

**Asia Internet Coalition (AIC) Feedback on the Consultation Paper on the
Recognition as a 'Specified Digital Platform' (Draft Circular)**

25 November 2024

To,

The General Manager

Market Intermediaries Regulations and Supervision Department

Securities Exchange Board of India

Respected Sir/ Ma'am,

The [Asia Internet Coalition](#) (AIC) is an industry association that promotes the understanding and resolution of internet policy issues in the Asia Pacific region. Our mission is to represent the internet industry and promote stakeholder dialogue between the public and private sectors, sharing best practises and ideas on internet technology and the digital economy. We wish to achieve our aim by collaborating with the Government, industry and all the relevant stakeholders.

In this regard, AIC, on behalf of the entire industry, would like to extend its gratitude to the Securities Exchange Board of India (**SEBI**) for conducting a multi-stakeholder public consultation on the Draft Circular, which addresses the growing concerns of unregistered financial influencers (**Finfluencers**) making claims and providing unauthorised advice on the securities market.

Considering the above, we have taken the opportunity to provide our inputs on the Draft Circular. **Our inputs are elaborated (below) under two parts, namely, Part I and Part II.** Part I primarily deals with the jurisdiction limitations of SEBI to regulate digital platforms, whereas Part II provides inputs on the preventive and curative measures outlined in Annexure-A of the Draft Circular.

AIC looks forward to discussing these inputs and working together with SEBI.

Thank you,

Sincerely,

Secretariat

Asia Internet Coalition

PART I – Jurisdictional limitations of SEBI

I. Background:

- We understand that SEBI has issued the Draft Circular under Section 11(1) of the Securities Exchange Board of India Act, 1992 (**SEBI Act**) on October 22, 2024. The Draft Circular was issued following the identical amendments made by SEBI to the multiple SEBI regulations on August 26, 2024 (*collectively the **SEBI Amendments***)¹. The SEBI Amendments aim to regulate Finfluencers who operate on digital platforms by prohibiting SEBI regulated entities² (**REs**) from *associating*³ with unregistered Finfluencers. In this context, we note that the SEBI Amendments exempt associations between REs and Finfluencers – in so far as such association occurs through a *specified digital platform (SDP)*.
- Given the above, the Draft Circular outlines detailed preventive and curative measures required to be demonstrated by digital platforms for them to be recognized as SDP. Specifically, Clause 10 of the Draft Circular provides that a “*digital platform shall be required to apply within three months after the issuance of this circular to seek recognition as SDP*”. In this context, we believe that the Draft Circular exceeds SEBI’s designated powers and responsibilities due to the following reasons:

II. Digital Platforms Fall Outside the Scope of SEBI Regulation

- The Draft Circular mandates digital platforms to register with SEBI and places obligations vis-à-vis the preventive and curative measures on such platforms. However, under Section 11(1) of the SEBI Act, SEBI is primarily mandated “*to protect the interests of investors in securities and to promote the development of,*

¹ SEBI seeks to concurrently issue the Draft Circular under Regulation 16A of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (**SEBI Intermediaries Regulations**), Regulation 44B of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 and Regulation 82B of Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018.

² SEBI regulated entities include stock exchanges, stockbrokers, depositories, credit rating agencies, custodians of securities, foreign institutional investors, and such other intermediaries who are associated with the securities market and are notified as such by SEBI.

³ SEBI Amendments define ‘association’ as: (a) monetary transactions or exchanges of monetary value; (b) referrals of clients; (c) interactions between information technology systems; or (d) other similar or related forms of interaction.

*and to regulate the securities market, by such measures as it thinks fit.” Further, as per Section 11(2) of the SEBI Act, SEBI may inter alia regulate REs such as stock exchanges, stockbrokers, depositories, credit rating agencies, custodians of securities, foreign institutional investors, and such other intermediaries who are associated with the securities market and are notified as such by SEBI. Thus, SEBI’s jurisdiction under the SEBI Act is limited to: (a) *promoting the development of and regulating the securities market*, and (b) those entities that fall within the meaning of REs.*

- Further, the Draft Circular defines digital platform as *“the software and media platform which enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services”*. As you will note the definition of digital platform is excessively broad and inclusive in nature. Given this, it is likely to include a wide range of technology platforms that may not have any connection to the securities market whatsoever. Thus, we submit that: (a) SEBI’s powers extend to REs who fall within the purview of Section 11(2) of the SEBI Act, and (b) digital platforms for the purposes of Master Circular do not qualify as REs.
- Additionally, we believe that although SEBI does not have direct authority to regulate digital platforms, it is indirectly attempting to do so by requiring digital platforms to adhere to the preventive and corrective measures in order to be recognized as SDP. In this context, we submit that SEBI is violating the doctrine of colourable legislation i.e, *“what cannot be directly cannot be done indirectly”*⁴. Moreover, to prevent the potential misuse of digital platforms by entities that are required to be registered as intermediaries/ have obtained a registration under the SEBI Act, SEBI ought to focus on regulating such intermediaries and not the digital platforms themselves. Such digital platforms cannot typically be regarded as a RE under Section 11(2) of the SEBI Act, neither has SEBI classified them as intermediaries for the purposes of SEBI (Intermediaries) Regulations, 2008 and the SEBI Act.
- *In light of the above, we submit that imposing preventive and corrective obligations on digital platforms and mandating them to register with SEBI, as outlined in the Draft Circular, would go beyond the powers and authority granted to SEBI under the SEBI Act.*

⁴ *Subhash Chandra v. Delhi Subordinate Services Selection Board*, (2009) 15 SCC 458; see also *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705

III. The IT Act Framework adequately regulates digital platforms

- Section 2(1)(w) under the Information Technology Act, 2000 (**IT Act**) defines an ‘intermediary’ with respect to any particular electronic records, as “*any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.*” As you will note there is a significant overlap between the definition of an intermediary under the IT Act and that of a digital platform under the SEBI Amendments. In other words, since the definition of intermediary is broad and inclusive under the IT Act, it includes ‘digital platform’ as defined under the Draft Circular.
- Given the above, we submit that the intermediaries are regulated under the IT Act and fall within the jurisdiction of the Ministry of Electronics and Information Technology (**MEITY**). To elaborate, as per the Allocation of Business Rules, 1961 (“**AB Rules**”), the MEITY has the power to regulate: (a) policy matters relating to information technology, electronics, and the internet; and (b) matters related to the administration of the IT Act.
- Moreover, most of the compliances sought under the Draft Circular are already addressed under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**IT Rules**) issued under the IT Act. For instance, the Draft Circular mandates intermediaries to provide a policy to: (a) “*take strict measures against impersonation of the SEBI, SEBI officials and persons regulated by SEBI, MIs and their agents*”; and (b) “*take action on users and content creators responsible for fraud, impersonation and unregistered activities and non-permitted claims related to securities market.*” In this context, the IT Rules already requires intermediaries to undertake reasonable efforts “*to not, as well as cause their users to not – host, upload, modify, publish, share, etc., any information which: (a) intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature; (b) impersonates another person; and (c) violates any law for the time being in force.*” Therefore, intermediaries (which would include digital platforms) already have in place adequate measures to address the issue of impersonations on their platforms.

- *In light of the above, we submit that: (a) that the existing IT Act framework (as mentioned above) is adequate for regulating digital platforms as defined under the SEBI Amendments, and (b) as per the AB Rules, regulation of the digital platforms falls outside the scope of SEBI's authority.*

PART II - Comments on the preventive and curative measures outlined in Annexure-A of the Draft Circular

I. Clause 5 - Definition Of "Advertisement"

- *Clause 5(a) of the Draft Circular defines the term "advertisement" to mean "any content on the digital platform that is intended to promote the sale, disposal, or use of any product or service, and in addition shall include a content that is identified/classified as an advertisement by the digital platform in accordance with its own policy/guidelines".*
- *The Draft Circular provides a broad definition of advertisement, which could potentially categorize user-generated content (UGC) as an advertisement. As a result, digital platforms may be required to inadvertently apply the preventive and corrective measures outlined in the Draft Circular to content that does not directly promote any product or service. For instance, the definition could extend to content focused on promoting investor awareness, wherein a user may be simply stating that a particular mutual fund is not performing well in their opinion.*
- *To the extent that digital platforms are required to monitor UGC, it would require them to proactively pre-screen all user posts – which would violate the precedent established by the Supreme Court in *Shreya Singhal v. Union of India* and *Google India Private Limited v. Visaka Industries* judgements. Such pre-censorship has the potential to create a chilling effect on the freedom of speech and expression as well as infringe safe harbour protections as explained in our submissions to Clause 6.1(ii) below. To avoid these issues, we recommend that the definition be restricted to paid advertisements only.*

II. Clause 5 - Definition Of “Content”

- Clause 5(c) of the Draft Circular defines the term “Content” to mean *“data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche”*.
- The Draft Circular should exclude UGC from its definition of content and restrict it solely to paid advertisements. Requiring digital platforms to monitor and remove securities-related content that doesn’t fit into the very specific categories outlined in the Draft Circular would infringe upon users’ right to free speech. This could also restrict non-educational content related to securities from non-approved entities, such as reviews of financial products, satirical takes on market trends, or opinions about specific stocks.
- Moreover, as per the doctrine of colourable legislation, SEBI should not indirectly regulate matters that it does directly have the power to directly regulate.⁵ In this case, regulation of content on digital platforms falls within the purview of the MEITY. Therefore, SEBI should not seek regulate digital platforms vis-à-vis the Draft Circular, when it is not empowered under the SEBI Act to prescribe such measures on digital platforms.
- *Given the impact on free speech due to proactive monitoring of UGC on their platforms, SEBI should delete the definition of content. SEBI should also clarify that the term advertisement is only limited to paid-for-advertisements and not UGC.*

III. Clause 6.1 - Preventive Measures

- Clause 6.1 of the Draft Circular states that *“preventive measures are the proactive and pre-emptive actions that the platform takes in order to prevent (i) fraud; (ii) impersonation; (iii) any claims by entities, that are not otherwise permitted by the SEBI; and (iv) presence of the entities that are not registered/recognised or otherwise permitted by the SEBI.”*
- The scope of the preventive measures should be restricted to paid advertisements, as advertisers have the ability to identify target audience on

⁵ Subhash Chandra v. Delhi Subordinate Services Selection Board, (2009) 15 SCC 458.

digital platforms. Moreover, the user base of these platforms typically depends on such advertisements to discover securities market-related services that are relevant to them.

- In any case, requiring digital platforms to undertake preventive measures for UGC would be an onerous obligation – as such platforms would be required on a daily basis to proactively monitor millions of pieces of content which are uploaded on their platform. In this regard and as discussed above, limiting the scope of the Draft Circular to paid-for-advertisements would reduce the risk of infringing free speech on digital platforms as such platforms would no longer be required to determine if UGC on their platform is unlawful or not. Based on such concerns, we have detailed out our recommendations in the box below.
- *SEBI should limit the scope of preventive measures to paid-for-advertisements where non-SEBI registered entity / person or whitelisted agent is advertising and providing advice / recommendations on securities, and not to UGC. Moreover, SEBI should clarify that digital platforms are required to implement the preventive measures on a 'best-efforts' basis.*
- *SEBI should permit digital platforms to implement classifiers to easily identify advertisements related the securities market on such platforms.*
- *The applicability of the clause should be limited to digital platforms implementing mechanisms where advertiser self-certify that they are registered with SEBI under law and submit their registration number when posting advertisements. In this context, the obligations of digital platforms should be limited to verifying the SEBI registration status of an individual or entity only when they attempt to place an advertisement. We request SEBI to clarify that digital platforms should only be expected to make "reasonable efforts" in verifying the registration status of the advertiser.*
- *To avoid any discrepancies, SEBI should publish and regularly update list of authorised entities and persons who are permitted to advice on the securities market.*
- *Given the unique features of end-to-end encrypted messaging services offered by digital platforms, SEBI should clarify that such platforms are exempted from complying with the Draft Circular. This is particularly because such platforms do not have the ability to view the content uploaded and shared by its users.*

- *Provide a minimum of 12 months to all the relevant stakeholders for effectively complying with the provisions of the Draft Circular. This is because the preventive measures as outlined under the Draft Circular necessitate significant technical adjustments to digital platforms, which could potentially cause disruptions to the SEBI-regulated entities that advertise on them.*

IV. Clause 6.1(i) - Policy in collaboration with SEBI

- Clause 6.1(i) of the Draft Circular provides that “*the platform should have a laid down policy to the satisfaction of SEBI to share the information and data, specific or aggregated, related to securities market on their platform with SEBI when asked for and to act on the information and inputs receive from SEBI.*”
- At the outset, it is pertinent to point out that the digital platforms already have established effective policies in place for sharing information with government authorities. For example, [LinkedIn](#) complies with government requests in so far as such requests follow established legal procedures. [LinkedIn](#) also notifies its users regarding such requests for their data unless prohibited by statute or court order.
- Similarly, [Google](#) provides an online platform for verified government agencies to securely submit requests for user data, ensuring that each request undergoes a thorough review to confirm compliance with applicable legal requirements.
- Moreover, these policies are designed to ensure consistency, fairness, and scalability across the platform’s entire user base. With this approach, digital platforms are better equipped to: (a) manage risks effectively and efficiently, (b) facilitate streamlined enforcement by regulatory authorities, and (c) ensure adherence to legal obligations. The main goal of these measures is to reduce the risk of securities-related fraud and scams occurring on their platforms.
- Additionally, we submit that the Clause has been broadly drafted as it requires digital platforms to act on the information and inputs received from SEBI. In this regard, the Clause does not specify the kinds of information or inputs that such platforms would receive. In any case, SEBI should not require digital platforms to undertake measures: (a) which the SEBI does not have the authority to prescribe; and (b) which are not required under any law in force.

- *Given that digital platforms already have the necessary policies in place, as outlined in the Draft Circular, and considering SEBI's existing authority to request information from platforms related to the securities market, we respectfully urge SEBI to remove Clause 6.1(i) from the Draft Circular.*
- *Alternatively, should SEBI decide to retain Clause 6.1(i), we request clarification that platforms would only be required to provide information that is already within their possession. Moreover, such platforms should not be obligated to:*
 - *collect any additional data that it does not already possess;*
 - *consolidate or analyze data that is not typically handled or processed in the ordinary course of their business operations;*
 - *take action that SEBI does not have authority to mandate under law.*

V. Clause 6.1(ii) - Ability to identify and analyze the content and/or advertisement related to a security or securities (including related services) under the regulatory purview of SEBI

- *Clause 6.1(ii) of the Draft Circular provides that “the platform should have in place the necessary technical tools, systems and expertise imparting the platform an ability to identify and analyse the content and/or advertisement related to a security or securities (including related services) under the regulatory purview of SEBI. The platform should deploy advanced artificial intelligence (AI) and machine learning tools for such purpose.” “The platform should have comprehensive guidelines and system to identify and analyse –*
 - a) whether the content and/or advertisement is related to securities market;*
 - b) whether the content and/or advertisement is by SEBI registered/recognised intermediary/entity or its agents, or not. The platform should have the mechanism to auto-check the registration/recognition status of the intermediary/entity from the whitelist published by SEBI, or their agents from the whitelist published by Association of Mutual funds in India (AMFI) and stock exchanges;*
 - c) whether the content and/or advertisement is in the nature of recommendation or advice or services in respect of or related to security or securities. If yes, whether the entity is permitted by SEBI to provide such recommendation or advice;*

d) whether the content and/or advertisement has any implicit or explicit claim of return or performance related in respect of or related to security or securities (including services); If yes, whether the entity is permitted to make such claim by SEBI or any agency recognised by SEBI.

e) Whether the content and/or advertisement is exclusively for providing education in the securities market;

f) If the content and/or advertisement directs/redirects to another medium such as Telegram, WhatsApp, Phone, e-mail etc. thereby effectively functioning as an advertisement with a call to action”.

- We submit that Clause 6.1(ii) lacks clarity regarding whether the use of advanced artificial intelligence (AI) and machine learning (ML) tools for monitoring is required only for paid advertisements or if it extends to UGC as well. If this requirement is applied to UGC, it would impose an unreasonable burden on digital platforms, forcing them to review vast amounts of content daily to determine if any advice or recommendations are being made by SEBI-authorized individuals or entities.
- To the extent content monitoring involves actively overseeing UGC, it would conflict with the fundamental role of intermediaries under the IT Act. The principle underpinning this is that intermediaries should not engage in curating or modifying content on their platforms. They are also not obligated to assess the legality of the content hosted on their platforms. Moreover, proactive content monitoring and removal of content that falls under the prohibited category in Rule 3(1)(b) of the IT Rules could infringe on users’ fundamental rights to privacy, as well as their freedom of speech and expression as guaranteed by the Constitution of India. For example, to comply with Clause 6.1(ii) of the Draft Circular, digital platforms might take an overly cautious approach, leading them to remove legitimate content—such as investor awareness posts or material from REs—simply to avoid the risk of non-compliance with the clause.
- Additionally, such a requirement would contradict the rulings in the *Shreya Singhal v. Union of India* and *Google India Private Limited v. Visaka Industries* cases, which held that intermediaries are not required to take down unlawful content unless they possess “actual knowledge” of the unlawful nature of content. Accordingly, intermediaries are only expected to provide a platform for third-party content to be posted, shared, hosted, etc., and they are not required to adjudicate the legality of that content or proactively monitor every piece of content for compliance.

- *We submit that SEBI should clarify whether the digital platforms are only required to make ‘reasonable efforts’ for deploying AI/ML to assess if a person is permitted to make securities-related claims, advice, and recommendations, rather than being tasked with determining the legality of such content. This clarification would ensure that the Draft Circular is in line with existing judicial precedents and the provisions of the IT Rules.*
- *Alternatively, insofar as SEBI retains Clause 6.1(ii) in the Draft Circular, it should consider narrowing the scope of the measures to apply only to paid advertisements, rather than UGC. Furthermore, SEBI should provide platforms with a well-defined set of specific keywords (avoiding overly broad terms), along with: (a) examples of content that fall under each category, and (b) clear definitions for each category. This would help digital platforms more effectively analyse content related to securities.*

VI. Clause 6.1(iii) - Policy on violations related to securities market

- *Clause 6.1(iii) of the Draft Circular provides that “the platform should have a policy to take measures to the satisfaction of SEBI to deal with the violations related to securities market including the cases of advice/recommendations/claims by entities not registered/permitted by SEBI.”*
- *The IT Rules already prescribe a takedown mechanism to remove prohibited content (**Prohibited Content**) from an intermediary’s platform – where “upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under Section 79(3)(b) of the IT Act, is required to not host, store or publish any unlawful information, which is prohibited under any law for the time being in force.”⁶ This provision extends to content related to the securities market, including cases where advice, recommendations, or claims are made by entities not registered or authorized by SEBI.*
- *Additionally, intermediaries are obligated to establish effective grievance redressal mechanisms, as specified in Rule 3(2) of the IT Rules. These mechanisms include: (a) appointing a designated grievance officer (“**Officer**”), (b) publishing the Officer’s contact details and the process for submitting grievances*

⁶ Rule 3(1)d of the IT Rules.

on the platform, and (c) ensuring that complaints are acknowledged within 24 hours and resolved within prescribed timelines. It is important to note that the Officer is also responsible for receiving and acknowledging any orders, notices, or directives issued by relevant government authorities, competent bodies, or courts.

- As per Rule 3A(4), individuals who are dissatisfied with the resolution of their complaint or whose grievances remain unresolved within the designated time frame, have the right to appeal to the Grievance Appellate Committee (**GAC**) within 30 days. The GAC must review and resolve the appeal within 30 calendar days from the date it is received.
- *Given that the IT Act and IT Rules already provide a comprehensive framework for content removal and grievance redressal concerning securities market violations, we request that SEBI to reconsider including Clause 6.1(iii) in the Draft Circular.*
- *Additionally, we recommend that SEBI should consider collaborating with MEITY to leverage the existing content takedown framework under Rule 3(1)(d) of the IT Rules. This would offer a more streamlined and legally consistent approach to addressing unlawful content related to the securities market across intermediary platforms.*

VII. Clause 6.1(iv) - Policy on impersonation related to securities market

- Clause 6.1(iv) of the Draft Circular provides that “*the platform should have a policy to take strict measures against impersonation of the SEBI, SEBI officials and persons regulated by SEBI, MIs and their agents. If the digital platform already has an existing policy on impersonation that covers the requirements, the digital platform shall demonstrate that the requirements are covered under their existing policy on impersonation.*”
- As mentioned in our submissions above, the IT Rules already prescribe for a takedown mechanism to remove content which impersonates SEBI, SEBI officials and persons regulated by SEBI, MIs and their agents from an intermediary’s platform. To elaborate, IT Rules already require every intermediary to comply with due diligence obligations which, *inter alia*, include making reasonable efforts by itself and to cause users not to display, upload, publish, modify, transmit, store,

update or share certain categories of Prohibited Content (such as content that *“violates any law currently in force” or knowingly and intentionally communicates any misinformation, or information which is patently false and untrue, or misleading in nature*”).

- Moreover, platforms such as X permanently suspend accounts which impersonate another person, group, or organisation under its [misleading and deceptive identities policy](#). Similarly, LinkedIn allows users to [report](#) profiles which may be fake or inappropriate.
- *We are of the view that the existing IT Act framework (as mentioned above) is adequate for regulating digital platforms as defined under the SEBI Amendments.*
- *Additionally, as per the AB Rules, regulation of the digital platforms falls outside the scope of SEBI's authority. In this context, we request SEBI to delete Clause 6.1(iv) from the Draft Circular.*

VIII. Clause 6.1(v) - Policy on allowing the entities that provide securities market related content and/or advertisement to operate on the platform

- Clause 6.1(v) of the Draft Circular provides that *“for the entities providing content and/or advertisement related to securities market, platform should have a policy that it shall allow only –*
 - a) An intermediary/entity registered/recognised by SEBI and their agents to provide content and/or advertisement related to securities market; or*
 - b) A person or an entity or content and/or advertisement which is exempted under any regulations issued by SEBI; or*
 - c) A person who provides/posts/reposts/creates the content and/or advertisement related to securities market exclusively for the purpose of investor education provided the person does not provide any advice or recommendation, directly or indirectly or makes any claim, expressly or impliedly, of return or performance, and does not direct to avail any product or services in respect of or related to security or securities (including related services).”*
- As mentioned earlier in our comments on Clause 5, the broad definition of “advertisement” could potentially encompass UGC, thereby creating ambiguity.

In this regard, we submit that Clause 6.1(v) would impose a requirement on digital platforms to proactively monitor both content and advertisements to ensure compliance with the categories outlined in this provision. This proactive monitoring obligation would contravene the “actual knowledge” standard established in the *Shreya Singhal v. Union of India* case, wherein the Court held that intermediaries, including digital platforms, are not required to proactively assess the legality or permissibility of UGC.

- Further, the imposition of such a monitoring requirement would compel digital platforms to oversee content posted by users, including those sharing educational material, in order to ensure compliance with Clause 6.1(v). This approach not only undermines the ruling in *Shreya Singhal*, which recognizes intermediaries as passive conduits for user-generated content, but it also risks stifling users’ ability to freely express themselves. Such measures could have a chilling effect on free speech, particularly in the context of content shared via intermediaries.
- Moreover, the broad definition of advertisement may also bring foreign entities that advertise legitimate foreign securities within the purview of the Draft Circular. However, as per the SEBI Act, SEBI only has the power to regulate domestic securities. Therefore, SEBI would be acting in excess of the jurisdiction conferred to it under the SEBI Act.
- *Given the potential impact on lawful free speech, we request SEBI to provide clarification on whether the requirements under Clause 6.1(v) would apply only to publicly available advertisements and paid ads, and not to UGC or organic content posted by platform users.*
- *Alternatively, if SEBI determines it necessary to retain Clause 6.1(v) in the Draft Circular, we propose the following changes:*
 - *SEBI should require digital platforms to make only “reasonable efforts” to ensure that only SEBI-registered or recognized intermediaries/entities, as well as their agents or exempt persons/entities, are permitted to post paid advertisements on the platform.*
 - *Digital platforms should only be required to remove content in accordance with the procedures outlined under the IT Act framework, consistent with the *Shreya Singhal v. Union of India* judgment.*

- *Additionally, we recommend that SEBI consider the following further measures:*
 - *Exemption for Foreign Entities: We recommend the inclusion of a new category (d) within Clause 6.1(v), which would exempt foreign entities advertising on foreign securities. These foreign entities could be required to self-certify that they are not regulated by SEBI and do not operate within the Indian securities market.*
 - *Whitelisting of Exempt Entities: These foreign entities should be included in a whitelist maintained by SEBI, as it may not be financially or technologically feasible for platforms to adjust their product offerings for each jurisdiction. This exemption would help mitigate disruptions to the business activities of these foreign entities.*
 - *Clear Definitions and Illustrations: The Draft Circular should clearly define each regulated category and provide illustrative examples to enhance understanding. For instance, SEBI should offer further clarification on the term “investor education” to ensure consistent interpretation and implementation across platforms.*
- We believe that the above-mentioned recommendations will help ensure that the Draft Circular is both effective in achieving its objectives and balanced in preserving free speech, while also ensuring practical feasibility for digital platforms.

IX. Clause 6.1(vi) - Usage of a verified label or badge system for SEBI regulated persons and their agents

- Clause 6.1(vi) of the Draft Circular provides that *“The platform should have a system to provide verified label or badge to SEBI registered persons to enable users to distinguish between SEBI registered entities and unregistered entities and to allow it to flag for further scrutiny to bring down content/advertisement by unregistered entities.”*
- The Clause restricts digital platforms by only requiring them to use a ‘verified label’ or a ‘badge’ to identify SEBI registered persons. However, digital platforms have already invested considerable resources in developing their own identification systems that are more suited to the specific needs of their platforms. For example,

certain digital platforms have mechanisms to place an indicator under an advertisement which would read - “paid for by [insert SEBI regulated person / entity or their agent]” or “paid for by SEBI-regulated person / entity or their agent.”

- In this context, mandating the use of a ‘verified label’ or ‘badge’ would create compliance challenges for digital platforms, as they would need to allocate resources to implement these measures. Instead, platforms should be allowed to develop their own systems to identify individuals as outlined in Clause 6.1(vi), given that such digital platforms are constantly enhancing their ability to detect misinformation on their platforms.
- *In light of the above submission, we request SEBI to replace the terms ‘verified label’ and ‘badge system’ with a more flexible term, such as ‘indicator.’ This change would provide digital platforms with the discretion to design and implement their own mechanisms for distinguishing SEBI-registered entities from non-SEBI-registered ones. This approach would allow platforms to maintain their flexibility while ensuring compliance with SEBI’s objectives.*

X. Clause 6.1(vii) - Effective action based on the policies, to the satisfaction of SEBI

- Clause 6.1(vii) of the Draft Circular provides that “*the platform should have a policy to and should take action on users and content creators responsible for fraud, impersonation and unregistered activities and non-permitted claims related to securities market.*”
- As reiterated in our submissions above, IT Rules already requires intermediaries to undertake reasonable efforts to not, as well as cause their users to not – host, upload, modify, publish, share, etc., any information that falls within the scope of Prohibited Content. This *inter alia* includes content which *intentionally communicates any misinformation or information which is patently false and untrue or misleading in nature or impersonates another person or violates any law for the time being in force*. Therefore, we submit that intermediaries already have in place measures which cause their users to not – host, upload, modify, publish, share, etc., content sought to be regulated by SEBI through the Draft Circular.
- Given the above, intermediaries already have in place robust measures to combat fraud, impersonation, unregistered activities, and unauthorized claims related to the securities market, in alignment with their obligations under the IT Rules. These

measures are embedded in platform policies, terms of use, and other relevant agreements.

- Moreover, this Clause requires digital platforms to comply with measures to “SEBI’s satisfaction.” However, SEBI does not have the power to prescribe such measures as it not empowered under the SEBI Act to regulate such platforms.
- *Therefore, we submit that SEBI should refrain from prescribing such broad requirements on entities which fall beyond its regulatory purview. To elaborate, SEBI should not require digital platforms to undertake measures: (a) which the SEBI does not have the authority to prescribe; and (b) which are not required under any law in force.*
- *As intermediaries (including digital platforms) have already implemented measures related to frauds, impersonations, etc., SEBI should delete this clause from the Draft Circular.*

XI. Clause 6.1(viii) Policy on transparency and accountability

- Clause 6.1(viii) of the Master Circular provides that “*the platform should have policy to and should submit periodic reports and other reports as and when required by SEBI, providing the information on the identification and the action taken by the platform related to frauds, impersonation, unregistered activities and claims which are not permitted.*”
- As per Rule 4(1)(d) of the IT Rules, intermediaries are already required to publish a periodic compliance report on a monthly basis. This report must include: (a) details of complaints received, (b) actions taken in response, and (c) for significant social media intermediaries, information regarding the number of communication links or pieces of content removed or access disabled due to proactive monitoring using automated tools (such as AI/ML), along with any other relevant details as specified.
- Given the above, intermediaries, including digital platforms, already provide transparency regarding their actions related to fraud, impersonation, unregistered activities, and other illegal claims on their platforms. Given this, requiring platforms to publish multiple reports on similar issues could create confusion for users and result in unnecessary duplication. Additionally, we respectfully submit that SEBI

does not have the legal authority to mandate digital platforms to produce additional reports.

- *Given that digital platforms are already publishing compliance reports in line with the IT Rules, we respectfully request that SEBI reconsider the inclusion of this clause in the Draft Circular. If SEBI determines that a report is necessary, we suggest limiting the requirement to an annual compliance report, which would provide a more focused and practical approach.*

XII. Clause 6.2 - Curative Measures

- *Clause 6.2 of the Draft Circular states that “Curative actions or measures are required to mitigate the impact of non-perfection of preventive measures. Curative action is important to restore the investor confidence and market integrity. The platform should have the following curative measures in place.”*
- *As outlined in our submissions above, Rules 3(2) and 3A of the IT Rules mandate that the Officer appointed by an intermediary must: (a) acknowledge complaints within twenty-four hours, and (b) resolve the complaints within prescribed timelines. Furthermore, any individual dissatisfied with the decision of the Officer, or whose grievance remains unresolved within the stipulated time, has the right to appeal to the GAC within thirty days from the date of receiving the Officer’s communication. The GAC is then required to resolve the appeal within thirty calendar days from the receipt of the appeal.*
- *Given that the IT Rules already establish a comprehensive framework for addressing grievances related to content in the securities market, we respectfully request that SEBI reconsider the need for additional curative measures under the Draft Circular.*

XIII. Clause 6.2(i) -Ability to analyse the content and/or advertisement on the platform

- *Clause 6.2.i of the Draft Circular states that “the platform should have the policy and system to analyse and take curative action on the content and/or advertisement on the platform for the violative content and entities. The platform should deploy advanced artificial intelligence (AI) and machine learning (ML) tools for such purpose.”*

- We understand that the clause mandates digital platforms to use AI/ML tools to analyze and take curative action on content and/or advertisements for any violative material. However, we note that Clause 6.1(ii) does not specify whether platforms are required to deploy these tools to take curative action only for paid advertisements, or if it extends to UGC as well. If this requirement is applied to UGC, it would impose an unreasonable burden on digital platforms, requiring them to review massive amounts of content daily to determine whether any advice or recommendations are being made by a SEBI-authorized individual or RE.
- As reiterated in our submissions above, insofar as content monitoring constitutes active oversight of UGC, it contradicts the fundamental nature of an intermediary under the IT Act. This is based on the principle that intermediaries should not actively curate or modify the content on their platforms. Moreover, proactive monitoring of all content and removal of such content to the extent it falls under the Prohibited Content, may infringe the user's fundamental right to privacy and freedom of speech and expression guaranteed under the Constitution of India.
- *To safeguard intermediaries' safe harbour protections under the IT Act, we request the SEBI to only require digital platforms make "reasonable efforts" to deploy artificial AI/ML tools to identify and action violating content, rather than take action on "possible violative content and entities" to only violative content. This change would align the requirement on digital platforms to identify possible cases of violation under the Draft Circular in conjunction with the IT Rules.*

XIV. Clause 6.2(ii) - Mechanism for escalation of unlawful content/advertisement and entities

- Clause 6.2.ii of the Draft Circular states that: (a) *"the platform should have a mechanism to enable reporting/escalation of the unauthorised content/advertisement and entities related to securities market on their platform by SEBI and SEBI regulated persons including MIs, and (b) "the platform should also have a mechanism to report/flag the misleading content and/or advertisement or unauthorised entity by platform users so as to generate intelligence for further examination of such content/advertisement or entity".*
- We submit that SEBI has the authority to report Prohibited Content and direct its removal from digital platforms vis-à-vis the Indian Cybercrime Coordination Centre

(I4C). Additionally, as outlined earlier in our submissions above, IT Rules already establish a robust framework for addressing grievances related to content in the securities market (Please refer to our submissions to Clauses 6.1(iii) and 6.2 under Part – II, above).

- Given the above, intermediaries already have in place mechanisms which enable reporting/escalation of the unauthorised content/advertisement and entities related to securities market on their platform by SEBI and SEBI regulated persons. Having said this, we request the SEBI to consider that it cannot require digital platforms to undertake measures: (a) which are not required by law; and (b) for which the SEBI already have the authority to require such platforms to undertake certain compliances.
- *Given that the IT Rules already establish a robust framework for addressing grievances related to content in the securities market, we respectfully request that SEBI reconsider the need for additional curative measures under the Draft Circular.*
- *Alternatively, the Central Government may also consider notifying SEBI as an authorised agency to issue take down orders under the IT framework - to facilitate issuing take down orders for misleading content/advertisement by a person or entity not authorised by SEBI.*

XV. Clause 6.2(iii) - Action on the reported content and/or advertisement

- Clause 6.2.ii of the Draft Circular states that “*the platform should have a policy to and take action to the satisfaction of SEBI and to promptly verify the reported content and/or advertisement and take the action in a specified Turn Around Time (TAT) with respect to the content and/or advertisement and entities that are reported/escalated by SEBI, SEBI regulated persons including MIIs and intelligence based on the number of cases reported by platform users to the satisfaction of SEBI.*”

“Such actions shall include -

a) *Taking down the reported/escalated content/advertisement, post, chat, as the case may be;*

- b) Blocking the content, advertisement, handle, post, profile, chat, as the case may be;*
- c) Preventing the sharing of the reported content and/or advertisement;*
- d) Deactivating/disablement of the reported links, videos etc.*
- e) Blacklisting of entities which are repeat offenders.”*
- As mentioned in our submission above, SEBI has the authority to escalate issues and instruct the removal of content on digital platforms through the I4C. In this context and to reiterate, we request the SEBI to consider that it cannot require digital platforms to undertake measures: (a) which are not required by law; and (b) for which the SEBI already have the authority to require such platforms to undertake certain compliances.
- Additionally, as mentioned in our submissions above, intermediaries are required to implement robust grievance redressal mechanisms, as outlined in Rule 3(2) of the IT Rules (*Please refer to our submissions to Clauses 6.1(iii) and 6.2 under Part – II, above*). Moreover, as per Rule 3(1)(b) of the IT Rules, an intermediary, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under Section 79(3)(b) of the IT Act, shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force. In this regard and as mentioned in our submission above, SEBI may look at the possibility to collaborate with MEITY to take down unlawful content under the IT Act framework.
- *We request SEBI to consider deleting Clause 6.2(iii) from the Draft Circular. Additionally, to facilitate such actions for end-to-end encrypted services, SEBI should, at the very least, provide digital platforms with evidence that a user or entity is distributing unlawful content. This would enable the intermediary to take the necessary steps to facilitate the removal of the content.*

XVI. Clause 7 - Type of Action

- Clause 7 of the Draft Circular provide that “*the platform should have the capability to deal with the violations with the specified measures as mentioned in the matrices given below:*”
- *Matrix-I:*

Level	Type of Action
<i>Advertisement</i>	<i>Preventive and curative (failures of preventive)</i>
<i>Content</i>	<i>Preventive and curative</i>
<i>Channel</i>	<i>Removal of the Channel on three instances of violation (content)</i>
<i>Entity</i>	<i>Blacklisting on three instances of violation (channel)</i>

- *Matrix-II:*

	Preventive/curative measures
<i>Advertisement/content</i>	unregistered entities/activities non-permitted claims impersonation frauds

- We submit that the digital platforms have already implemented various policies to address violations on their platforms. To illustrate, tech platforms like [Google](#) already have well-established policies to evaluate whether content on their platforms violates their guidelines, in accordance with their obligations under the IT Rules. These policies are unique to the digital platform as it addresses the specific kinds of violations which may occur on their platforms – since they are based on the services and features that the platform provides to its users. Moreover, these policies are regularly updated – to address any form of violations which may occur on the platforms.
- *We request SEBI to delete Clause 7 of the Draft Circular. Digital platforms should be permitted to develop and implement their own measures to address violations effectively within the framework of existing laws.*

- *Alternatively, if SEBI decides to retain Clause 7, we request that platforms be allowed to comply with the prescribed timelines on a reasonable basis, considering the practicalities involved in enforcing content moderation across diverse user bases and content types.*

XVII. Clause 8 - Turn-around-time (TAT) to take action

- *The platform should have the following policy on TAT to take action for the violations:*

<i>Measures</i>	<i>Advertisement</i>	<i>Content/Channel/entity</i>
<i>Preventive</i>	<i>Before the advertisement goes live on the platform</i>	<i>Twenty-four hours</i>
<i>Curative</i>	<i>Twenty-four hours</i>	<i>Seventy-two hours</i>

- As reiterated in our above submissions, the grievance redressal mechanisms under Rule 3(2) of the IT Rules already provide a clear process for users or victims to file complaints against content that violates any law. The Officer appointed by the intermediary is required to: (a) acknowledge the complaint within twenty-four hours; and (b) resolve the complaint within prescribed timelines. However, imposing additional timeframes under the Draft Circular, will create significant challenges for intermediaries (including digital platforms), as they would be required to implement varying timelines across different regulatory frameworks.
- Despite having a grievance redressal mechanism in place where digital platforms address grievances as per the prescribed timelines, the Draft Circular requires digital platforms to implement additional timelines as per Clause 8. This would likely result in digital platforms facing compliance hurdles while implementing different TATs under two different regulatory frameworks. More importantly, requiring digital platforms to undertake preventive measures before a platform goes live – would likely result in such platforms pre-censoring content to ensure that they remain compliant with the requirements under the Draft Circular. This requirement conflicts with the judgment in *Shreya Singhal v. Union of India*, wherein the Court ruled that intermediaries are not

obligated to proactively monitor or determine the legality of content, including advertisements, on their platforms.

- Additionally, requiring digital platforms to pre-screen content before it goes live on its platform would cause significant backlogs while uploading such advertisements – as platforms would be required to analyse every advertisement to ensure that it is compliant with the Draft Circular. This would be time-consuming and would negatively affect the interest of advertisers as they rely on quick turnarounds to publish their advertisements on digital platforms. Given the delays, advertisers may choose to advertise on more effective alternative mediums. This would result in digital platforms losing a significant portion of their advertisement revenue.
- *Given that the IT Rules already specify timelines for intermediaries, we request that SEBI consider removing the requirement for digital platforms to implement preventive measures prior to advertisements getting uploaded.*
- *Alternatively, if SEBI chooses to retain Clause 8 in the Draft Circular, we request SEBI to provide clarification that digital platforms should align the prescribed timelines with those already provided under the IT Rules. Additionally, digital platforms should only be required to make "reasonable efforts" to comply with the timelines set forth under Clause 8, rather than facing strict compliance requirements.*

XVIII. Clause 9 - Disputes between the platform and entities, and the platform and SEBI

- Clause 9 (i) provides that “*for any dispute between the platform and entity on the nature of the content/advertisement, the entity or the platform may approach SEBI. View of SEBI will be final.*” Whereas Clause 9(ii) provides that “*for any dispute between SEBI and the platform, the platform may approach the Hon’ble Securities Appellate Tribunal (SAT).*”
- At the outset, it is pertinent to note that according to the AB Rules, MEITY has the power to regulate intermediaries (including digital platforms) as such platforms fall within the purview of matters related to the administration of the IT Act. In this regard, MEITY would be the appropriate authority to prescribe the applicable forum to resolve disputes.
- However, in the present case, we note that the dispute resolution mechanism outlined in the Draft Circular designates the SAT as the designated forum for resolving disputes

between SEBI and digital platforms. We submit that this provision conflicts with the SEBI Act, as Section 15T of the SEBI Act permits appeals to SAT only against orders issued by SEBI or an adjudicating officer, which is not the case under the dispute resolution mechanism proposed in the Draft Circular.

- Additionally, as mentioned earlier in our submissions, Rule 3(2) and Rule 3A of the IT Rules already provide a comprehensive grievance redressal mechanism, including an appellate process, to address any disputes or grievances arising from violations. Introducing a separate dispute resolution mechanism would likely lead to confusion for both intermediaries and users regarding the appropriate forum for resolving such matters.
- *Given that a robust dispute resolution mechanism exists under the IT Rules and the fact that the regulation of digital platforms falls under MEITY's jurisdiction, we request SEBI to delete Clause 9 from the Draft Circular.*
- *If SEBI decides to retain Clause 9 in the Draft Circular, we request SEBI to provide clarifications on the following:*
 - *define which entities are entitled to access the dispute resolution forum;*
 - *limit the scope of disputes to those that are predominantly related to securities; and*
 - *clarify that further appeals under applicable law remain unaffected.*

XIX. Clause 10 - Obligation to register with SEBI

- Clause 10 of Draft Circular provides that *“the digital platform shall be required to apply within three months after the issuance of this circular to seek recognition as a specified digital platform.”*
- We believe that the three-month timeframe outlined in the Draft Circular is insufficient. Industry participants will not be able to implement the necessary changes within such a short period as product cycles involve comprehensive development and extensive testing. Moreover, considerable resources would have to be directed to ensure that the mechanisms of such platforms are working in accordance with the requirements of the Draft Circular.

- *SEBI should provide stakeholders with at least a minimum of 12 months' time to implement the requirements under the Draft Circular. This will provide stakeholders with adequate time to ensure compliance with the Draft Circular.*