

# **MONEY MAESTROS STUCK IN REGULATORY CONUNDRUM: EVALUATING THE RECKLESSNESS OF FINFLUENCERS**

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## **INTRODUCTION**

The advent of the digital age has precipitated a transformative paradigm shift within the financial landscape, culminating in the emergence of a distinct category of influencers, and catalysed the emergence of a novel cadre of financial influencers, commonly known as ‘finfluencers’. These people are not classic financial analysts but hold a substantial social media presence and possess the power to impact the decisions of investors and traders to buy the securities of a particular entity. Moreover, these personalities leverage their virtual identity and financial acumen to persuade novice or financially untrained investors and impart recommendations to a substantial online audience. Furthermore, these people are not circumscribed within the structure of the SEBI (Investment Advisors) Regulations, 2013 and SEBI (Research Analyst) Regulations, 2014. They may also be involved in the pump and dump and other market rigging schemes using social media, which can lead to the procurement of the securities of the listed company. Finfluencers captured the attention of a substantial number of enthusiasts (followers) on social media platforms, encouraged them to buy the securities or stocks that they had already bought, and subsequently sold the promoted stocks once the price rose. Therefore, the concerns about conflict of interest cannot be laid at bay and these people could deploy their influence to obtain personal surplus by squaring off their position in capitalising.

Previously, in profuse press conferences, security regulator the SEBI warned of investment fraud on social media and has crackdown upon several finfluencers for market manipulations, with the Baap of Chart being a very recent example where a huge penalty was imposed. Therefore, to curb their market implications, on 25th August, SEBI released a consultation paper on the Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including FinFluencers).<sup>1</sup>

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<sup>1</sup> *Consultation Paper on Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including Finfluencers)* (Aug. 25, 2013), [https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-\\_75932.html](https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-association-of-sebi-registered-intermediaries-regulated-entities-with-unregistered-entities-including-finfluencers-_75932.html).

The purpose of this paper is to solicit public opinion/Comments on various material issues pertaining to the regulation of finfluencers without violating their right to proliferate or spread financial information. The proposed paper aims to standardise the regulations and to protect the interest of investors by bringing a regulatory mechanism without the intrusion of uninhibited information. This article explores the intricate legal and regulatory convolutions surrounding the oversight of finfluencers and the missed opportunity by SEBI to clearly interpret the meaning of the word recklessness in its recent order.

### **ROLE OF FINFLUENCER IN AFFECTING THE MARKET**

Historically, companies and market regulators have struggled to attract investors owing to the lack of financial literacy in India as per official data.<sup>2</sup> People were generally unrestricted and utilized social media to obtain information and perform daily tasks during the lockdown period. This event provided a fertile ground for the finfluencers to impart financial market knowledge to their followers and encouraged them to invest. Consequently, India witnessed a huge influx of retail investors in the securities/ financial market, hailing not only from the metro cities but also from the non-metro cities and hinterland.<sup>3</sup> This rise of retail investors has also raised the issue of how this has happened in a very short span of time and whether the investors are investing their money judiciously. While on the one hand, finfluencers are disseminating financial literacy by concocting content on social media in facile language and on the other hand, under the guise of imparting financial knowledge, they have also started to provide financial advice to their followers to deal with securities.<sup>4</sup> These people began exchanging personal experiences, investing strategies, and financial advice on the management of their financial resources.

Even though these individuals often lack requisite qualifications, they possess a unique ability to connect with their audience. Moreover, it has reached an extent that they are able to manipulate the securities of listed companies by persuading their followers to purchase the recommended securities. Thereafter, they offload their pre-purchased stock and make a profit out of it. SEBI was duly informed when a whole-time director of SEBI held four finfluencers

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<sup>2</sup> Jasim Nihalani, *Domestic investors help Indian markets buck the trend in 2022*, THE HINDU, (Nov. 9, 2023, 10:17 AM) <https://www.thehindu.com/data/data-domestic-investors>.

<sup>3</sup> Shubham Khandal, *Indian stock market: A study on rise of retail investors*, ASIAN JOURNAL OF MANANAGEMENTN AND COMMERCE 192 <https://www.allcommercejournal.com/article/134/4-1-7-335.pdf>.

<sup>4</sup> Krithi D. Ramaswamy, *Finfluencers in India: New Paradigms of Financial Trust and Authority*, 23 Social Media and Society in India 139, 133-140 (2023).

accountable in the case of Stock Recommendations Using a Social Media Channel (Telegram)<sup>5</sup> for manipulating small cap stocks via their Telegram channel. During its investigation, SEBI discovered that the volume and price of the recommended stock increased and fluctuated significantly whenever recommendations were made via their Telegram channel.<sup>6</sup>

Pursuant to this, in a recent press conference, the current chairperson of the SEBI, Ms. Madhabi Puri Buch mentioned that the SEBI is not against people educating about personal finance, but it will have to definitely take action against those who aim to profit by endorsing other platforms or shares, through their social media and channels of distribution.<sup>7</sup> In simple words, SEBI being a vigilant financial watchdog, does not allow unlicensed individuals to encash the gullibility of financial illiteracy of the common people.

### **FINFLUENCERS VIS-A-VIS RIGHTS OF THE CONSUMERS**

The growth of Finfluencers has alarmed the Advertising Standards Council of India (“ASCI”). This aforementioned self-regulatory organisation works to ensure that honest advertising standards are being followed, which safeguards the interests of the consumer. It is pertinent to note that ASCI, despite not being a government body, has developed a Code for its functioning.<sup>8</sup> Recently, ASCI Influencer Guidelines 2023<sup>9</sup> became a part of the ASCI Code. These guidelines require finfluencers to have the necessary qualifications to propagate financial information. A week later, the SEBI released a consultation paper on the Association of SEBI Registered Intermediaries/Regulated Entities with Unregistered Entities (including FinFluencers)<sup>10</sup>. The authors hereby critically analyse the guidelines put forth by the financial watchdogs. In this regard, the paper aims to set clear boundaries between legal and illegal activities by shedding light on the operation of finfluencers in various spheres of financial sectors like Mutual Funds.

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<sup>5</sup> SEBI Interim Order In the matter of Stock Recommendations using Social Media channel Telegram, WTM/SKM/54/201-22, [https://www.sebi.gov.in/enforcement/orders/jan-2022/interim-order-in-the-matter-of-stock-recommendations-using-social-media-channel-telegram\\_55305.html](https://www.sebi.gov.in/enforcement/orders/jan-2022/interim-order-in-the-matter-of-stock-recommendations-using-social-media-channel-telegram_55305.html).

<sup>6</sup> *Id.*

<sup>7</sup> Ajay Rag, *Finfluencers must register with Sebi for dealing with regulated entities: Madhabi Puri Buch*, THE ECONOMIC TIMES (September 05, 2023, 8:47 PM) <https://economictimes.indiatimes.com/tech/technology/finluncers-must-register-with-sebi-for-dealing-with-regulated-entities-madhabi-puri-buch/articleshow/103403507.cms?from=mdr>.

<sup>8</sup> *Finfluencers In The Crosshairs: SEBI's Regulatory Clampdown*, KHAITAN & CO. (December, 13, 2023) [https://www.khaitanco.com/thought-leaderships/Finfluencers\\_In\\_The\\_Crosshairs\\_SEBIs\\_Regulatory\\_Clampdown](https://www.khaitanco.com/thought-leaderships/Finfluencers_In_The_Crosshairs_SEBIs_Regulatory_Clampdown).

<sup>9</sup> *Guidelines For Influencer Advertising In Digital Media* (May 27, 2021) <https://www.ascionline.in/wp-content/uploads/2023/08/GUIDELINES-FOR-INFLUENCER-ADVERTISING-IN-DIGITAL-MEDIA.pdf>

<sup>10</sup> *Supra note. 1*

Practically, influencers can be divided into two categories based on their *modus operandi*. Few take monetary consideration in lieu of their advice *via* educational courses, while others make a profit from sponsorships from stock companies and viewership on social media.<sup>11</sup> But in both categories, most of the influencers make false claims about their qualifications, trading experience, and profits made in the market. There have been instances where the underlying companies are incentivizing them to encourage their followers to trade in their company securities.

SEBI has proposed that financial influencers must adhere to the code of conduct and advertising guidelines. This raises the question of whether SEBI plans to establish separate registration requirements for influencers or if it encompasses those already registered as entities like Investment Advisers (IAs), Research Analysts (RAs), Stockbrokers, etc.<sup>12</sup>

#### **THE CURRENT MECHANISM FOR SEBI TO REGULATE THE ‘INVESTMENT ADVICE’: CAN FINFLUENCERS BE BROUGHT UNDER ITS AMBIT?**

Though no specific law exists to govern the influencer, they can be held liable for the violation of the Act and Regulation. Section 12A of the Act mentions that no person should directly or indirectly engage in activities that aim to defraud, manipulate, or mislead the investor with respect to the transaction in the stock market.<sup>13</sup> Similarly, Regulation 4 of the PFUTP Regulation provides that no person should indulge in a manipulative, fraudulent, or unfair trade practice in the securities market.<sup>14</sup> Upon analysing the aforementioned provisions, it can be presumed that influencers not only mislead current investors, but also prospective investors. Moreover, the unregulated acts of these influencers often lead to the wrongful assessment of securities, which eventually leads to fraud and unfair trade practices.<sup>15</sup> The SEBI (Investment Advisers) Regulations, 2013 (IA Regulations) govern investment advisors in India.<sup>16</sup> The meaning of “investment advice” under these regulations deals not only with the arrayed

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<sup>11</sup> Namita & Adya Garg, *End of the Party for Sin (Fin) Influencers? SEBI's Regulatory Crackdown on Influencers*, CYRIL AMARCHAND MANGALDAS (January 21, 2024, 9:15 PM) <https://corporate.cyrilamarchandblogs.com/2023/09/end-of-the-party-for-sin-fin-fluencers-sebis-regulatory-crackdown-on-finfluencers/>

<sup>12</sup> *Id.*

<sup>13</sup> Securities and Exchange Board of India Act, 1992, §12A, No. 15, Acts of Parliament, 1992 (India).

<sup>14</sup> SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Gazette of India, pt. II sec. 4 (Jul. 17, 2003).

<sup>15</sup> Aamir Kapadia and Avinash Kotval, SEBI's Proposed Regulations on Influencers: Navigating Unresolved Practicalities, INDIA CORP LAW (January 25, 2024 11:24 P.M) <https://indiacorplaw.in/2023/09/sebis-proposed-regulations-on-influencers-navigating-unresolved-practicalities.html>.

<sup>16</sup> Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, Gazette of India, pt. III sec. 4 (Jan. 21, 2013).

valuations of shares altogether, but also with the simplification of complicated financial jargon via written, oral, or any other means of communication. It is pertinent to note that any advice given through electronic broadcasting or telecommunications medium, which is publicly available, shall not be considered investment advice for the purpose of these regulations.<sup>17</sup> Therefore, the majority of finfluencers who are providing advice or stock recommendations which are publicly available do not come under the grab of the IA Regulation. Similarly, finfluencers also did not fall under the category of Research Analyst under the SEBI (Research Analysts) Regulation, 2014 (RA regulations) because they do not fulfil the requisite qualifications required under RA Regulations.<sup>18</sup>

The Reg. 2 (1) (u) of SEBI RA Regulations defines “*a research analyst to be a person who is primarily responsible for making available research content including making buy/sell/hold recommendation or offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of research analyst.*”<sup>19</sup>

Recently, SEBI, in the matter of unregistered investment advisory activities of Mohammad Nasiruddin Ansari (“Baap of Chart”),<sup>20</sup> held that the finfluencer providing advice in lieu of consideration and as their advice is not available free of cost, fulfil the tenets put forth by the IA Regulations, therefore their advice comes under the definition of “investment advice.”

Therefore, it is imperative that the Finfluencers, before propagating any information to the common masses, should have minimum qualifications and should be registered with SEBI. Also, SEBI should revamp its regulations to adhere to challenges posed by social media so that innocent prospective investors don't lose their hard-earned money in the volatile stock market.

#### **SUGGESTION- MISSED OPPORTUNITY TO DETERMINE ‘RECKLESSNESS’.**

In the matter of ‘Baap of Charts’,<sup>21</sup> SEBI has applied regulation 4(2)(k) of the PFUTP Regulations, 2003, for the first time in the context of FinFluencers. Regulations 3 and 4(1),

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<sup>17</sup> *Id.*

<sup>18</sup> Ayush Yadav, *Regulation of Financial Influencers (Finfluencers) in India: a Critical Analysis*, 1 NULAS SECURITY LAW REVIEW (2023).

<sup>19</sup> Securities and Exchange Board of India (Research Analyst) Regulation, 2014, Gazette of India, pt. III sec. 4 (Sep. 1, 2014).

<sup>20</sup> SEBI Interim Order In the matter of unregistered investment advisory activities by Mohammad Nasiruddin Ansar Baap of Chart, WTM/AN/MIRSD/MIRSD-SEC-6/29693/2023-24, [https://www.sebi.gov.in/enforcement/orders/oct-2023/interim-order-cum-scn-in-the-matter-of-unregistered-investment-advisory-activities-of-mohammad-nasiruddin-ansari-baap-of-chart\\_78333.html](https://www.sebi.gov.in/enforcement/orders/oct-2023/interim-order-cum-scn-in-the-matter-of-unregistered-investment-advisory-activities-of-mohammad-nasiruddin-ansari-baap-of-chart_78333.html).

<sup>21</sup> *Id.*

cover the broad and overreaching of PFUTP Regulations, 2003 altogether. Moreover, the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022 ('2022 Amendment') gave rise to the 'recklessness standard'. Consequently, SEBI observed that the acts performed by Nasir were 'reckless', as they aimed to mislead others in the name of educational courses by ensuring profits from the investments made by them in the stock market.<sup>22</sup> In its ruling, the financial regulatory watchdog has not elaborated upon the 'recklessness principle', which, if provided, would have been cardinal to mitigate the irregularities and misleading in the finfluencer ecosystem.

In the United States, activities aiming to manipulate the stock market are prohibited, as per principles enshrined in Section 10(b) of the Securities Exchange Act of 1934,<sup>23</sup> read along with Rule 10b-5 of SEC Rules, 1934.<sup>24</sup> These provisions give a standard for the proof of intent, commonly known as scienter. The scienter is a multifaceted concept that does not only cover intention, but also knowledge and recklessness.<sup>25</sup> The aspects of recklessness were elaborately discussed in the landmark case of *Sundstrand Corporation v. Sun Chemical Corporation* ("*Sundstrand*"),<sup>26</sup> where the Court defined recklessness as "*highly unreasonable [conduct], involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care*". Furthermore, any act of recklessness "*serve[s] as a proper legally functional equivalent of intent, because it measures conduct against an external standard that, under the circumstances of a given case, leads to the conclusion that the reckless man must bear the risk of his [conduct]*".<sup>27</sup> Therefore, this case has set a precedent for the interpretation of 'recklessness' by equating it to the intention to deceive, thereby elevating the degree of negligence. The court also set objective and subjective tests to determine recklessness.

In a similar manner, SEBI has the opportunity to exhaustively set the standards for the determination of recklessness, which is crucial because of the upcoming manipulative tactics of FinFluencers. The "*Sundstrand*" case also set up certain objective and subjective tests for

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<sup>22</sup> *Id.*

<sup>23</sup> Security Exchange Act, 1934, §10(b), 15 U.S.C.S., 1934 (U.S.A).

<sup>24</sup> SEC Rules, 1934, Rule 10b-5 (1934).

<sup>25</sup> Prachi Pandya, *FinFluencers — From the Lens of SEBI*, SCC ONLINE (December 14, 2023, 8:15 P.M) <https://www.scconline.com/blog/post/2023/08/29/finfluencers-from-the-lens-of-sebi/>.

<sup>26</sup> *Sundstrand Corporation v. Sun Chemical Corporation*, 434 U.S. 875 (1977).

<sup>27</sup> *Id.*

the degree of recklessness.<sup>28</sup> Therefore, in this regard, the ‘Baap of Charts’ order was imperative to set up tests for the proper execution of financial regulatory principles.

## **COMPARATIVE REGULATORY FRAMEWORK GOVERNING THE FINFLUENCERS IN THE U.S.A**

In the era of digital revolution, the rampant upsurge of fin-fluencers across the globe forced the security market regulators to think upon the regulation of these unregulated entities. It is an undeniable fact that the USA, having the biggest Stock Exchange in the world, is not untainted with the vices of financial misinformation through the medium of internet by finfluencers. Moreover, it has been observed that the stocks that generally trend on social media face the most volatility.<sup>29</sup> The Securities and Exchange Commission (SEC), the USA security market regulator, has taken cognizance of the price volatility of certain companies which were promoted by the social media influencers as a viable option to invest in them. The SEC observed that there had been a sudden rise in the stock of some companies whose shares or the misinformation about them propagated by the finfluencers.<sup>30</sup> SEBI's counterpart in the USA is well aware of it and has acknowledged it.

Historically, the SEC aligns the activities of finfluencer akin to market manipulation. It defines market manipulation as wilful disruption of the free forces of supply and demand of stocks, which is often carried out to mislead investors by manipulating or influencing prices or market activity of a stock.<sup>31</sup> To charge the individual or an entity of market manipulation, the following essential need to be fulfilled “(1) manipulative acts; (2) damage (3) caused by reliance on an assumption of an efficient market free of manipulation; (4) scienter; (5) in connection with the purchase or sale of securities; (6) furthered by the defendant’s use of any means or the mails.”<sup>32</sup>

The phenomenon finds its application in Section 17(a) and (b) of the Securities Act of 1933, Section 9(a) and 10(b) of the Securities and Exchange Act and SEC Rule 10b-5. All these

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<sup>28</sup> Supra note 23.

<sup>29</sup> Megan R. Miller, *Finfluencers Meme Stocks, and Regulatory Response*, BOSTON UNIVERSITY SCHOOL OF LAW (February 25, 2024) <https://www.bu.edu/rbfl/2022/03/28/finfluencers-meme-stocks-and-regulatory-response/>.

<sup>30</sup> Tamra Manfredo, *How to Make \$1 Million in 30 Seconds or Less: The Need for Regulations on Finfluencers*, 84 LOUISIANA LAW REVIEW 792, 799 (2024) <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=6987&context=lalrev>.

<sup>31</sup> Merritt B. Fox, *Stock Market Manipulation and Its Regulation*, 35 UNIVERSITY OF MICHIGAN LAW SCHOOL 68, 79 (2018) <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2978&context=articles>.

<sup>32</sup> Basic v. Levinson, 485 U.S. 224 (1988).



provisions are general provisions not specifically meant for tackling influencers. Therefore, in 2022 SEC issued an “investor alert” warning the investor not to make investment decisions solely based upon advice or information from social media platform and apps”.<sup>33</sup>

Recently, U.S. courts charged several individuals involved in market manipulation using social media platforms. One such case is Securities and Exchange Commission v. Carol McKeown and Others,<sup>34</sup> where U.S. district court for Southern district of Florida upheld the charges against two individuals for pumping the stocks of micro-cap companies and then making a profit by selling them. These individuals were held liable for violation of sections 17(a) and 17(b) of the Securities Act of 1933 and Section 10(b) of the Security and Exchange Act, 1934 and Rule 10b-5 made thereunder. Similarly, in Securities and Exchange Commission v James Alan,<sup>35</sup> the U.S. district for Northern district of California held the defendant liable for tweeting false statements about listed companies which caused a sharp drop in their scrip price and triggered a trading halt in one of them. The defendant was held liable for violation of Section 10(b) of the Security and Exchange Act, 1934, even though he failed to make any substantial profits.

It is pertinent to note that the language of section 10b of the SEC Act, 1934, is wide as well as flexible enough to charge a person for any kind of manipulative practice. It also gives power to the SEC to charge a person for violation of any rule and regulation formed thereunder. Hence, the act of influencers intended to deceive investors fall within scope of section 10b. The main challenge faced by the SEC for establishing a person guilty of market manipulation is the “scienter” requirement.<sup>36</sup> The judicial precedent set by the courts across the U.S. made it clear that intention is an important factor to hold a person liable for market manipulation.

It has been observed that the conviction rate for the violation of sections 17(a) and 17(b) of the Securities Act of 1933 and section 10(b) of the Security and Exchange Act, 1934 has increased because in many cases, the courts are upholding the charges even though one of the six essentials required to charge the individual or an entity of market manipulation is missing.

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<sup>33</sup> *Social media and Investment Fraud – Investor Alert*, U.S. Securities and Exchange Commission (August 29, 2022) <https://www.sec.gov/oiea/investor-alerts-and-bulletins/social-media-and-investment-fraud-investor-alert>.

<sup>34</sup> *Securities and Exchange Commission v. Carol McKeown and Others*, Civil Action No. 10-CV-80748- COHN (S.D. Fla.).

<sup>35</sup> *Securities and Exchange Commission v. James Alan Craig*, Civil Action No. 3:15-cv-05076) (N.D. Cal.).

<sup>36</sup> Akshat Sharma, *Deciphering Indian & USA Securities Laws -A Future Roadmap to Regulate Influencers in India*, NLIU - TRILEGAL SUMMIT ON CORPORATE AND COMMERCIAL LAWS (April 2023) <https://cbcl.nliu.ac.in/wp-content/uploads/2023/02/7th-NLIU-Trilegal-Summit-Book.pdf>.



In *Markowski v. SEC*,<sup>37</sup> the U.S. district court further upheld the SEC's position that intent alone is enough to hold the person liable for the violation of section 10b and Rule 10b-5 of the SEC Act, 1934. Similar observations were made in *Security Exchange Commission v. Masri*,<sup>38</sup> wherein the court held that "manipulative intent alone is enough to make open market transactions manipulative". However, these judgments were criticized by many jurists, as they consider the intention of the wrongdoer alone to be not sufficient to establish a violation of Section 10(b) of the SEA Act, 1934 without considering any other essentials, and the criticism is supported by third circuit in *GFL Advantage Fund, Ltd. v. Colkit*,<sup>39</sup> where it was held that "manipulative intent alone is not enough to make open-market transactions amount to illegal market manipulation".<sup>40</sup>

In India, with the judgment in *Abhijit Ranjan v. SEBI*,<sup>41</sup> intention holds a degree of relevance in securities market manipulation, while the clouds are unclear with respect to the influencers (i.e. non-insiders, possessing and propagating the information). The jurisprudential evolution in both countries marked the adoption of the 'parity of information' doctrine, whether the regulators emphasise on the information possessed by the manipulator, rather than focussing on his intention to violate the securities law.

## **REQUIREMENT FOR ANTI-TOUTING REGULATION IN INDIA**

Touting activities refer to the promotion of security by the person against the consideration received without disclosing about the consideration.<sup>42</sup> In the U.S.A. touting activities are considered a violation of section 17(b) of the Securities Act of 1933. Recently, the SEC charged Kim Kardashian with a violation of section 17(b) of the Securities Act for promoting crypto security Ethereum Max on her Instagram account without giving the disclosure that she received consideration against the said promotion.<sup>43</sup> Kim Kardashian was charged \$1.26 million, which according to many, is a mere change for a billionaire celebrity like her, but it

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<sup>37</sup> *Markowski v. SEC*, 274 F.3d 525, 529 (D.C. Cir. 2001).

<sup>38</sup> *Security Exchange Commission v. Masri*, 523 F.Supp. 2d 361, 367 (S.D.N.Y. 2007).

<sup>39</sup> *GFL Advantage Fund Ltd. v. Colkit* 272 F.3d 189, 205 (3rd Cir. 2001).

<sup>40</sup> *Id.*

<sup>41</sup> *Abhijit Ranjan v. SEBI*, 2019 SCC OnLine SAT 223.

<sup>42</sup> Jessica B. Magee, *Tout, Tout, Let It All Out: SEC Continues Crackdown on Celebs, Athletes Touting Digital Assets*, HOLLAND AND KNIGHT (March 2, 2023) <https://www.hklaw.com/en/insights/publications/2023/03/tout-tout-let-it-all-out-sec-continues-crackdown-on-celebs>.

<sup>43</sup> *SEC Charges Kim Kardashian for Unlawfully Touting Crypto Security*, U.S. Securities and Exchange Commission (October 3, 2022) <https://www.sec.gov/news/press-release/2022-183>.

set the precedent that if influencers or celebrities promote security violating the anti-touting regulation, he/she will be charged for the said violation.<sup>44</sup>

In *Affiliated Ute Citizens v. United States*, the U.S Supreme Court observed that “*proof of materiality of an omitted fact is sufficient to presume reliance in cases involving primarily a failure to disclose.*”<sup>45</sup> Hence, when a finfluencer or celebrity promotes certain security against the consideration, he/she is obliged to disclose the same and if he fails to do so the presumption or the reliance will be presumed. Further, if finfluencer did not make a disclosure intentionally, the “scienter” requirement will also get presumed.

In India, SEBI passed an Interim Order in the matter of Stock Recommendations using YouTube in the scrip of Sadhna Broadcast Limited,<sup>46</sup> barring actor Arshad Warsi and promoters of Sadhna Broadcasting from the security market for making misleading recommendations to the investors from buying the shares of the company and being involved in pump and dump scheme. Later on, the SAT stayed the order due to lack of evidence and consequently directed the SEBI to complete the investigation within six months.<sup>47</sup> However, there is a grey area pertaining to the regulation of anti-touting activities. The existing regulatory mechanism lacks the mandatory disclosure by the endorser whether the said endorsement is for a consideration or not.

## CONCLUSION

In this dynamic world, a new sphere has emerged in the realm of social interaction with people, technology made it easier through various platforms like Instagram, LinkedIn, YouTube, etc. Therefore, turning a blind eye to unqualified and unregulated investment advisory services can cause irreparable damage to the integrity of the securities market. Such services may adversely impact the orderly development of the securities market apart from hurting the interests of the investors in the market. The existing regulatory framework only seeks to address fraudulent and unfair trade practices. However, it does not possess the requisite mechanisms to effectively

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<sup>44</sup> Doina Chiacu, *Kim Kardashian pays \$1.26 million fine for paid crypto ad, SEC says*, REUTERS (October 3, 2022, 11:33 P.M) <https://www.reuters.com/markets/us/sec-charges-kim-kardashian-unlawfully-touting-crypto-security-statement-2022-10-03>.

<sup>45</sup> *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972).

<sup>46</sup> Interim Order in the matter of Stock Recommendations using YouTube in the scrip of Sadhna Broadcast Limited, WTM/AM/ISD-SEC-1/24333/2015, [https://www.sebi.gov.in/enforcement/orders/mar-2023/interim-order-in-the-matter-of-stock-recommendations-using-youtube-in-the-scrip-of-sadhna-broadcast-limited\\_68595.html](https://www.sebi.gov.in/enforcement/orders/mar-2023/interim-order-in-the-matter-of-stock-recommendations-using-youtube-in-the-scrip-of-sadhna-broadcast-limited_68595.html).

<sup>47</sup> Arshad Hussain Warsi v. SEBI, SAT Appeal No. 284 of 2023 (March 27, 2023) [https://sat.gov.in/english/pdf/E2023\\_JO2023284.PDF](https://sat.gov.in/english/pdf/E2023_JO2023284.PDF).

confront the multifaceted challenges engendered by unregistered or unregulated finfluencers who operate within a grey zone and disseminate unsubstantiated information. An urgent necessity exists either to amend the existing regulatory regime or to frame a new regulatory framework to protect investors' interests. A balance enabling the propagation of financial education and regulating Finfluencers is necessary for regulating them. By addressing the existing regulatory gaps and by implementing an effective mechanism, market regulators can reinstate the trust among the investors and create a platform for the unhindered flow of information.