary excluding board of director.</p> <p>Recognized as a Key Managerial Personnel (KMP) as per section 2(51) of the Companies Act, 2013.</p> <p>Appointment as whole-time KMP in every listed company or every other company having a paid-up share capital of 10 crore rupees or more as per Section 203 of the Companies Act, 2013 read with the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.</p> <p>Appointed as Key Management Person under IRDA (Registration of Indian Insurance Companies) Regulation, 2000 [Regulation 2(1)(i)]</p>
36	Regulation 3 (1) (i)	Definition	credit rating agency" means a person which is engaged in the business of assigning credit rating;	credit rating agency" means a person who is engaged in or proposed to be engaged in, the rating of securities or financial products, or such other products as may be introduced by IFSCA from time to time.	The same has been modified to be in consonance with Clause 64 of this draft International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021.
37	4	Obligation to seek registration	<p>4. (1) The following categories of intermediaries shall obtain a certificate of registration from the Authority prior to commencement of operations in an IFSC:</p> <p>(a) Broker dealers; Explanation: The broker dealers shall be eligible for registration as segregated nominee account providers with the recognised stock exchanges pursuant to compliance with the requirements specified by the exchanges and Authority from time to time.</p> <p>(b) Clearing members; Explanation: The clearing members shall be eligible for registration as segregated nominee account providers with the recognised clearing corporations pursuant to compliance with the requirements specified by the clearing corporations and Authority from time to time.</p> <p>(c) Depository participants;</p> <p>(d) Investment bankers;</p> <p>(e) Portfolio Managers;</p> <p>(f) Investment Advisers: investment fund or any other intermediary or entity, recognised by the Authority;</p> <p>(g) Custodians; and</p> <p>(h) Any other category of intermediaries, as may be specified by the Authority from time to time.</p>	<p>Proposed suggestion to add the following classes of entities as intermediaries:</p> <p>A. Merchant Banker; B. Bankers to an Issue; C. Underwriters; D. RTA & Share Transfer Agent</p>	<p>Issuance of certain classes of securities.</p> <p>Certain instruments as enumerated below may be issued by the exchanges in IFSCA jurisdiction by virtue of the IFSCA (Issuance and Listing of Securities) Regulations, 2021.</p> <p>(a) an initial public offer of specified securities by an unlisted issuer;</p> <p>(b) a follow-on public offer of specified securities by a listed issuer;</p> <p>(c) listing of specified securities by a startup company or an SME company;</p> <p>(d) secondary listing of specified securities;</p> <p>(e) an initial public offer of specified securities by a Special Purpose Acquisition Company;</p>

			<p>(2)The following categories of intermediaries may obtain a certification of registration from the Authority for providing services for any financial product, financial services and financial institutions in an IFSC:</p> <p>(a)Credit rating agencies; (b)Debenture Trustees; (c)Account Aggregators; and (d)Any other category of intermediaries, as may be specified by the Authority from time to time.</p> <p>(3)A Banking Unit recognised by the Authority under the IFSCA (Banking) Regulations, 2020 shall be permitted to function as a banker to an issue in an IFSC, without any additional registration requirement, subject to compliance with the regulatory provisions that may be specified by the Authority from time to time.</p> <p>(4) Notwithstanding sub-regulations (1) to (3) above, the Authority may specify norms for authorization of capital market intermediaries for operating or providing services in an IFSC from time to time.</p>		<p>(f) rights issue and/or preferential issues by a listed issuer; Confidential (g) listing of depository receipts; (h) listing of debt securities; (i) listing of ESG debt securities; and (j) issuance and/or listing of any other securities as may be specified by the Authority from time to time.</p> <p>Therefore, it is suggested that these entities may be recognized as intermediaries in the present regulations.</p>
38	4 (2)	Obligation to seek registration	<p>(2) The following categories of intermediaries may obtain a certification of registration from the Authority for providing services for any financial product, financial services and financial institutions in an IFSC:</p> <p>(a)Credit rating agencies; (b)Debenture Trustees; (c)Account Aggregators; and (d)Any other category of intermediaries, as may be specified by the Authority from time to time.</p>	<p>The following provision may be inserted after Regulation 4 (2) (d):</p> <p>Provided it shall be mandatory for the intermediaries to seek a certification of registration from the Authority, for providing services for any financial product, financial services and financial institutions in IFSC if the intermediaries are not registered in India or in Foreign Jurisdiction Or Authorities may provide for a mechanism for mandatory registration/ regulation of the intermediaries mentioned herein.</p>	<p>In the present regulation, there is no provision for mandatory registration of the intermediaries under Regulation 4(2). Such a scenario may give rise to a person not being registered in India or in the Foreign Jurisdiction and may still provide services in IFSC jurisdiction. Therefore, it is proposed that a proviso may be added for mandatory registration /regulation of such intermediaries.</p>
39	9(1)	Fit and Proper Requirement	<p>A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel and controlling shareholders are fit and proper persons, at all times.</p>	<p>A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel, promoter (natural persons) who is an individual and neither a director or shareholder, partner and controlling shareholders are fit and proper persons, at all times.</p> <p>For the purpose of this Regulation, promoter may be defined as under:</p> <p>“promoter” shall include a person: i.who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or ii.who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or iii.in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act: Provided that nothing in sub-clause (iii) shall apply to a person who is acting merely in a professional capacity.</p>	<p>In order to remove any ambiguity, promoter and partner of a partnership firm may be included, as they are distinct from the persons mentioned. Additionally, for the purpose of this Regulation, inclusion of the definition of promoter as suggested may be considered.</p>
40	9 (2)	Fit and Proper Requirement	<p>9.(1) A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel and controlling shareholders are fit and proper persons, at all times.</p> <p>(2) For the purpose of sub-regulation (1), a person shall be deemed to be a fit and proper person if, - (a)such person has a record of fairness and integrity, including but not limited to- (i)financial integrity; (ii)good reputation and character; and (iii)honesty. (b)such person has not incurred any of the following disqualifications – (i)the person has been convicted by a court for any offence involving moral turpitude or any economic offence or any offence against securities laws; (ii)a recovery proceeding has been initiated against the person by a financial regulatory authority and is pending;</p>	<p>The following sub-regulation may be included in Regulation 9(2) (b):</p> <p>The person has a negative credit score that has been provided by a credit rating agency.</p>	<p>The Consultation Paper stipulates a wide range of the requirements, in our view, to comply with and adhere to the ‘fit and proper person’, the criteria of negative credit score, and the financial credibility of the person should also be taken into consideration.</p> <p>Further, the purpose of the IFSCA is to make the securities market a safe place to invest</p>

			<p>(iii)an order for winding up has been passed against the person for malfeasance;</p> <p>(iv)the person has been declared insolvent and not discharged;</p> <p>(v)an order, restraining, prohibiting or debarring the person from accessing or dealing in financial products or financial services, has been passed by any regulatory authority, and a period of three years from the date of the expiry of the period specified in the order has not elapsed;</p> <p>(vi)any other order against the person, which has a bearing on the securities market, has been passed by the Authority or any other regulatory authority, and a period of three years from the date of the order has not elapsed;</p> <p>(vii)the person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;</p> <p>(viii)the person is financially not sound or has been categorized as a wilful defaulter;</p> <p>(ix)the person has been declared a fugitive economic offender; or</p> <p>(x)any other disqualification as may be specified by the Authority.</p>		
41	18	Redressal of Grievances	<p>A registered capital market intermediary shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint.</p> <p>The intermediary shall maintain records regarding investor grievances received by it and redressal of such grievances.</p>	<p>The following may be inserted in the present Regulation:</p> <p>“The intermediary shall at the end of each quarter of a Financial Year ending on 31st March upload information about the number of investor grievances received, redressed and those remaining unresolved beyond three months of the receipt thereof by the intermediary on the website specified by the Board.”</p>	<p>While paragraph 18 of the Consultation Paper states that registered capital market intermediary should take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and should maintain records regarding investor grievances received by, in our view, IFSCA should consider adding a stipulation to the extant regulation of uploading information about the number of investor grievances received, redressed and those remaining unresolved beyond a specific period of the receipt thereof by the intermediary on the website specified by the IFSCA at the time prescribed by the IFSCA.</p>
42	23	Change in control	<p>A registered capital market intermediary shall intimate the Authority within 15 days, in case of any change in control of the intermediary.</p>	<p>We suggest that in case of change of control, prior approval should be obtained.</p> <p>We also suggest that definition of change in control shall be provided.</p>	<p>As per current practice, in case of change of control, prior approval is obtained from the regulator& the exchange and consequently, the new registration certificate is issued by Regulator.</p> <p>Definition will clarify what constitutes change in control.</p>
43	27	Broker dealers and Clearing members	<p>27.(1) A registered broker dealer shall ensure compliance with the applicable laws, including byelaws of the recognised stock exchange.</p> <p>(2)A registered clearing member shall ensure compliance with the applicable laws, including bye-laws of the recognised clearing corporation.</p>	<p>Categories of clients that broker dealer can have can be specified on similar lines prescribed for portfolio manager in this Regulation (33) and as per SEBI IFSC 2015 guidelines [9 (1)].</p>	<p>This will be enabling provision and provide clarity to whom they are allowed to transact with.</p>
44	75	Cross -Border Business	<p>75. A registered capital market intermediary may undertake cross-border business in capital markets in India or a Foreign Jurisdiction, subject to the following conditions:</p> <p>(a)The intermediary shall ensure that its cross-border business activities in capital markets is in compliance with the applicable regulatory requirements of the other jurisdiction;</p> <p>(b)The intermediary shall ring fence its IFSC related capital market activities with its cross-border operations;</p> <p>(c)The intermediary shall ensure that it has appropriate risk management and internal controls to ensure that the interests of its clients and investors in IFSC are adequately protected;</p> <p>(d)The intermediary shall perform KYC norms, client due diligence, Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) in accordance with the following,</p> <p>-</p> <p>i.Applicable norms in IFSC in respect of clients onboarded in IFSC; and</p> <p>ii.Applicable norms in IFSC or other jurisdiction in respect of clients onboarded in other jurisdiction.</p> <p>(e)The intermediary shall maintain records (including details of client, KYC, details of</p>	<p>Requirement of separate registration or intimation in prescribed format should be specified.</p>	<p>Due to this requirement, IFSCA will know the list of intermediaries who are involved in cross border business.</p>

			transactions etc.) of its cross-border activities in electronic retrieval form for a period of 20 years and the same shall be made available to the Authority as and when required; (f)The intermediary shall have policies and procedures pertaining to handling of complaints in respect of its cross-border operations; and (g)The intermediary shall furnish to the Authority such reports as may be specified by the Authority from time to time.		
45	75(e)	Cross -Border Business	(e)The intermediary shall maintain records (including details of client, KYC, details of transactions etc.) of its cross-border activities in electronic retrieval form for a period of 20 years and the same shall be made available to the Authority as and when required;	"The intermediaries shall maintain records (including details of client, KYC, details of transactions etc.) of their cross-border activities in electronic retrieval form for a period of 20 years from and the same shall be made available to the Authority as and when required;"	Relevant date /point in time should be provided for the purpose of commencement of the 20 years period. This would ensure that there is no ambiguity in the provision.
46	87 (2)	Repeal and Savings	(2)On and from the commencement of these regulations, Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, Securities and Exchange Board of India (Underwriters) Regulations, 1993, Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994, Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, Securities and Exchange Board of India (Investment Adviser) Regulations, 2013 and Securities and Exchange Board of India (Stock-Brokers) Regulations, 1992, Securities and Exchange Board of India (Custodian) Regulations, 1996, Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 and Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 shall not apply in an IFSC.	SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 shall be included in the list of "Repeal and Savings"	This is not there in the list of regulation provided in that point.
47	Schedule 1 Part I Pt. 11	Financial Information (Balance Sheet and P&L Statement)	Financial Information (Balance Sheet and P&L Statement)	We can add below, Please enclose financial information not older than six months as on the date of application.	This is not there in the list of regulation provided in that point.
48	Schedule 1 Part I Pt. 12	Net worth as per the latest audited financial statements of the applicant	Net worth as per the latest audited financial statements of the applicant Please enclose net worth certificate not older than six months as on the date of application.	Both the requirement seems conflicting. Audited financials are generally of March end. So as per this provisions NWC can be accepted till Sep end. What if the date of applications after Sep? Financial Statements signed by principle officer/KMP/Designated officer can be taken. However, Network certificate can be provided by Chartered Accountant /Company Secretary / Certified Public Accountant (or equivalent)	
49	Schedule II	Net Worth Requirements		For Broker dealer, Clearing Member, Self clearing member, and Depository participant, Network can be specified as jointly decided by the exchanges.	This will have the uniformity in the requirement as same intermediary can have membership of multiple exchanges and also to avoid any Regulatory arbitrage it is advisable.
50	Schedule III	Code of Conduct		The following may be inserted in the present Regulation to the Code of Conduct: Paragraph 24: An intermediary shall not make a recommendation to any client or investor who may be expected to rely thereon to acquire, dispose of or retain any securities traded on IFSCA (platform) unless he has reasonable grounds to believe that the recommendation is suitable.	The said provision is being recommended from a point of view of (i) safeguarding the investor's rights; and (ii) ensure transparency in dealings by the intermediaries.
51			Suggestion to Include Additional Provision	Provision pertaining to Data Privacy may be included in these Regulations for the purpose of curbing any misuse of data.	We request IFSCA to consider express provisions relating to data privacy and storage of payment data by these intermediaries, especially with respect to sensitive personal data or information.

					In this regard, IFSCA should consider: I. IT Rules, 2011; II. Proposed data privacy legislations, as and when they may be passed and enacted; III. Storage of Payment Data circular dated April 6, 2018 issued by the Reserve Bank of India vide circular no. RBI/2017-18/153 DPSS.CO.OD No.2785/06.08.005/2017-2018
52			Suggestion to Include Additional Provision	Transition Provisions Capital Market Intermediaries who are currently operating in the IFSC, may continue to operate subject to complying with these regulations. Such intermediaries may, within [time period] of notification of the proposed regulations shall comply with proposed regulation.	IFSCA may prescribe a transition period for the benefit of such capital market intermediaries who are currently operating in IFSC for complying with the proposed regulation.
53			Suggestion to Include Additional Provision	Provision pertaining to an Appellate judicial forum for appeal against decision of IFSCA passed under the present regulations may be included in the regulations.	Judicial remedy available to intermediaries in case they are aggrieved by decisions under the draft regulations
54	3(1)(j)	Definition of Custodial Services	(j)“custodial services” in relation to financial products means safekeeping of such financial products and providing services incidental thereto, and includes: a. maintaining accounts of such financial products; b. collecting the benefits or rights accruing to the client in respect of such financial products; c. keeping the client informed of the actions taken or to be taken by the issuer, having a bearing on the benefits or rights accruing to the client; and d. maintaining and reconciling records of the services;	Please add the following as sub-clause (e) under the definition of the term “custodial services”: “e. undertaking activities as an IFSC-based depository in respect of depository receipts issued in terms of the International Financial Services Centres Authority (Issuance and Listing of Securities) Regulations, 2021”	A similar activity has already been included under the ambit of the term “custodial services”, as defined under Regulation 2(1)(e)(ia) of the SEBI (Custodians of Securities) Regulations, 1996. Please see the language of the same below: “(ia) undertaking activities as a Domestic Depository in terms of the Companies (Issue of Indian Depository Receipts) Rules, 2004” In the event that this suggested point (e) is not included, an issuance and listing of depository receipts may never take place in IFSCs since market participants may read the absence of the enabling language as an indication that the regulator intended for custodians to not act as IFSC-based depositories for depository receipts. Currently, even the IFSCA (Issuance and Listing of Securities) Regulations, 2021, do not specify who can be an IFSC-based depository for a depository receipts programme.
55	Regulation 54 to 57	Specific Obligations and responsibilities for Custodian		Please consider including the following additional responsibilities of custodians, in the relevant place in the section dedicated to custodians: (i) Every custodian shall open a separate custody account for each client, in the name of the client whose securities are in its custody and the assets of one client shall not be mixed with those of another client. (ii) The custodian shall be continuously accountable for the movement of securities or goods in and out of the custody account, deposit, and withdrawal of cash from the client's account and shall provide complete audit trail, whenever called for by the client or IFSCA. (iii) Every custodian shall exercise due diligence in safe-keeping and administration of the assets of his clients in his custody for which he is acting as custodian. (iv) The custodian shall create and maintain the records of securities held in custody in such manner that the tracing of securities or obtaining duplicate title	The additional responsibilities suggested arise from the SEBI (Custodians of Securities) Regulations, 1996. For your ease of reference, the relevant regulation numbers are specified below: Point (i): Regulation 16 Point (ii): Regulation 12 (viz. code of conduct), read with contents of the Third Schedule Point (iii): Regulation 12 (viz. code of conduct), read with contents of the Third Schedule Point (iv): Regulation 12 (viz. code of conduct), read with contents of the Third Schedule

				documents is facilitated, in the event of loss of original records for any reason.	
56	33 (d) and 46(d)	Portfolio Managers and Investments Advisers	an individual resident in India having a net worth of at least US Dollar one million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India	It is recommended to do away with or lower threshold of net -worth condition of USD 1 million for an individual resident in India.	In order to attract investments from potential investments in India, the threshold of 1 mn USD as net worth could be a hindrance in attracting retail clients. Also, it will be a regulatory burden to check net worth. Under regulation 40 (1), a client of a portfolio manager needs to bring a minimum funds/security of USD 700,000.
57	38	Portfolio Managers	The portfolio manager shall charge an agreed fee from the clients for rendering portfolio management services without guaranteeing or assuring, either directly or indirectly, any return and the fee so charged may be a fixed fee or a return-based fee or a combination of both.	Please clarify whether upfront fee can be charged by the PMS entity in IFSC. Also, prescribe the methodology for calculation of return based fee.	Currently, the SEBI FAQ on PMS issued on October 28, 2020 provided an indicative illustration for calculation of performance fee considering the high-water mark principle. Previously, the SEBI vide circular ref no. Cir/IMD/DF/13/2010 dated October 5, 2010 had prescribed that the performance fee shall be charged on the basis of high-water mark principle. Hence, in absence of any such methodology, there could be disparity among portfolio managers in the calculation of the fee. It is recommended that the IFSC Authority prescribe an appropriate methodology for this purpose.
58	Regulation 38	Portfolio Managers	The portfolio manager shall charge an agreed fee from the clients for rendering portfolio management services without guaranteeing or assuring, either directly or indirectly, any return and the fee so charged may be a fixed fee or a return-based fee or a combination of both.	Please clarify whether distribution fee can be paid upfront to the distributors.	As per regulation 22(11) of the SEBI (Portfolio Managers) Regulations, PMs are not permitted to charge any upfront fees directly or indirectly to the clients. The SEBI circular dated 13 February 2020 further clarified that the PMs shall pay fees or commission to distributors only on trail basis (refer point G.16.ii of the circular). In other words, no upfront fees, of any nature, can be paid to the distributors. To market Portfolio Management services to non-residents and foreign investors as a product in IFSC, PMs will be required to appoint offshore distributors. These distributors demand upfront fees for distribution of the products. Such upfront fee is paid by the international peers to these distributors to distribute the products to their clients. Entities who do not pay upfront fees do not get any preference. Moreover, PMs in Singapore are permitted to charge distribution/ referral fees/ placement fees as a part of organisational expenses.

					Hence, it is recommended that the IFSC Authority clarify on this aspect to avoid any ambiguity.
59	Regulation 39(2)	Portfolio Managers	The discretionary portfolio manager shall invest funds of his clients in the securities listed or traded on stock exchanges, money market instruments, units of mutual funds and other securities in India, an IFSC or Foreign Jurisdiction as specified by the Authority from time to time.	It is recommended that this clause may be deleted.	<p>Under these proposed regulations, Regulation 34 states that PMs operating in an IFSC are permitted to invest in securities in India, IFSC or Foreign Jurisdiction.</p> <p>The proposed regulation 39(2), states the securities in which discretionary PM may invest in and also permits them to invest in 'other securities in India/ IFSC/ Foreign Jurisdiction'.</p> <p>This creates a doubt and considering the intent of the IFSC Authority to permit PMs to invest across all jurisdictions, it is recommended that this sub-clause (2) to Regulation 39 may kindly be deleted.</p>
60	Regulation 6	Structure	Provided that the branch structure is permitted only for an intermediary which is already registered in India or a Foreign Jurisdiction for conducting similar activities or already registered with the Authority in any capacity:	It is recommended that the branch structure be permitted for intermediaries even if they are not registered but regulated in India or Foreign Jurisdiction.	<p>Currently, there are certain entities which are not registered with SEBI but are regulated by SEBI, for example Asset Management Companies, AIF Managers etc. AMCs which operate Mutual Fund schemes, are themselves not registered but their schemes are registered with the SEBI in accordance with SEBI (Mutual Fund) Regulations.</p> <p>Hence, in order to permit such entities to set up branch structure in IFSC, it is recommended that the Regulation be suitably amended.</p>
60	Regulation 7(a)	Structure	(a) The entity shall adequately ring fence the operations of the branch in IFSC;	Please define the term 'ring fence' and provide necessary guidelines for the same.	<p>The term 'ring fence' has not been defined and may lead to multiple interpretations.</p> <p>A clear set of guidelines/ framework for capital market intermediaries to satisfy ring fencing may be issued by the IFSC Authority, so that entities are not in violation of the regulations.</p>
61	Regulation 10(2)(c)	Registration requirements	(c) A certification from any organization or institution or association or stock exchange which is recognized/ accredited by IFSCA or a regulator in an IFSC, India or Foreign Jurisdiction.	It is recommended to relax the mandatory requirement for obtaining certification for certain portfolio managers who have already established their presence in the portfolio management industry over the years, whether in India or Foreign Jurisdiction. The IFSC Authority may thus suitably amend the clause to provide relaxation based on the experience criteria.	<p>Existing PMs and IAs holding valid registration are permitted to set up a branch or subsidiary company in IFSC.</p> <p>The certification requirement under these proposed regulations may cause a hindrance to existing PMs and IAs who have decades of experience in the investment management domain.</p> <p>For instance, the Ministry of Corporate Affairs has also specifically exempted directors with three years of experience of statutory corporations set up under an Act of Parliament or</p>

					<p>any State legislature carrying on commercial activities from their qualifying online self-proficiency test.</p> <p>Hence, in order to create an enabling environment in IFSC, the IFSC Authority may consider rationalising this mandatory certification requirement for existing PMs or IAs based on the experience criteria.</p>
62	Regulation 26	Appointment of Designated Officer	A registered capital market intermediary shall, for the purpose of enforcing compliance with regulatory requirements, appoint a senior management person as Designated Officer.	Please clarify whether the term 'Designated officer' under this regulation can be the same person as principal officer defined in clause (x) of Regulation 3.	<p>Under the existing SEBI (Portfolio Managers) Regulations, Regulation 34 mandates a PM to appoint a 'compliance officer' with a condition that the 'principal officer' shall not be designated as the compliance officer.</p> <p>However, there is no such condition mentioned under the SEBI (Investment Advisers) Regulations, SEBI (Merchant Bankers) Regulations or the SEBI (Stock Brokers and Sub Brokers) Regulations.</p> <p>Hence, it is recommended that the IFSC Authority clarify whether the principal officer of an intermediary can also be the designated officer.</p>
63	Regulation 16(1) and Regulation 75(e)	Maintenance of Books and records, and Cross Border Business	<p>16(1) - Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years, namely: ***</p> <p>75(e) -The intermediary shall maintain records (including details of client, KYC, details of transactions etc.) of its cross-border activities in electronic retrieval form for a period of 20 years and the same shall be made available to the Authority as and when required;</p>	It is recommended to lower the time limit of 20 years.	<p>Under the current SEBI (Portfolio Managers) Regulations, Regulation 29 prescribes that books of accounts and documents shall be maintained for a period of 5 years.</p> <p>Similarly, under the SEBI (Investment Advisers) Regulations; SEBI (Stock brokers and Sub brokers) Regulations and SEBI (Merchant Bankers) Regulations, books of accounts are required to be maintained for 5 years.</p> <p>In view of the above, the time limit of 20 years as prescribed in the proposed regulations is too long and needs to be in tune with the existing requirements. Hence, it is recommended to lower the time limit suitably.</p>
64	Regulation 16(1)(c)	Maintenance of Books and records	a copy of the auditor's report on the accounts for each accounting period;	It is recommended to provide that the accounting period, for a branch or subsidiary of a company, shall mean the accounting period as followed by the parent entity of the said capital market intermediary.	<p>Under Regulation 11 read with Regulation 6 of the proposed regulations, existing capital market intermediaries holding valid registration either in India or foreign jurisdiction, are permitted to obtain registration with IFSC Authority, by establishing a branch/subsidiary company.</p> <p>It must be noted that the accounting period generally followed in various jurisdictions is usually different from the financial year followed in India i.e. April to March.</p> <p>Given that the branch and/or subsidiaries are required to</p>

					consolidate their accounts with their parent entity, there needs to be clarity in the term 'accounting period' for the purpose of maintenance of books of accounts by intermediaries in IFSC.
65	Regulation 16(1)(d)	Maintenance of Books and records	(d) a statement of net worth for each quarter;	It is recommended that the net worth be certified by a chartered accountant. Further, the net worth certificate shall be furnished as and when required by the IFSC Authority instead of the proposed quarterly submission.	Regulation 28 of SEBI (Portfolio Managers) Regulations state that a net worth certificate issued by a chartered accountant must be furnished by the Portfolio Manager to SEBI as and when required. At sr. no. 12 of the Application Form provided in Schedule I of these proposed regulations, net worth certificate is required to be submitted along with the application form. Hence, to avoid any ambiguity which may arise due to multiple interpretations, it is recommended to suitably amend the proposed regulations.
66	Regulation 19(1)	Business Continuity Plan	A registered capital market intermediary shall maintain a business continuity plan identifying procedure relating to an emergency or significant business disruption.	It is recommended to amend the regulations to grant powers to the IFSC Authority to issue a framework. Subsequently provide a detailed framework for intermediaries to satisfy the 'Business Continuity Plan'.	The current regulations have put the onus of business continuity plan, cyber security and cyber resilience and risk management and internal control on the capital market intermediary without providing a framework or operational guidelines as to how and in what manner these are to be maintained. This may give rise to ambiguity and may lead to violation of regulations by intermediaries, if there is no specific framework prescribed.
67	Regulation 20	Cyber Security and Cyber resilience	A registered capital market shall have robust cyber security and cyber resilience framework in accordance with the requirements as may be specified by the Authority from time to time.	It is recommended to provide a framework for 'cyber security and cyber resilience'.	Hence, it is recommended that the IFSC Authority issue a detailed set of guidelines and framework for capital market intermediaries to adhere to.
68	Regulation 21	Risk Management and Internal Controls	A registered capital market intermediary shall have a sound risk management system for comprehensively managing risks.	It is recommended to amend the regulations to grant powers to the IFSC Authority to issue a framework to enable it to subsequently provide a detailed framework for intermediaries to satisfy the condition of 'sound risk management system'.	Hence, it is recommended that the IFSC Authority issue a detailed set of guidelines and framework for capital market intermediaries to adhere to.
69	Regulation 25	Annual Audit	A registered capital market intermediary shall conduct an annual audit in respect of compliance with these regulations.	It is recommended to specify which professional body/bodies shall be permitted to conduct the annual audit.	Currently, Regulation 30 of SEBI (Portfolio Managers) Regulations, states that the books of accounts shall be audited annually by a member of the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India. Similarly, Regulation 19 of SEBI (Investment Advisers) Regulations, states that the books of accounts shall be audited by an independent chartered accountant. The term 'chartered accountant' here has been defined therein and refers to clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under that Act. Thus, it is recommended that the proposed regulations also

					clearly specify the qualifications of the auditor.
70	Regulation 76(1)	Cross Border Business	A registered capital market intermediary undertaking cross-border business operations shall submit an annual certification from an external auditor to the Authority that the conditions specified in this Chapter and the regulatory requirements specified by the Authority from time to time, have been complied with, within 30 days of end of financial year.	Define 'external auditor'	<p>Currently, Regulation 30 of SEBI (Portfolio Managers) Regulations, states that the books of accounts shall be audited annually by a member of the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India.</p> <p>Regulation 19 of SEBI (Investment Advisers) Regulations, states that the books of accounts shall be audited by an independent chartered accountant. The term 'chartered accountant' here has been defined therein and refers to clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under that Act.</p> <p>It is recommended to suitably define the term 'external auditor'.</p>
71	Regulation No 39(2) Regulation 5(3)(ii)	Portfolio Managers, and Application for registration	-	Please define 'Stock exchange' if it is different from the definition of 'Recognised Stock exchange'.	<p>Under Regulation 39(2) of these proposed regulations, a discretionary portfolio manager is permitted to invest in securities listed or traded on stock exchanges. Here, the term stock exchanges could even mean overseas stock exchanges or other stock exchanges in India which may not be registered with SEBI.</p> <p>Similarly, Regulation 5(3)(ii) states that a registered broker dealer may be permitted to operate in more than one stock exchange.</p> <p>Hence, it is recommended that the term 'stock exchange' be defined specifically if it is different from the definition of 'recognised stock exchange'. as defined under Regulation 3(1)(y).</p>
72	Regulation 3(x)	Regulation Principal Officer	(x) "principal officer" means any person who is responsible for the activities of an intermediary and includes- (i) proprietor, in the case of a proprietary concern; (ii) any partner, in the case of a partnership firm; (iii) whole time/executive director/managing director, in the case of a body corporate; (iv) trustee, in the case of a trust; (v) any key employee; and (vi) any person designated as a principal officer;	Please clarify whether more than one principal officer is required.	The term principal officer lists down various personnel who may be appointed as such. However, the word 'and' mentioned in the sub-clause (v) therein leads to an interpretation that two principal officers are required.
73	Regulation 4(f)(vi)	Regulation Investment Advisers	(vi) any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Authority, who provides investment advice to their clients, incidental to his professional service;	It is recommended to clarify whether professional firms registered with any professional body can also provide Investment Advisory services incidental to their professional service without obtaining registration as Investment Adviser with the IFSC Authority.	On plain reading of Regulation 4(1)(f)(vi), it seems that chartered accountancy firms, company secretary firms etc. need to obtain Investment Advisers registration and that individual members of ICAI/

					ICSI need not obtain registration.
74	Regulation 3(1)(h)	Definition of Control	<p>“control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:</p> <p>Provided that a director or officer of a company shall not be considered to be in control over such company, merely by virtue of holding such position.</p>	<p>The term “control” could be defined as follows:</p> <p>“control” shall -</p> <p>(a) in the context of an intermediary who’s shares are listed on any recognised stock exchange, mean the same as is defined in Regulation 2(1)(e) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as amended from time to time.</p> <p>(b) in the context of an intermediary who’s shares are not listed, mean an interest, whether direct or indirect, to the extent of more than fifty percent of voting rights or interest of the intermediary;</p> <p>Provided that a director or officer of a company shall not be considered to be in control over such company, merely by virtue of holding such position.</p>	<p>The term “Control” has been used in the Proposed IFSCA (Capital Market Intermediaries) Regulations, 2021 (“Proposed Regulations”) in (i) Regulation 23 in the context of change in control of Capital Market Intermediary (“CMI”), (ii) in the context of ‘controlling shareholder’ and (iii) under explanation to Regulation 30(2) which contemplates a test for determining the “associate of the issuer or person”.</p> <p>Considering the practical impact of the term ‘control’ would be faced under the Proposed Regulations in cases where there is a change in control of the entity or disclosures relating to who the controlling shareholders are of such an entity, hence, it would be useful to provide a subjective test for such aspects as opposed to an objective definition of control.</p> <p>The term controlling shareholder has also not been defined in the Proposed Regulations.</p> <p>The current definition of the term control does not provide for a specific percentage of shareholding or voting rights which would amount to the holder having a controlling interest in the entity.</p> <p>Change suggested to bring the definition under the Proposed Regulations in line with the approach followed by SEBI historically under various SEBI Regulations.</p>
75	Regulation 3(1)(s)	Definition	<p>(s) “investment banker” means a person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;</p>	<p>Insertion of definition of ‘issue’ as follows: “issue” means an offer of sale or purchase of listed or to be listed securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to the public, other than on a private placement basis.</p>	<p>We observe that the definition of investment banker under the Proposed Regulations is the same as the definition of a merchant banker under the SEBI (Merchant Banker) Regulations, 1992 (“MB Regulations”). However, we observe that while the term ‘issue’ has been used in the definition of investment banker, the said term has not been defined under the Proposed Regulations.</p> <p>We observe that the term ‘issue’ has been defined under the MB Regulations considering its reference in the definition of merchant banker. If the term ‘issue’ is not defined under the Proposed Regulations, then it would be difficult to ascertain what would be the scope of ‘issue management’ in the context of the activities of an investment banker.</p> <p>The IFSCA Committee may also consider providing in the definition of ‘issue’ whether the same would cover only public issues or would transactions undertaken on a private placement basis of listed or to be listed securities would also</p>

					<p>be covered within the scope of issue management activities of an investment banker.</p> <p>Private arrangements are typically not covered within the scope of regulated activities of investment bankers in offshore jurisdictions and hence offshore groups proposing to undertake investment banking activities from IFSC may expect similar scope of activities to be regulated under Proposed Regulations. Hence clarity on whether private arrangements for any type of securities would be covered or not within the scope of investment banking activities would be useful. We have suggested a definition of 'issue' on the above basis.</p>
76	Regulation 3(1)(t)	Definition	<p>"key managerial personnel" means the officers or personnel of the intermediary who are members of its core management team (excluding board of directors) and includes members of the management one level below the executive directors of the intermediary, functional heads and includes 'key managerial personnel' as defined under the Companies Act, 2013 or any other person whom the intermediary may declare as a key managerial personnel.</p>	<p>Revised definition:</p> <p>"key managerial personnel" means the officers or personnel of the intermediary who are members of its core management team (excluding board of directors), heads of business departments of the intermediary or any other person whom the intermediary may declare as a key managerial personnel.</p>	<p>We observe that the proposed definition of key managerial personnel ("KMP") excludes board of directors from its scope. However, the latter part of the definition includes KMP as defined under the Companies Act, 2013 ("Companies Act").</p> <p>KMP under the Companies Act includes within its ambit a managing director, manager, company secretary and whole-time director. Hence by retaining the reference to KMP as defined under the Companies Act would result in board of directors being included as KMP.</p> <p>Further, in our view, a KMP in the context of activities to be undertaken by a company under the Companies Act is very different from what activities and responsibilities a KMP is required to undertake for a CMI in IFSC. For e.g., while a company secretary may be included as a key managerial person for the purposes of a company for compliance with Companies Act requirements, their activities may not be as relevant in the context of financial services activities undertaken by a CMI. Further, under the Proposed Regulations, the KMP is also required to be fit and proper. Extending this requirement to a company secretary of the CMI may be onerous. Therefore, we suggest that this definition should be altered to not refer to KMP under the Companies Act.</p> <p>Further considering the definition already covers 'members of its core management team (excluding board of directors)', we believe there is not requirement to specifically also include '..and includes members of the management one level below the executive directors of the intermediary'. If the personnel is a part of the core management team he/she would in any case get covered in the initial part of the definition. Also there is no certainty that personnel one level below the executive directors would necessarily be</p>

					<p>part of the core management team. The intermediary should retain the flexibility on who would be part of its core management team.</p> <p>Additionally, considering that the initial part of the definition of KMP under the Proposed Regulations specifically excludes 'board of directors', by keeping a reference to definition of KMP under the Companies Act (which includes managing director, whole-time director, personnel one level before directors) would lead to ambiguity regarding the scope of KMP under the Proposed Regulations.</p> <p>Further, since the Proposed Regulations does not provide any guidance on the term 'functional heads', one could consider revising the same to 'heads of business departments of the intermediary'. By specifying to cover 'business departments', heads of other departments such as IT / HR / Administrative departments would not be included in this definition.</p>
77	Regulation 3(1)(u)	Definition	"net worth" means the aggregate value of the paid up equity capital and free reserves (excluding reserves created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;	<p>Revised definition:</p> <p>"net worth" means the aggregate value of the paid up share capital, share premium account and free reserves (excluding reserves created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;</p>	<p>The proposed definition only includes equity share capital and not preference share capital of the intermediary. The CMI may choose to issue preference shares (convertible or not) to its shareholders as a part of its share capital, however, the same will not be counted towards its net worth under the current definition. This will effectively result in restricting the CMI to issue only equity shares to its shareholders. Hence, to permit the intermediary to have flexibility in the manner in which it would like to issue its share capital, we suggest that the definition of the term net worth include "paid up share capital" instead of "paid up equity capital". This would bring the definition in line with similar definitions under various SEBI Regulations, you may consider the proposed changes.</p> <p>Further, the IFSCA Committee may take into account that often, shares are required to be allotted at a premium and hence, even the share premium account should be included for the purposes of net worth of the CMI.</p>
78	Regulation 3(1)(w)	Definition	"portfolio manager" means a person, which pursuant to a contract with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or financial products or funds of the client, as the case may be;	<p>Insertion of a new definition :</p> <p>"discretionary portfolio manager" means a portfolio manager who under a contract relating to portfolio management, exercises or may exercise, any degree of discretion as to the investment of funds or management of the portfolio of securities of the client, as the case may be.</p>	<p>We observe that the definition of portfolio manager provides reference to 'discretionary portfolio manager'. Further Regulation 39(1) and (2) of the Proposed Regulations provide specific directions on activities of a discretionary portfolio manager.</p> <p>In light of the same, the IFSCA Committee could consider incorporating a definition of discretionary portfolio manager on the lines as provided under the current SEBI (Portfolio Managers) Regulations, 2020.</p>

79	Regulation 3(1)(x)	Definition	<p>principal officer means any person who is responsible for the activities of an intermediary and includes-</p> <ul style="list-style-type: none"> i. proprietor, in the case of a proprietary concern; ii. any partner, in the case of a partnership firm; iii. whole time/executive director/managing director, in the case of a body corporate; iv. trustee, in the case of a trust; v. any key employee; and vi. any person designated as a principal officer; 	<p>Revised definition :</p> <p>principal officer means an employee of the intermediary, designated as such, who is responsible for the overall function of the business and operations of the intermediary, failing such designation the principal officer shall mean -</p> <ul style="list-style-type: none"> (i) the proprietor, in the case of a proprietary concern; (ii) any partner, in the case of a partnership firm; (iii) whole time/executive director/managing director, in the case of a body corporate; or (iv) trustee, in the case of a trust; 	<p>We note that proposed definition is an 'inclusive' definition, and hence would take within its ambit several people who also fall under sub-para (i) to (vi) in the said definition.</p> <p>Typically, securities market intermediaries would employ personnel having relevant experience and qualification to be the 'principal officer' of the intermediary. Such a principal officer would be responsible for the day-to-day activities of the intermediary.</p> <p>Under the definition proposed under the Proposed Regulations, even a whole-time director of the CMI could be considered to be a principal officer even though the whole-time director is not designated as such and has not been employed to be responsible for the overall functions, business and operations of the intermediary.</p> <p>We note that 'principal officers' are important functionaries under the Proposed Regulations and are entrusted with a lot of responsibilities. Therefore, the scope of the term should be narrowed down so as to bring only specific officers under its coverage.</p>
80	Regulation 4(1)(a)	Obligation to seek recognition	<p>Broker dealers;</p> <p>Explanation: The broker dealers shall be eligible for registration as segregated nominee account providers with the recognised stock exchanges pursuant to compliance with the requirements specified by the exchanges and Authority from time to time.</p>	<p>"segregated nominee account" means [please provide definition]</p>	<p>We observe that while the explanation to the definition of broker dealers refers to the term 'segregated nominee account' providers, no further guidance or clarity has been provided under the Proposed Regulations on what a 'segregated nominee account' would entail. Considering this is for the first time that transactions through such account structures would be permitted, it may be useful to provide more clarity or define 'segregated nominee account'.</p>
81	Regulation 4(1)(b)	Obligation to seek recognition	<p>(b) Clearing members;</p> <p>Explanation: The clearing members shall be eligible for registration as segregated nominee account providers with the recognised clearing corporations pursuant to compliance with the requirements specified by the clearing corporations and Authority from time to time.</p>	<p>"segregated nominee account" means [please provide definition]</p>	<p>We observe that while the explanation to the definition of broker dealers refers to the term 'segregated nominee account' providers, no further guidance or clarity has been provided under the Proposed Regulations on what a 'segregated nominee account' would entail. Considering this is for the first time that transactions through such account structures would be permitted, it may be useful to provide more clarity or define 'segregated nominee account'.</p>
82	Regulation 4(1)(f)	Obligation to seek recognition	<p>The following persons shall not be required to seek registration as an investment adviser in IFSC:</p> <ul style="list-style-type: none"> (i) any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product; 	<p>Revised provision :</p> <p>The following persons shall not be required to seek registration as an investment adviser in IFSC :</p> <p>[...]</p> <ul style="list-style-type: none"> (ix) any principal officer and person associated with advice of an investment adviser which is registered by the Authority under these regulations 	<p>We note that the exemption provided under Regulation 4(1)(f) from seeking investment adviser registration in IFSC are akin to Regulation 4 of the SEBI (Investment Advisor) Regulations, 2013.</p> <p>However, the exemption from registration for investment advisers who provides investment advice exclusively to clients based out of India</p>

			<p>(ii) any insurance agent or insurance brokers recognised by the Authority, who offers investment advice solely in insurance products;</p> <p>(iii) any pension adviser recognised by the Authority, who offers investment advice solely in pension products;</p> <p>(iv) any distributor of mutual funds providing any investment advice to its clients incidental to its primary activity;</p> <p>(v) any advocate, solicitor or law firm, who offers investment advice to its clients, incidental to their legal practice;</p> <p>(vi) any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body as may be specified by the Authority, who provides investment advice to their clients, incidental to his professional service;</p> <p>(vii) any broker dealer, portfolio manager or investment banker recognised by the Authority under these regulations, who offers investment advice to its clients, incidental to their primary activity;</p> <p>(viii) any fund manager, by whatever name called of a mutual fund, alternative investment fund or any other intermediary or entity, recognised by the Authority;</p> <p>(ix) any principal officer and person associated with advice of an investment adviser which is recognised by the Authority under these regulations; and</p> <p>(x) any other person as may be specified by the Authority;</p>	<p>(x) Any person who provides investment advice exclusively to associates / group entities based out of India:</p> <p>Provided that such persons comply with the minimum net worth requirements specified for an investment adviser in Schedule II of these regulations.</p> <p>(xi) any other person as may be specified by the Authority;</p>	<p>(other than NRIs or PIO) has been omitted under the Proposed Regulations. This omission will mean that a person in IFSC providing investment advice to clients based outside IFSC/India will be required to seek registration under these Proposed Regulations.</p> <p>As you would be aware that numerous advisory entities in India currently provide captive non-binding investment advisory services to offshore fund manager entities of its group which are based outside India. Most of such captive advisory entities in India are currently not registered and regulated under the SEBI Investment Advisers Regulations. Such captive investment advisory entities typically do not provide investment advice to external parties and restrict advisory services only to its group entities. Not including such an exemption under the Proposed Regulations would result in such captive advisory entities being required to be registered as an investment adviser in IFSC, whereas an investment advisory entity undertaking similar activities in India will not be required to seek an investment adviser registration with SEBI. This could make IFSCs a less attractive proposition for investment advisors.</p> <p>IFSCA Committee may therefore consider permitting captive investment advisers to undertake investment advisory activities from IFSC to its associate / group entities based outside of India without being required to seek registration provided such exempted entities in IFSC meet the net worth requirement which otherwise a registered investment adviser in IFSC is required to maintain.</p>
83	Regulation 9	Fit and proper requirement	<p>(1) A capital market intermediary shall ensure that the entity, all its directors, key managerial personnel and controlling shareholders are fit and proper persons, at all times.</p>	<p>“controlling shareholder” means a person or persons acting individually or in concert, directly or indirectly, having interest to the extent of more than [fifty] percent of voting rights or interest in the intermediary</p>	<p>We observe that the term controlling shareholders has not been defined under the Proposed Regulations.</p> <p>Considering the importance of controlling shareholders under the Proposed Regulations, it would be prudent to provide for a subjective definition for controlling shareholders.</p> <p>In a way, we observe that Item 10 of PART I, Schedule I (Application Form) requires the CMI to provide a list of major shareholders (i.e. shareholders holding more than 5% voting rights in the CMI). It is therefore suggested that the threshold to consider a person as a controlling shareholder could be linked to a similar percentage threshold.</p> <p>We believe that a fixed voting threshold for controlling</p>

					shareholders will reduce ambiguity on who should be considered to be a controlling shareholder and promote uniformity in disclosures.
84	Regulation 11	Simplified Application	<p>(1) Notwithstanding anything provided in this Chapter, an entity which is registered in India or a Foreign Jurisdiction, and the registration is valid, may apply for registration under the same category with a simplified application form specified in Part II of Schedule I, along with the application fees specified by the Authority, until March 31, 2022:</p> <p>Provide that such entity shall comply with the fit and proper and net worth requirements specified in these regulations.</p> <p>(2) The entity would be required to comply with all the provisions of this Chapter for continuing to operate as a capital market intermediary, within a period of 1 year from the date of registration.</p>	<p>Revised provision :</p> <p>11. (1) Notwithstanding anything provided in this Chapter, an entity which is registered and regulated in India or a Foreign Jurisdiction, and the registration with its regulator is valid, may either through its branch or wholly owned entity, apply for registration under the same category with a simplified.</p> <p>(2) The entity present in IFSC and seeking registration with the Authority under sub-regulation (1) above would be required to comply with all the provisions of this Chapter for continuing to operate as a capital market intermediary, within a period of 1 year from the date of registration.</p>	<p>We understand that a CMI seeking registration with the Authority is required to be present in IFSC by either establishing a branch or forming a company or LLP or body corporate or partnership firm or proprietorship firm.</p> <p>We understand for the Simplified Application, the parent entity of the applicant ("Parent") is required to be registered in India or Foreign Jurisdiction and the registration of the Parent is required to be valid, for the applicant to be able to apply for simplified registration.</p> <p>It would be useful to clarify (i) that the Parent is required to be registered 'and regulated' in India / Foreign Jurisdiction, (ii) registration of the Parent with whom is required to be valid. Further in Regulation 10(2), it would be useful to clarify which 'entity' (Parent or the applicant) is required to comply with the prescribed requirements in 1 year.</p> <p>We have therefore suggested a revised provision.</p>
85	Regulation 16	Maintenance of books of account, records and other documents	<p>Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years, namely:</p> <p>-...</p>	<p>Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of five years, namely: -...</p>	<p>The requirement to preserve books of accounts, records and documents for 20 years may be costly and onerous requirement for the intermediary and could be reduced to 5 years in line with the requirements under the existing SEBI Regulations.</p>
86	Regulation 23	Change in control	<p>A registered capital market intermediary shall intimate the Authority within 15 days, in case of any change in control of the intermediary.</p>	<p>A registered capital market intermediary shall intimate the Authority within 15 days, in case of any direct or indirect change in control of the intermediary</p>	<p>We suggest that it is clarified whether the intimation requirement for change in control is only at the parent level or any indirect change in control will trigger this intimation requirement. Generally, the requirement is inclusive of direct or indirect change control under SEBI regulations.</p>
87	Regulation 26	Appointment of Designated Officer	<p>A registered capital market intermediary shall, for the purpose of enforcing compliance with regulatory requirements, appoint a senior management person as Designated Officer.</p>	<p>Revised provision:</p> <p>Appointment of Compliance Officer</p> <p>A registered capital market intermediary shall, for the purpose of enforcing compliance with regulatory requirements, appoint a person as its compliance officer</p>	<p>We understand that the Proposed Regulations requires the CMI to appoint a 'senior management person' as a 'designated officer' for the purpose of enforcing compliance with regulatory requirements.</p> <p>Under all of the existing SEBI Regulations, this activity is undertaken by a 'compliance officer' who need not be a senior management person. The compliance officer could report to a senior management person.</p> <p>Further, typically, a senior management person would oversee all aspects of the intermediary and not only aspects relating to compliance with regulatory requirements. Compliance requirements are primarily dealt with by compliance officers.</p>

					<p>We observe that Schedule III (Code of Conduct) – Part A – Paragraph</p> <p>19 of the Proposed Regulations provides that the intermediary “Shall ensure that the compliance officer / Designated Officer has adequate freedom and power for effective discharge of his duties”. It appears that the term compliance officer/ designated officer is used interchangeably.</p> <p>It would, therefore, be preferable to retain the concept of appointing compliance officer by the intermediary as is currently there under all of the SEBI Regulations, as opposed to introducing a new concept of Designated Officer under the Proposed Regulations.</p> <p>The Proposed Regulations already contemplate the intermediary to appoint a Principal Officer who would be responsible for the activities of the intermediary.</p> <p>Additionally, it would be pertinent to clarify whether the Principal Officer can also act as the designated officer /compliance officer. Clarity in this regard may be provided under the Proposed Regulations.</p>
88	Regulation 30(2)	Investment bankers	An investment banker shall not undertake any activity, except for marketing of the issue or offer, if the investment banker is a promoter or an associate of the issuer of securities or of any person making an offer to sell or purchase securities in terms of any regulations made by the Authority		<p>The MB Regulations requires that a merchant banker cannot carry on any business other than that in the securities market.</p> <p>In the event the intention under the Proposed Regulations is to restrict an investment banker to carry on business only in the securities market, a similar direction should be provided under the Proposed Regulations.</p> <p>If no such direction is provided, one could hold that the business of an investment banker would not be restricted only to securities market.</p>
89	Reg 34	Portfolio managers	A portfolio manager operating in an IFSC shall be permitted to invest in securities in an IFSC, India or Foreign Jurisdiction	<p>Revised provision:</p> <p>A portfolio manager operating in an IFSC shall be permitted to invest in securities in any jurisdiction.</p>	<p>While the concept of Foreign Jurisdiction is very relevant in the context of parentage of the intermediary in IFSC, the funds managed by offshore portfolio manager (who may be contemplating to set up presence in IFSC) could currently be invested in various jurisdictions across the world, and may not be restricted to only 'Foreign Jurisdictions'.</p> <p>Hence, restricting the scope of securities which an IFSC based portfolio manager is permitted to invest in for its client could in a way, make IFSC less attractive to offshore portfolio managers proposing to set up base in IFSC. Such offshore portfolio managers would like to retain the same flexibility in the context of permissible investments they currently enjoy from other offshore jurisdictions.</p>

90	Regulation 39(2)	Portfolio managers	The discretionary portfolio manager shall invest funds of his clients in the securities listed or traded on stock exchanges, money market instruments, units of mutual funds and other securities in India, an IFSC or Foreign Jurisdiction as specified by the Authority from time to time.	Revised provision : The portfolio manager shall invest funds of his clients in unlisted, listed or to be listed securities in any jurisdiction, money market instruments in any jurisdiction, units of mutual funds in any jurisdiction and any other securities as specified by the Authority from time to time.	As per the definition of a portfolio manager under the Proposed Regulations, the portfolio manager could be a discretionary portfolio manager or a non-discretionary portfolio manager or provide advisory services. While Regulation 39(1) provide activities to be undertaken by a discretionary portfolio manager and non-discretionary portfolio manager, Regulation 39(2) provides guidance on type of investments which can be made by a discretionary portfolio manager. No similar guidance has been provided for non-discretionary portfolio managers. Hence Regulation 39(2) should cover both types of portfolio managers. Further, as set out in our comments for Regulation 34 above, the portfolio manager should ideally have flexibility to invest in any and all types of securities across various jurisdictions.
91	Regulation 40(2)	Portfolio managers	A portfolio manager shall keep the funds of all clients in <u>a separate account</u> to be maintained by it in a Banking Unit.	-	We suggest that it is clarified whether the portfolio manager is required to maintain a separate Banking Unit account for each client or just a common Banking Unit account for all of its clients.
92	Regulation 46 (d)	Investment advisers	An investment adviser may have the following categories as clients: ... (d) an individual resident in India having a net worth of at least US Dollar one million during the preceding financial year who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India	Revised provision: An investment adviser may have the following categories as clients: ... (d) an individual resident in India who is eligible under FEMA to invest funds offshore, to the extent allowed in the Liberalized Remittance Scheme of Reserve Bank of India	We suggest that the requirement of individuals having a net worth of at least USD 1 million should be done away with considering an individual in India is permitted to invest in offshore securities up to USD 250,000 under Liberalised Remittance Scheme of the Reserve Bank of India. By keeping such a high net worth requirement would restrict individuals not having net worth of less than USD 1 million from seeking services of an investment adviser in IFSC even though such an individual is permitted to make investments outside India upto USD 250,000.
93	Regulation 52(1)	Investment Advisers	An investment adviser may provide implementation services to its advisory clients in securities market: Provided that investment advisers shall ensure that no consideration including any commission or referral fees, whether embedded or indirect or otherwise, by whatever name called is received, directly or indirectly, by the investment adviser or its group or family for the said service.	Revised provision: An investment adviser may provide implementation services to its advisory clients in securities market. Provided the investment adviser shall either avoid any conflict of interest while providing its services, or where any conflict of interest arises, ensure fair treatment to all his clients, and shall disclose to the clients, the possible source of conflict of interest, while providing unbiased services to its clients. An investment adviser shall not place his interest above those of his clients.	Considering many investment advisers proposing to set up their presence in IFSC may be conglomerates providing various types of financial services / products worldwide through various entities, each of which may have its own fee schedules. Requirement under Regulation 49(2) may restrict such entities / group entities from earning fees from such separate financial implementation services provided to the client. Entities outside India are typically not subjected to such restrictions at a group level. We suggest that instead of completely restricting the group entities of investment adviser

					from receiving such fees, requirement on appropriate disclosures to client in this regard could be mandated on the investment adviser.
94	Items 1 -2 of Section D, Part I, Schedule I Items 1 -2 of Section E, Part I, Schedule I	Application Form	D. Portfolio Managers 1. Provide details regarding qualification, work experience and certification of all directors / partners / proprietor and principal officers. 2. Provide a copy of the relevant certifications. E. Investment Advisers 1. Number of principal officers and persons who propose to render investment advice under these regulations on behalf of the applicant. 2. Provide details regarding qualification, work experience and certification of all directors /partners / proprietor, principal officers and persons associated with investment advice.		We understand that this requirement is akin to qualification and experience requirements for the principal officer under the SEBI (Portfolio Manager) Regulations, 2020. However, a plain reading of the items under the Proposed Regulations suggests that all directors / partners / proprietor are required to have qualification, work experience and certification as prescribed under the Regulations (whereas the Proposed Regulations do not mandate directors / partners/proprietors of the intermediary to meet any qualification, work experience and certification requirements). We suggest that these qualification, work experience and certification details be sought only for the principal officer.
95	Item 8(c) of Section D, Part I, Schedule I	Application Form	8. Additional Declarations: ... c. Declaration regarding time taken for transfer of securities into client accounts.		Trust IFSCA would be issuing guidelines in this regard. Else, this declaration could be deleted if no such directions have been issued by IFSCA yet.
96	Schedule II	Net Worth Requirements	Net worth Requirements for – Entities incorporated in India (including IFSC) and Foreign Entities		We understand that a CMI seeking registration with the IFSCA are required to be present in IFSC by either establishing a branch or forming a company or LLP or body corporate or partnership firm or proprietorship firm. Hence, the Applicant can either be (i) a branch of an entity which is incorporated in India, or (ii) an entity which is incorporated in IFSC (“IFSC Entity”). The parent of the IFSC Entity can either be an entity in India or a Foreign Jurisdiction. All of such entities appear to fall under the first column under the heading “Net worth for Entities incorporated in India (including IFSC)”. It would be useful to clarify what types of entities would fall under the column with heading “Foreign Entities”. Are we intending to cover entities based in IFSC which have ‘Foreign Entities’ as its parent in the second column ??
97	-	-	-	Proposed Regulations to clarify if fees or commission to distributors can be paid on an upfront basis.	Proposed Regulations do not expressly prohibit PMs from payment of distribution fees/ commission on an upfront basis. Payment of fees/ commission on an upfront basis is a standard, well known, and accepted practice in the international markets. Accordingly, the Proposed Regulations should clarify that a PM in IFSC can pay fees/

					<p>commission on an upfront basis.</p> <p>This practice is also known to create an incentive for offshore distributors/ sub-distributors for distributing PMS schemes to their clients.</p>
98	42	Portfolio Manager	The portfolio manager shall ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations and circulars issued thereunder from time to time.	Proposed IFSCA Regulations on Capital Market Intermediaries ('Proposed Regulations') should clarify that Portfolio Managers ('PMs') can act as distributors for their clients	<p>There is no express prohibition on a PM acting as a distributor for its client in the Proposed Regulations.</p> <p>However, on reading Regulation 42, it could be construed that PM and distributor are contemplated as different persons.</p> <p>In domestic financial markets, local distributors guide the investors by communicating features of PMS schemes and play a key role in soliciting clients for PMs. However, raising funds from offshore investors is a specialized activity. Thus, in a global financial centre such as IFSC, where offshore investors participate, it becomes relevant for a PM based in IFSC to enter into distributorship/ sub-distributorship agreements with offshore Funds/ intermediaries to on-board offshore investors.</p> <p>Separately, please note that this is a standard practice in global markets.</p>
99		Record Maintenance		Maximum period for maintenance of records shall be reduced to 10 years	20 years are a bit longer period and as per PMLA the said period if 10 years
100		Annual Certification		A period for certification from external auditor shall be from 30 days to 90 days	Getting certificate within 30 days will be difficult and 90 days will be in line with other SEBI regulations
101	Chapter V	Cross Border Business		It may be specified that records relating to the cross-border business activities shall be maintained and available at IFSC	This is to avoid difficulties in getting the records from offshore jurisdiction
102	Clause 3(1)(j)	Definition of Custodial Service		<p>The definition refers to the services in relation to financial products.</p> <p>However, the term financial products have not been defined.</p>	It may be clarified that financial products includes 'securities' as defined by SEBI in Securities Contract Regulations Act or rules made thereunder
103	7			It is requested that "Registrar & Transfer Agent (RTA)" may also be included as an intermediary category under these regulations.	It is submitted that RTA are registered with SEBI and are regulated for various services they perform in relation to various securities issued by companies. RTA also serve as an interface between the Depository and Issuers. In case of IFSC also, issuers would need RTA services for interface / operations with Depositories and for various services in relation to securities.
104	8			Prior Registration & related requirements for branch / subsidiary set-up / capital for SEBI Registered RTA	Considering the exigency of launch of IDR operations and need for RTA services, it is requested that prior registration and related requirement for RTA services in IFSC may be relaxed for next few months.
105	<p>General Comments: The proposals in the Consultation Paper bring in a comprehensive regulatory framework applicable to various capital market intermediaries and address various regulatory gaps. We believe that most of the proposals are beneficial and a step in the right direction. The broad principles of this comment letter are as follows: (a) Most changes are favourable for intermediaries and investors alike and bring in clarity, coherence and consistency; and (b) The regulation would be further strengthened by incorporating features of other norms, domestic and international.</p>				

106	3(1)(h)	Definition	<p>(h)“control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:</p> <p>Provided that a director or officer of a company shall not be considered to be in control over such company, merely by virtue of holding such position.</p>	<p>“control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner including by holding interest, whether direct or indirect, to the extent of more than fifty percent of voting rights or interest:</p> <p>Provided that a director or officer of a company shall not be considered to be in control over such company, merely by virtue of holding such position.</p>	Clarity can be added to define further what may amount to control. Reference – SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
107	10(1)	Registration	<p>10.(1) The Authority shall take into account all matters which it deems relevant for grant of registration to a capital market intermediary and in particular the following, namely, whether:</p> <p>a) the applicant or its principal officer has adequate past experience in the activities as a capital market intermediary for which it is desirous of obtaining a certificate of recognition or related activities;</p> <p>b) the applicant has the necessary infrastructure like adequate office space, equipment, communication facilities and manpower to effectively discharge its activities;</p> <p>c) the applicant satisfies the eligibility criteria, net worth and fund allocation requirements, if applicable, as specified in these regulations;</p> <p>d) the applicant, and its directors, key managerial personnel and controlling shareholders are fit and proper persons;</p> <p>e) the applicant or any of its associates have in the past been refused certificate by the Authority and if so, the ground for such refusal; and</p> <p>f) the applicant or its principal officer is subject to any proceeding for breach of law by the Authority.</p>	A new sub regulation can be introduced to include evaluation by the concerned authority of the business continuity plan as well as internal risk control mechanism of intermediaries at the time of registration	The Dubai financial Services Authority (DFSA) has a layer wherein it approves the business structure of the financial services firms. While this might be considered a bit intrusive, an evaluation of the business continuity plan and internal risk control akin to SEBI’s regulatory sandbox framework may be introduced to ensure adequate systemic risk management.
108	8 r/w Schedule II	Net-Worth Requirements		Net worth requirements can be revisited and reduced at least for IFSCA registered entities, particularly for Investment advisers and account aggregators.	Relaxation in the net worth requirement for IFSCA registered entities would increase ease of business for financial intermediaries in the IFSC.
109	16(1)	Maintenance of books of account, records and other documents	<p>16. (1) Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years, namely: -</p> <p>(a) a copy of the balance sheet at the end of each accounting period;</p> <p>(b) a copy of profit and loss account for each accounting period;</p> <p>(c) a copy of the auditor’s report on the accounts for each accounting period;</p> <p>(d) a statement of net worth for each quarter;</p> <p>(e) relevant records and documents relating to its activities in capital markets; and</p> <p>(f) such other books of accounts, records and documents as may be specified by the Authority from time to time.</p>	<p>Every capital market intermediary shall maintain and preserve the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years eight years, namely: -</p> <p>(a)a copy of the balance sheet at the end of each accounting period;</p> <p>(b) a copy of profit and loss account for each accounting period;</p> <p>(c) a copy of the auditor’s report on the accounts for each accounting period;</p> <p>(d) a statement of net worth for each quarter;</p> <p>(e) relevant records and documents relating to its activities in capital markets;</p> <p>(f)most recent documentary evidence collected with respect to its clients;</p> <p>(g) most recent account opening contract or documentation;</p> <p>(h) the most recent documentation obtained by the reporting entity pursuant to AML/KYC procedures or for other regulatory purposes;</p> <p>(i) any power of attorney or signature authority forms currently in effect; and</p> <p>(f) (j) such other books of accounts, records and documents as may be specified by the Authority from time to time.</p>	<p>The requirement of maintaining documents and records for twenty years might be unnecessary. Eight years, in consonance with Section 128(5) of the Companies Act, 2013 which requires a company to maintain its books of accounts and other financial records for 8 years.</p> <p>Further, to ensure better scrutiny, the Intermediaries may be required to maintain and preserve a few other documents such as documents in relation to client relations to ensure clarity in case of any disputes. Further to ensure streamlined compliance to AML, CFT and KYC norms, documentary evidence for the same can also be required to be maintained for the same duration.</p>

110	16(2)	Maintenance of books of account, records and other documents	<p>(2) In relation to a capital market intermediary not being a body corporate, it shall maintain the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years, namely, - (a) all sums of money received and expended;</p> <p>(b) its assets and liabilities;</p> <p>(c) a statement of net worth for each quarter;</p> <p>(d) relevant records and documents relating to its activities in capital markets; and</p> <p>(e) such other books of accounts, record and documents as may be specified by the Authority from time to time.</p>	<p>In relation to a capital market intermediary not being a body corporate, it shall maintain the following books of accounts, records and documents, in electronic retrieval form for a minimum of twenty years eight years, namely, -</p> <p>(a) all sums of money received and expended;</p> <p>(b) its assets and liabilities;</p> <p>(c) a statement of net worth for each quarter;</p> <p>(d) relevant records and documents relating to its activities in capital markets;</p> <p>(e) most recent documentary evidence collected with respect to its clients;</p> <p>(f) most recent account opening contract or documentation;</p> <p>(g) the most recent documentation obtained by the reporting entity pursuant to AML/KYC procedures or for other regulatory purposes;</p> <p>(h) any power of attorney or signature authority forms currently in effect; and</p> <p>(f) (i) such other books of accounts, record and documents as may be specified by the Authority from time to time.</p>	<p>The requirement of maintaining documents and records for twenty years might be unnecessary. Eight years, in consonance with Section 128(5) of the Companies Act, 2013 which requires a company to maintain its books of accounts and other financial records for 8 years.</p> <p>Further, to ensure better scrutiny, the Intermediaries may be required to maintain and preserve a few other documents such as documents in relation to client relations to ensure clarity in case of any disputes. Further to ensure streamlined compliance to AML, CFT and KYC norms, documentary evidence for the same can also be required to be maintained for the same duration.</p>
111	New provision			<p>A capital market intermediary shall at all times ensure compliance with the Prevention of Money Laundering Act, 2002 and rules issued thereunder as well as with Know Your Customer (KYC), Anti-money laundering (AML) norms published by SEBI.</p>	<p>This may be repealed and replaced with the applicability of apposite AML/KYC norms of the IFSCA, if any, that may be published in the future.</p>

The above comments were considered suitably and the revised draft of the IFSCA (Capital Market Intermediaries) Regulations, 2021 were placed before the Authority in its meeting held on September 24, 2021.