

**CONSULTATION PAPER ON EASE OF DOING BUSINESS INITIATIVES FOR  
PORTFOLIO MANAGERS**

**1. Objective**

1.1. The objective of this consultation paper is to seek comments/ suggestions from public on the proposals regarding ease of doing business initiatives for Portfolio Managers.

**2. Background**

2.1. The Portfolio Management Services (PMS) are currently regulated through SEBI (Portfolio Managers), Regulations, 2020 ('PMS Regulations') and other circulars issued thereunder including Master Circular dated March 20, 2023 ('Master Circular').

2.2. The Hon'ble Finance Minister in the budget announcements for FY 2023-24, *inter-alia*, made an announcement to simplify, ease and reduce cost of compliance for participants in the financial sector through a consultative approach.

2.3. In order to align the process of review with the budget announcement, SEBI constituted various Working Groups to recommend measures to simplify and ease compliances under various SEBI Regulations. A working group ('EODB working group') was formed to review the present framework under PMS Regulations and recommend measures to promote the ease of doing business for Portfolio Managers.

2.4. Further, in order to promote the ease of doing business and reduce the compliance burden, SEBI vide Press Release dated October 4, 2023 had also sought comments from the public on various Regulations including PMS Regulations by November 06, 2023.

2.5. The comments received from the public regarding PMS Regulations were forwarded to the EODB working group for consideration in its final recommendation.

2.6. While the EODB working group has undertaken a comprehensive review of various processes and guidelines applicable to the Portfolio Managers, it has provided its first set of recommendations on the following:

- a. Facilitate collective oversight of PMS distributors by making registration with Association of Portfolio Managers in India (APMI) mandatory for PMS distributors.

b. Facilitate ease of digital onboarding process for clients of Portfolio Managers.

2.7. This consultation paper provides details of the above-mentioned recommendations of the EODB working group and some additional proposals, and seeks suggestions of the public on the same.

### 3. Issues for Public Consultation

#### 3.1. **Facilitate collective oversight of PMS distributors by making registration with APMI mandatory for PMS distributors**

3.1.1. Presently, the persons engaged by a Portfolio Manager to act as a distributor of the PMS, are required to obtain certification from the National Institute of Securities Markets (NISM) by passing the examination- NISM-Series-XXI-A.

3.1.2. Further, Portfolio Managers are required to ensure that distributors abide by the Code of Conduct as specified in Annexure 2B of the Master Circular and any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with the SEBI (Portfolio Managers) Regulations, 2020 and circulars issued thereunder from time to time.

3.1.3. APMI has been constituted as a trade body for Portfolio Managers and was incorporated on December 31, 2021 as a Section 25 company. APMI represents the portfolio management industry with a view to provide a common interface to regulators, intermediaries, investors, etc.

3.1.4. The EODB working group has stated that there are several regulatory benefits of mandating APRN number (PMS Distributor registration number) as the industry standard for distributing PMS products. Accordingly, the EODB working group recommended making APMI registration mandatory for PMS distributors. The benefits as highlighted by the EODB working group are as under:

a) *The key benefits for distributor:*

- *Registration with an Industry body.*
- *Single filing for compliance & other declarations.*
- *Access to Industry data.*
- *Easy & faster access to Portfolio Managers.*

- *Common Know Your Distributor (KYD) requirements for easier registration with Portfolio Managers.*
- *Training for NISM XXI-A examination at discounted fees.*
- *Faster grievance redressal.*
- *Updates on guidelines & circulars related to PMS.*

*b) The key benefits for Portfolio Managers:*

- *Common compliances.*
- *Common KYD requirements.*
- *Common due diligence report.*
- *Secure eligibility confirmation & auto alert in system for expired NISM certification.*
- *Access to distributor profile.*
- *Tagging of NISM XXIA certification for non-individual distributors, which will help in building validation at the time of onboarding investors.*

3.1.5. The recommendation is in line with the practice already being followed in the mutual fund industry, wherein, Mutual Funds Distributors are required to register with Association of Mutual Funds in India (AMFI) and obtain an ARN (AMFI Registration Number) for providing distribution services.

**3.1.6. Consultation/Proposal 1**

- a) Whether the recommendations of the EODB working group at para 3.1.4 are appropriate.
- b) Any other suggestions.

**3.2. Facilitate ease in digital onboarding process for clients of Portfolio Managers**

3.2.1. Clause 4.3.3. of the Master Circular states as under:

*“New clients shall be required to separately sign the annexure on fees and charges*

and **add in their own handwriting that they have understood the fees/ charges structure.**”

3.2.2. The EODB working group has highlighted that in the digital onboarding process, there are certain operational challenges in complying with the requirement of a handwritten note on the annexure of fees in the agreements, including non-availability of stylus at the location of the investors. This requirement creates a hindrance towards complete digital onboarding of the clients.

3.2.3. The EODB working group has recommended the following:

- a) *While on-boarding a client, Portfolio Manager must ensure that the client has understood the fee structure and the words (“I/We have understood the fees/charge structure.”) are:*
  - i. **Handwritten** in cases where the client is being on boarded through physical mode.
  - ii. **Hand typed (using a keyboard)** by the first holder in cases the client is being on boarded through a digital mode. Other holder/s should click on “Yes/No” to indicate that they have understood the fee structure. If the other holder(s) clicks “Yes”, then each of the holder should be given an option to e-sign the said text. If the other holder clicks “No”, then the digital onboarding process shall be halted until the Portfolio Manager explains the fee terms to the client. Post which the digital onboarding for that holder can be allowed to continue. But this time the holder should hand type (using a keyboard) “I/We now understand the fees/charge structure.”
- b) *Every Portfolio Manager should have an online fee calculation tool that highlights all fee options with multi-year fee calculations with high watermark concept. An email with the link for the same should be sent to all new clients being on boarded.*
- c) *The agreement between client and the Portfolio Manager to contain the following fee Illustrations:*

- i. *Fixed fee should provide all three scenarios: positive, negative & zero returns.*
- ii. *Performance fee should provide 1 year & multi-year fee example that covers all the 3 scenarios positive, negative & zero return. The examples should cover scenarios of triggering of high watermark.*
- d) *The fee debit note should have an annexure detailing the fee calculation. If the fee calculation is incorrect, or if the client raises a query on the fee charged then the Portfolio Manager should resolve the matter within 30 days.*
- e) *The standard formats for above fees disclosures (fee illustrations and fee calculation) may be prescribed by APMI.*
- f) *Further, there should be no other cost for the investor other than the fees and charges specified in annexure of fees in the agreement.*

#### 3.2.4. **Consultation/ Proposal 2:**

- a) Whether the recommendations of EODB working group at para 3.2.3 (a) to (f) above are appropriate.
- b) Any other suggestion.

### 3.3. **Additional proposal: Most Important Terms and Conditions (MITC)**

3.3.1. In terms of Regulation 22(1) and 22(3) of SEBI (Portfolio Managers) Regulations, 2020, the following documents have been prescribed for formalizing the PMS-client relationship:

- i. **PMS-Client agreement** which *inter alia* includes provisions related to mutual rights, liabilities and obligations, fees payable, risks involved, investment objective, investment restrictions, tenure and termination of the agreement.
- ii. **Disclosure document** which *inter alia* provides disclosures related to portfolio risks specific to investment approach, related party transactions, conflicts of interests, performance of portfolio manager, audited financial statements.

- 3.3.2. Typically, these documents are voluminous and investors may lose focus on critical aspects of the relationship with the Portfolio Managers.
- 3.3.3. In order to bring into focus the critical aspects of the PMS-client relationship and for ease of understanding of the clients, it is proposed that a Portfolio Manager may be required to provide to its client a standard “*Most Important Terms and Conditions (MITC)*” document, which shall be acknowledged by the client.
- 3.3.4. The form, nature of communication, documentation and detailed standards for implementation of MITC may be prescribed by the APMI, in consultation with SEBI.
- 3.3.5. **Consultation/ Proposal 3:**
- Whether the proposals at para 3.3.3 and 3.3.4 above are appropriate.
  - Any other suggestion.

#### 4. Public Comments on this Consultation Paper

- 4.1. Public comments are invited for the proposals at paragraph 3.1, 3.2 and 3.3 above. The comments/ suggestions should be submitted by the following mode latest by **March 07, 2024**:-

- **Online web-based form**

- 4.1.1. The comments may be submitted through the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

- 4.1.2. The instructions to submit comments on the consultation paper are as under:

- Before initiating the process, please read the instructions given on top left of the web form as “Instructions”.
- Select the consultation paper you want to comment upon from the dropdown under the tab – “Consultation Paper” after entering the requisite information in the form.

- c. All fields in the form are mandatory;
- d. Email Id and phone number cannot be used more than once for providing comments on a particular consultation paper.
- e. If you represent any organization other than the types mentioned under dropdown in “Organization Type”, please select “Others” and mention the type, which suits you best. Similarly, if you do not represent any organization, you may select “Others” and mention “Not Applicable” in the text box.
- f. There will be a dropdown of Proposals in the form. Please select the proposals one- by-one and for each of the proposal, please record your level of agreement with the selected proposal. Please note that submission of agreement level is mandatory.
- g. If you want to provide your comments for the selected proposal, please select “Yes” from the dropdown under “Do you want to comment on the proposal” and use the text boxes provided for the same.
- h. After recording your response to the proposal, click on “Submit” button. System will save your response to the selected proposal and prompt you to record your response for the next proposal. Please follow this procedure for all the proposals given in the dropdown.
- i. If you do not want to react on any proposal, please select that proposal from the dropdown and click on “Skip this proposal” and move to the next proposal.
- j. After recording your response to all the proposals, you may see your draft response to all of proposals by clicking on “Check your response before submitting” just before submitting response to the last proposal in the dropdown. Please download the pdf file, link of which is given at the bottom of the form, just before finally submitting the comments to last and final proposal. This pdf will help in case technical issue is faced while final submission of comments;
- k. The final comments shall be submitted only after recording your response on all of the proposals in the consultation paper.

**4.1.3.** In case of any technical issue in submitting your comments through web based public comments form, you may contact the following through email with a subject "Consultation Paper on Ease of Doing Business Initiatives for Portfolio Managers":

- a) [pms\\_comments@sebi.gov.in](mailto:pms_comments@sebi.gov.in)
- b) Mr. Peter Mardi, DGM ([peterm@sebi.gov.in](mailto:peterm@sebi.gov.in))
- c) Mr. Tarun Kumar Garg, Manager ([tarung@sebi.gov.in](mailto:tarung@sebi.gov.in))

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(End of Consultation Paper)