



CIRCULAR

F. No. 817/IFSCA/Distribution/2022-23

December 21, 2022

To,

All Fund Management Entities (FMEs) in International Financial Services Centres (IFSCs)

All Investment Advisers in IFSCs

All Investment Bankers in IFSCs

All Banking Units in IFSCs

All Finance Companies in IFSCs

All Broker-Dealers in IFSCs

All Corporate Agents in IFSCs

All Distributors of Capital Market Products and Services

Dear Sir / Madam,

Sub: Distribution of Capital Market Products and Services under International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021

In exercise of the powers conferred by Section 12 and 13 of the International Financial Services Centres Authority Act, 2019, read with sub-regulation (4) of regulation 3 of the International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 ("Regulations"), and in recognition of the crucial role played by the distributors in distribution of capital market products and services, the Authority hereby specifies the following framework for distribution of capital market products and services:

Definitions

For the purpose of this Circular, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them, and their cognate expressions and variations shall be construed accordingly:

1. “capital market products” shall mean “securities” as defined under sub-section (h) under section 2 of Securities Contracts (Regulation) Act, 1956, and includes similar instruments by whatever name called, issued or created by any issuer in IFSC, India or Foreign Jurisdictions, and such other instruments as may be specified by the Authority;
2. “capital market services” mean and include investment advisory services, portfolio management services, by whatever name called, provided by a service provider which is a regulated financial entity, and such other services as may be specified by the Authority;
3. “capital market products and services” shall collectively mean and include capital market products and capital market services;
4. “client” means a person who avails the services of a distributor for investing in a capital market product or for subscribing to a capital market service;
5. “distributor” means a person who for remuneration engages with clients on behalf of an issuer or a service provider to facilitate investment or subscription into capital market products or capital market services, respectively;
6. “registered distributor” means a distributor registered with the Authority;
7. “regulated financial entity” means an issuer or a service provider set up in India, IFSCs or any Foreign Jurisdiction, which is registered, authorised, licensed or regulated by any regulatory or supervisory authority of its home jurisdiction for carrying out activities related to asset management, funds management, investment advisory, portfolio management or any other similar activity, by whatever name called;
8. “sophisticated investors” shall mean and include such investors from India, IFSC or Foreign Jurisdictions which on the strength of their financial capability or qualification or experience or such other quantitative or qualitative criteria, are deemed to understand the risks of their investments and who or which have a valid special status under financial regulation laws of their respective home jurisdiction. Generally, sophisticated investors include high-net-worth individuals, banks, financial institutions, and other large corporations. In different jurisdictions, these investors are also termed

as accredited investors, expert investors, professional investors, qualified investors, etc. Alternatively, an investor who, irrespective of home jurisdiction, satisfies the eligibility criteria for accredited investors as specified by the Authority, shall also be considered sophisticated investor.

Applicability and Obligation to seek Registration

9. An entity desirous of setting-up operations in an IFSC to act as a registered distributor shall be required to seek registration with the Authority under regulation 3 of the Regulations and in terms of this Circular. Such an entity shall comply with all the norms as applicable under the Regulations, this Circular and any other circular or guidelines issued by Authority in this regard from time to time.

10. An entity that undertakes distribution of capital market products or services offered by issuers and service providers set up in IFSCs but does not set up operations in an IFSC shall be required to comply with the code of conduct as specified in Annexure I of this Circular.

11. All other relevant provisions of the Regulations including the circulars or guidelines, if any, issued thereunder, unless specified otherwise, shall apply to registered distributors.

Application for registration

12. An entity desirous of obtaining a certificate of registration for carrying out activities as a registered distributor shall submit an application form to the Authority in the format provided in Part I of Schedule I of the Regulations along with the application fees as specified by the Authority.

13. In addition to the above, the entity shall also provide the following information and documents along with the application form:
 - i. Details of Principal Officer(s) including the persons who are authorised to provide distribution services on behalf of the entity;
 - ii. Details regarding qualification, work experience and certification of the Principal Officer(s) and persons associated with distribution activities, along with supporting documents.
 - iii. Its regulatory business plan, which, among others, shall include information about:
 - a. Type of clients proposed to be catered (whether all type of investors or only sophisticated investors).
 - b. Type of capital market products or services which are proposed to be distributed.

- c. Process proposed to be followed for risk profiling and for assessing suitability of a capital market product or service.
- d. A detailed description of the proposed systems and controls to ensure that its business activities are carried out in compliance with applicable laws and regulations.
- e. A detailed description of the proposed governance and risk management framework covering its business and operations to ensure effective oversight and governance of its operations.
- f. Additional Declarations:
 - (i) That its principal officer and persons associated with distribution activities shall comply with qualification and certification requirements specified by the Authority.
 - (ii) That the entity shall not obtain any consideration by way of remuneration or compensation or any other form whatsoever, from the client, in respect of the capital market products or services distributed to the client.
 - (iii) That it shall comply with the code of conduct as specified in Schedule III of the Regulations and **Annexure I** of this Circular.
 - (iv) That it shall comply with regulation 49 of the Regulations (applicable only if the applicant is registered as an Investment Adviser).

Simplified registration process for certain entities

14. The following entities may apply for a simplified registration to act as a registered distributor:

- i. Banking Units licensed by the Authority under sub-regulation (5) of regulation 3 of IFSCA (Banking) Regulations, 2020;
- ii. Finance Companies or Finance Units registered with the Authority under sub-regulation (7) of regulation 3 of IFSCA (Finance Company) Regulations, 2021;
- iii. Broker-Dealers registered with the Authority under sub-regulation (1) of regulation 10 of the Regulations;
- iv. Investment Bankers registered with the Authority under sub-regulation (1) of regulation 10 of the Regulations;
- v. Investment Advisers registered with the Authority under sub-regulation (1) of regulation 10 of the Regulations;
- vi. Corporate Agents registered with the Authority under sub-regulation (2) of regulation 7 of IFSCA (Insurance Intermediary) Regulations, 2021;
- vii. Any other entity as may be specified by the Authority.

15. The entities desirous of availing simplified registration may apply by sending an application, comprising of a letter of intent, details of existing registration or license in

terms of clause 14, details as required under clause 13 and fees as specified by the Authority.

Legal form of applicant

16. An entity desirous of seeking registration with the Authority for undertaking distribution activities shall be required to be present in an IFSC by establishing a branch or forming a company or limited liability partnership or body corporate or partnership firm or proprietorship firm or any other form as may be permitted by the Authority.

Provided that the branch structure is permitted only for such company or limited liability partnership or body corporate which is already registered, regulated, licensed or authorised for undertaking distribution activities in India or a Foreign Jurisdiction by the regulatory or supervisory authority of that jurisdiction or by any other body recognised by the regulatory or supervisory authority of that jurisdiction for undertaking registration or regulation of entities involved in distribution activities.

Net worth requirements

17. An entity seeking registration as a registered distributor shall maintain a net worth of at least USD 50,000 at all times.

Provided that a registered distributor, if registered, licensed or authorised with the Authority in multiple categories, shall maintain the highest of the applicable minimum net worth requirements, unless a higher amount is specified by the Authority.

Qualification & Experience requirements

18. An entity desirous of becoming a registered distributor shall have at least one person designated as Principal Officer who shall have:

- i. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, law, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognised by the Central Government or any State Government or a recognised foreign university or institution or association or a CFA Charter from the CFA Institute; or a certification from any organization or institution or association or stock exchange which is recognised or accredited by IFSCA or a regulator in India or Foreign Jurisdiction; and
- ii. An experience of at least five years in related activities in the securities market or financial products or financial services including in a portfolio manager, broker dealer, investment adviser, research analyst, distributor or fund management.

19. In addition to the Principal Officer, the registered distributor shall have adequate manpower commensurate to its business activities. Each employee involved in the distribution activities, other than the Principal Officer(s), shall at least have a graduation degree from a university or an institution recognised by the Central Government or any State Government or a foreign university or qualification/certification as mentioned in sub-clause (i) of clause 18.

Provided that the entities registered, licensed or authorised by the Authority in terms of clause 14 may identify any of its existing employees, for the purpose of distribution activities as long as there are no conflicts of interest, no violation of any applicable laws and are complying with the eligibility requirements.

20. The Principal Officer(s) shall be responsible for the distribution activities undertaken by the registered distributor and shall also ensure that other employees of the registered distributor are aware of the obligations as applicable under the Regulations and this Circular.

Code of conduct

21. Every registered distributor and its employees shall abide by the code of conduct as specified in Schedule III of the Regulations and **Annexure I** of this circular.

22. A registered distributor may further engage or tie up or collaborate or in any manner enter into an arrangement (except that of employment) with any person (hereinafter referred to as 'associated distributor') for various permissible activities as specified in clause 24. The registered distributor may have such arrangements only with those entities that are set up in India, IFSC or a foreign jurisdiction. Further, with respect to such arrangements with distributors in India or a foreign jurisdiction, the registered distributor shall ensure the following:

- i. That it carries out an assessment for every entity it plans to enter into an arrangement with as an associated distributor that the latter has the capability to ensure compliance with the IFSCA prescribed Code of Conduct as specified in **Annexure I** of this Circular. It shall also maintain records of such assessment;
- ii. That it ensures compliance of the associated distributors to the code of conduct as specified in **Annexure I** of this Circular, in so far as those permissible activities are concerned which are carried out as part of the arrangement.

23. Registered distributor shall ensure that material changes, if any, in the information provided to the Authority earlier, is immediately informed to the Authority.

Permissible activities

24. A registered distributor may undertake the following activities:

- i. Distribution of capital market products and/or services to any client in IFSC or Foreign Jurisdiction - The capital market products and/or services offered by any regulated financial entity set up in India, IFSC, jurisdictions which are identified in the notification published in the Gazette of India vide no. G.S.R. 882(E) dated November 28, 2019, as may be revised from time to time, or any other jurisdiction as may be specified by the Authority, may be distributed to any client in IFSC or foreign jurisdictions.
- ii. Distribution of capital market products and/or services to sophisticated investors in IFSC or Foreign Jurisdictions – The capital market products and/or services offered by any issuer or service provider, respectively, which is set up in India, IFSC or any foreign jurisdiction may be distributed to sophisticated investors in IFSC or foreign jurisdictions.
- iii. Distribution of capital market products and/or services to any client in India - The capital market products and/or services offered by any regulated financial entity set up in IFSC, jurisdictions which are identified in the notification published in the Gazette of India vide no. G.S.R. 882(E) dated November 28, 2019, as may be revised from time to time, or any other jurisdiction as may be specified by the Authority, may be distributed to any client in India.
- iv. Distribution of capital market products and/or services to sophisticated investors in India – The capital market products and/or services offered by any issuer or service provider, respectively, which is set up in IFSC or any foreign jurisdiction, may be distributed to sophisticated investors in India.
- v. Any other activities as may be specified by the Authority.

25. For distribution of capital market products and/or services offered by a regulated financial entity to all types of clients, the registered distributor shall ensure that such products or services have been authorised, vetted or approved for offering to all types of investors, by the relevant regulatory or supervisory authority of such regulated financial entity.

26. The registered distributor while undertaking various permissible activities shall ensure compliance with all applicable laws as prevalent in the jurisdictions of issuers, service providers and clients.

Obligations and responsibilities of distributors

27. The registered distributor shall ensure clear segregation of its proprietary investments and those carried out as part of its distribution activities in terms of the Circular.

28. The registered distributor shall not take clients' assets, including funds and securities, in its custody or exercise any control over management of such assets.

Provided that the registered distributors which are also registered with the Authority specified in sub-clauses (i), (ii) and (iii) of clause 14 of this circular and such other registered distributors having net worth more than USD 1,50,000 may facilitate clients through omnibus account structure to invest in jurisdictions where such structures are permitted by relevant regulatory or supervisory authority. In such cases, the registered distributor shall ensure that:

- i. such investments are undertaken pursuant to prior consent of the clients;
- ii. adequate internal checks and processes are in place to ensure *inter-se* separation of clients' funds and securities;
- iii. the minimum investment requirement, if specified by the issuer or the service provider is met individually by each of the clients who are contributing into the omnibus structure;
- iv. it complies with Know Your Customer (KYC) and the Anti-Money Laundering / Combating the Financing of Terrorism (AML/CFT) norms, as applicable and records of the same are adequately maintained;
- v. arrangements are in place to ensure clients' records are immediately made available in an appropriate manner to the Authority or any other competent authority, whenever required.

29. The registered distributor shall disclose to a prospective client, all material information about itself including its business, disciplinary history, terms and conditions on which it offers distribution services, affiliations with other intermediaries, conflicts of interest and any other material information so as to enable the client to take an informed decision on whether or not to avail its distribution services.

30. The registered distributor shall enter into written agreement(s) with its clients as well as with the issuers or service providers, whose capital market products or services it undertakes to distribute. Alternatively, in such cases, where the associated distributor of the registered distributor has a written agreement with an issuer or a service provider, the registered distributor may enter into a written agreement with the associated distributor. These agreements shall, *inter-alia*, define their *inter-se* relationship mutual rights, liabilities, obligations and other material details. Wherever the client is a sophisticated investor, the registered distributor shall be required to obtain a declaration to the effect that the investor understands the risks associated to the capital market product or service being distributed.

31. The registered distributor shall provide assistance and arrange for necessary documents of its clients related to KYC, AML/CFT, Power of Attorney, investor's agreement(s), or such other documents, as may be required by regulated financial

entities for offering their capital market products or services to the clients of registered distributor.

32. The registered distributor shall obtain registration, authorisation or license, as applicable, under appropriate Regulations from the Authority for undertaking any activity beyond the scope of this Circular.

Distribution through digital mode

33. A registered distributor may enter into an arrangement with issuers, service providers or associated distributors for sale of capital market products and/or services through any digital mode.

34. Registered distributors, issuers and service providers, as applicable, shall ensure that the obligations and responsibilities as attributed to them in the Circular, Regulations and other applicable laws shall be duly discharged in course of distribution through digital mode.

Obligations and responsibilities of issuers and service providers set up in IFSC

35. In case of empanelment of a distributor other than a registered distributor, an issuer or a regulated financial entity set up in IFSC shall ensure that:

- i. prior to such empanelment, an assessment is carried out satisfying itself that the distributor has the capability to ensure compliance with the code of conduct as specified in Annexure I and maintain records of such assessment;
- ii. on an ongoing basis, the distributor complies with the code of conduct as specified in Annexure I, in so far as the activities undertaken by the distributors for distribution of capital market products or services of that issuer or regulated financial entity are concerned.

36. Issuers and regulated financial entities shall take suitable action against distributors empaneled by them in the event of any non-compliance by such distributor and shall report the details of non-compliance to the Authority without any delay.

37. While regulated financial entities may enter into arrangements with the distributors with respect to fulfilment of requirements as applicable under various laws, including but not limited to KYC, AML/CFT, they shall, however, continue to bear the responsibility of compliance with all applicable laws with respect to the clients solicited by the distributors.

Fees for Registered Distributors

38. The fees payable by the registered distributors to the Authority shall be as follows:

- i. **Application Fee:** one-time non-refundable fee of USD 750
- ii. **Registration Fee:** one-time non-refundable fee of USD 7,500
- iii. **Annual Fee:** USD 2,000

The Annual Fee shall be applicable starting from the financial year after the year in which certificate of registration is granted by the Authority and shall be payable in the first month of each financial year i.e. in April.

A copy of this Circular is available on the website of International Financial Services Centres Authority at www.ifsca.gov.in.

Yours faithfully

Sd/-

Pavan Shah

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Encl.: As above

Code of Conduct for Registered Distributors, Associated Distributors and Entities referred under Clause 10 of Circular (collectively referred to as “Distributors” in Annexure I)

General

1. Distributors shall maintain high standards of integrity, promptitude and fairness in the conduct of all business transactions.
2. Distributors shall act with due skill, care and diligence in the conduct of their business and shall consider clients' interest as paramount.
3. Distributors shall avoid malpractices, such as mis-selling of capital market products and services, and shall consider clients' interest and suitability to their financial needs.
4. When dealing with clients other than sophisticated investors, distributors shall undertake due diligence of capital market products and services being distributed to them, and also assess the suitability of product / service to the investors. For this purpose, distributors shall seek information from such clients about their financial status, investment experience, investment objectives, etc. to be in a better position to offer them such capital market products and services which are suitable to their risk profile.
5. Distributors shall act in the best interests of the clients and the integrity of the market. Distributors shall inform the client if the capital market product or service is not deemed suitable for them.
6. Distributors shall be fully conversant with the terms of the private placement memorandum, disclosure document and all other relevant agreements / documents.
7. Distributors shall enter into a written agreement with clients and issuers / service providers/ associated distributors, as applicable, which clearly lays down the *inter-se* relationship, mutual rights, liabilities and obligations and other material details.
8. Wherever the client is a sophisticated investor, distributors shall obtain a declaration to the effect that the investor understands the risks associated to the capital market product or service being distributed.
9. Distributors shall disclose all material information to their prospective clients, including but not limited to their business, disciplinary history, terms and conditions of

distribution services, conflict of interest, affiliations with other intermediaries and any other material information.

10. Distributors shall urge their clients to go through the private placement memorandum, disclosure document and other applicable capital market product or service related documents, as the case may be, and agreement to be entered with the client and the regulated financial entities before making the final decision.
11. Distributors shall disclose all material information regarding the capital market products and services being distributed to their clients, including related party transactions and self-positions. If requested by a client, the distributor shall disclose the amount of direct and indirect remuneration and the basis of such remuneration it receives as a result of rendering distributing services to that client and whether there is any relation between the distributor and the entity offering the capital market product or service.
12. Distributors shall assist the clients in completing KYC and other related procedures and assist in compliance with relevant laws relating to, inter alia, AML and CFT to the extent applicable.
13. Distributors shall abstain from tampering with the application form and other documents submitted by the client, including inserting, deleting, or changing any information in the application form or any other document provided by the client.
14. Distributors shall provide to their clients full and latest information about the capital market products and services offered by the regulated financial entities and shall clearly highlight the assumptions made in performance calculations, risk assessments, performance projections etc.
15. Distributors shall abstain from giving any assurance or cause any misrepresentation to their clients with respect to returns or risk characteristics of a capital market product or service.
16. Distributors shall abstain from attracting clients through offer of rebate, kickback, gifts, etc.
17. Distributors shall maintain necessary infrastructure to provide support to their clients and regulated financial entities, so as to be able to satisfactorily discharge their responsibilities as per the mutually agreed terms.

18. Distributors shall ensure clear segregation of their proprietary investments and those carried out as part of distribution activities. If allowed to facilitate clients' investments through omnibus structure, they shall ensure compliance with all applicable norms.
19. Distributors shall maintain adequate records in relation to clients, whether in physical or digital form including correspondence with the clients on particular capital market product or service suitability and consent/dissent of the clients, wherever applicable.
20. Distributors shall ensure that all client related statutory communications as well as such other reports as mutually agreed are reliably and timely sent to their clients.
21. Distributors shall take all reasonable steps to avoid conflicts of interest (whether actual or perceived) and develop appropriate policies and procedures to identify, manage, monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the clients.
22. In order to avoid conflict of interest arising due to multiple activities, distributors shall ensure segregation of the activities and proper disclosures about segregation to the clients.
23. Distributors shall maintain and protect confidentiality of clients' details, deals and transactions, investment goals which they come to know in the course of business relationship.
24. Distributors shall have a robust complaint redressal mechanism and an escalation matrix. They shall endeavour to resolve all grievances / complaints arising out of their distribution activities in a time bound manner.
25. Distributors shall abstain from encouraging over transacting and churning of portfolio of the clients to earn higher remuneration.
26. When distributing various capital market products and services, distributors shall ensure that clients' interest are paramount and that earning extra remuneration should never form the basis for distributing any product or service to the client.
27. Distributors shall not indulge in any manipulative, fraudulent or deceptive practices.
28. Distributors shall hold valid registration with the IFSCA at all times, if applicable, and shall comply with all applicable laws, code of conduct and norms related to qualifications and experiences of their Principal Officer(s) and other employees.

Advertisement Code

29. Advertisements shall be accurate, true, fair, clear, complete, unambiguous and concise.
30. Advertisements shall not contain statements which are false, misleading, biased or deceptive, based on assumption/projections and shall not contain any testimonials or any ranking based on any criteria.
31. Advertisements shall not be so designed as likely to be misunderstood or likely to disguise the significance of any statement. Advertisements shall not contain statements which directly or by implication or by omission may mislead the client.
32. Advertisements shall not carry any slogan that is exaggerated or unwarranted or slogan that is inconsistent with or unrelated to the nature and risk and return profile of the capital market product or service.
33. Advertisements shall not be so framed as to exploit the lack of experience or knowledge of the clients. Extensive use of technical or legal terminology or complex language and the inclusion of excessive details which may detract the clients should be avoided.
34. Advertisements shall contain information which is timely and consistent with the disclosures made in the private placement memorandum, disclosure document or the basic document, by whatever name called, which is created by the issuer / service provider and explains the characteristics of the capital market product or service.

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