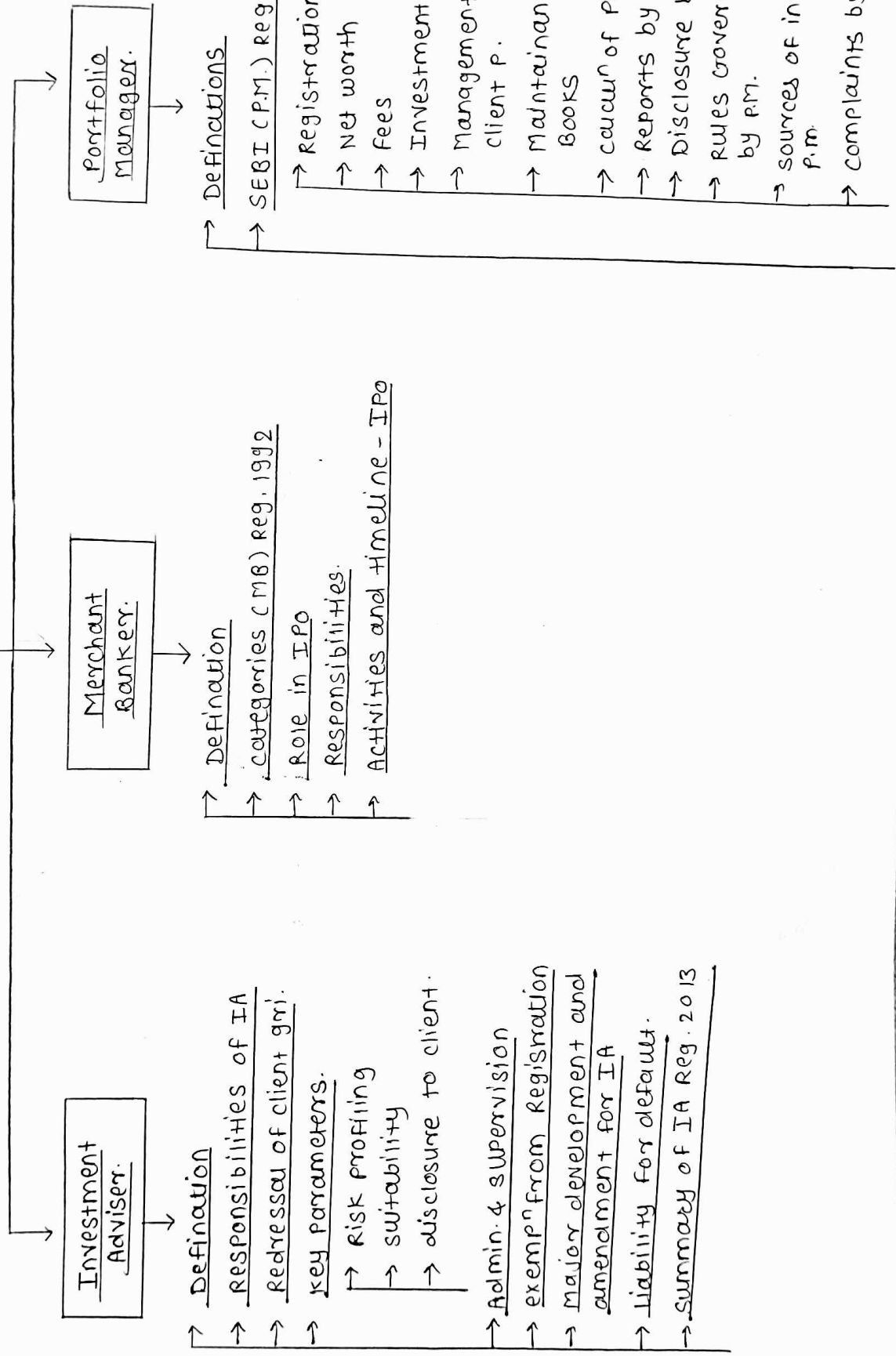


# ch-17. Role of Intermediaries in Fund Raising

- Role of CS
- Importance during Listing
- co-ordination with intermediaries
- compliance with laws.



- Definition
- Responsibilities of IA
- Redressal of client gri.
- key parameters.
  - Risk Profiling
  - suitability
  - disclosure to client.
- Admin. & supervision
- exemp<sup>n</sup> from registration
- Major development and amendment for IA
- Liability for default.
- Summary of IA Reg. 2013

- Definition
- Categories (MB) Reg. 1992
- Role in IPO
- Responsibilities
- Activities and timeline - IPO

- Definitions
- SEBI (P.M.) Reg. 2020
- Registration
- Net worth
- fees
- Investment Rules
- Management of client P.
- Maintenance of Books
- calculation of performance
- Reports by P.M.
- Disclosure by P.M
- Rules Govern service by P.M.
- sources of info about P.M.
- complaints by client

①

Who is an Invst. Adviser?

- IA is a person who for consideration is engaged in the business of providing investment advice to the clients
- Investment Advise means advise relating to investing in, purchasing, selling or otherwise dealing in securities or investment products.
- Advice given thr. newspaper magazines any electronic or broadcasting or tele. commun<sup>n</sup> medium which is widely av. to public → not considered as investment advice

③

Redressal of client Grievances

- IA shall redress client grievances promptly.
- Shall have adequate procedure for expeditious grievance redressal
- Client grievances pertaining to financial products shall fall within a purview of the regulator of such financial product.
- Any dispute between invst. adviser and his client may be resolved through arbitration or through ombudsman authorized or appoint for the purpose. by any regulatory authority.

Investment Advisers

②

Responsibilities of IA.

→ Specific points.

- IA shall not receive any consideration by way of remuneration or compen<sup>n</sup> from any person other than client
- IA shall not enter into transaction on its own account which is contrary to its advice given to client for a period of 15 days from a day of such advice.
- IA shall not act on its own account knowingly to sell securities or invest. products. to or purchase sec. or invst. product from a client.

→ Other points.

- IA shall maintain an arm length relationship betn its activities as an invst adviser and other activities
- IA which is also engaged in activities other than investment advisory services shall ensure that its advisory services are clearly segregated from all its other activities.
- If there is any conflict of int. in adv. service & other activities → discl.

→ General points.

- IA shall act in fiduciary capacity towards its client and shall disclose all conflict of int. as and when arise.
- IA shall follow know your client procedure as specified by SEBI
- IA shall abide by code of conduct specified in third schedule.

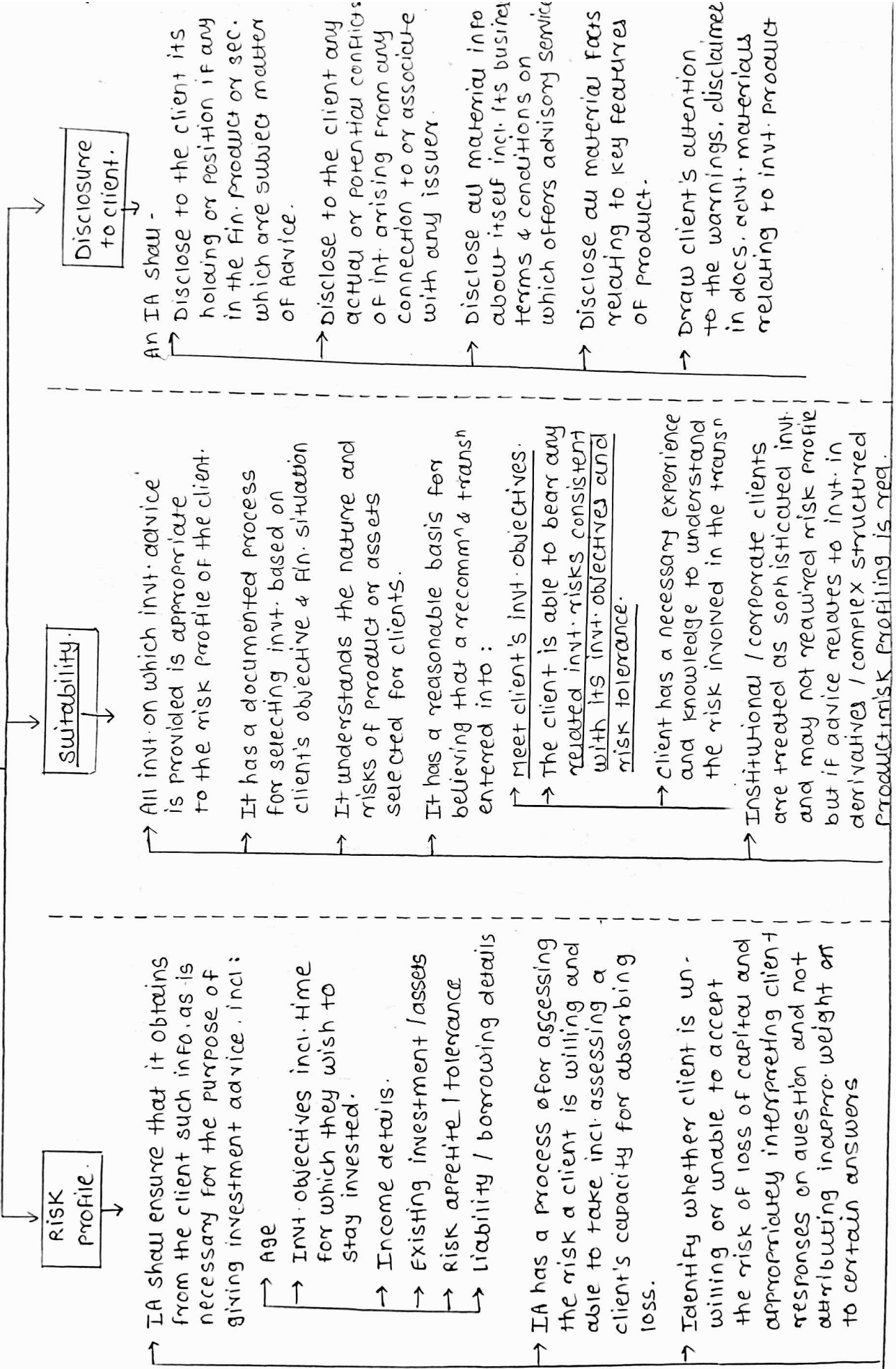
→ SEBI Related Points -

- In case of change in control of the investment adviser, prior approval from SEBI is required.
- IA shall furnish with SEBI info. and reports as may be specified by SEBI from time to time.
- It shall be the responsibility of IA to ensure compliance with the certification and qualification at all times.

SEBI (Investment Adviser) Reg. 2013

- IA shall mandatorily obtain certificate of Reg. from SEBI.
- 1324 IA are registered with SEBI as on June 13, 2022.

# Key Parameters.



④ Exemption from Reg. Under IA Regu<sup>n</sup>

- Any person who gives gen. comments in good faith in the fin. and sec. market and such comment do not specify any particular sec. or investment product
- Entities which are providing Advice / incidental advice to their primary activity these are :
- Insurance agent / broker
  - Any Pension Advisor.
  - Any Advocate, Solicitor or law firm.
  - Any mem of ICAI, ICSI, ICFMAI
  - any stock broker, portfolio manager or merchant banker reg. with SEBI, who provide any investment advice to its client incidental to their primary activity.
  - Any fund manager of a mutual fund, Alternative invt fund or any other intermediary.
  - person who provide IA service outside India

⑤ Major Developments Amendments to be consid.

- key Regulatory changes include -
- ① segregation of advisory and distrib<sup>n</sup> activities. :-
- At a client level to avoid conflict of int
  - An IA shall not provide distrib<sup>n</sup> services.
  - <sup>Non</sup> IA shall have client level segregation at group level for invt. advisory and distrib<sup>n</sup> services and maintain an arm length relationship between its activities.

② Implementation services :-

- IA are allowed to provide implement<sup>n</sup> service.
  - No consid<sup>n</sup> → directly / indirectly → at invt advisor's, group / family level.
- ③ Agreement bet<sup>n</sup> invt Adviser and client
- Mandatory agreement to be entered bet<sup>n</sup> IA and client.

④ Fees -

- shall be in a manner specified by SEBI

⑤ Eligibility criteria for IAs

- i) Main Net worth -
- Individual - 5 L
  - Non-indivi - 50 L
- ii) Qualification
- Prof. / Post gradu.
  - Experience - 5 years.
  - client > 150
- ↓
- Mandatorily apply for Reg. of Non individual investors.

⑥

→ Summary of provisions of SEBI (IA) Reg. 2013

- Cap on fees → if fixed - 1.25 L  
if in % - 2.5% of (Asset under Advice) AUA
- Execution services → IA can provide exe. service. without taking consid<sup>n</sup>.
- Rest<sup>n</sup> on no. of client under indiv. License → 150
- Free trials → Not allowed
- Fees in adv. → only up to 2 quarters.
- Fees in hard cash → Not allowed only DD / NEFT RTGS / UPI

## Merchant Bankers.

→ Any person who is engaged in the business of issue management either by making arrangement regarding selling, buying or subscribing to securities

or.

→ Acting as a manager, consultant, adviser or rendering corporate advisory service



- cap. Adeq. Req. - Min 5 cr.
- AS on 13 June 2022 - 219 MB are Reg → SEBI



→ AS PER SEBI (Merchant Banker) Reg. 1992

Any person  $\xrightarrow{\text{App}^n \text{ For Reg. Form A} + \text{Non refund. fees.}}$  SEBI

Application

→ For any one of the following category.

category I

- Activities of issue managem.
- To act as a adviser, consultant manager, under-writer, Portfolio manager.

category II

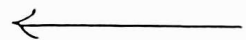
- To Act as Adviser, consultant, manager, Portfolio m.

category III

- underwriter, Adviser, consultant to an issue.

category IV

- Adviser or consultant to an issue.



- MB should be a Body corporate AS per sec. 2(11) of CO. Act 2013

- Applicants which are LLPs are also consid. as Body corporate.

- A sole proprietor is not eligible to be a MB.

→ Role of MB in an IPO :-

- MB manages entire IPO / FPO right issue from beginning to end. right from getting prospectus filed and approved by SEBI to determining the price range and market plan for IPO
- Post-listing support is all handled by MB. He is the Nodal contact point for everything pertaining to issue
- Past track record and credibility of the MB matters since most investors tend to invest in IPOs based on the reputation of MB. same also discl. in offer doc.
- Investors normally prefer MB with a strong pedigree who have handled many IPOs successfully in the past as well as those MBs whose IPOs have generally done well post listing

## Responsibilities of MB.

### ① MB has following responsibilities.

- overall trans<sup>n</sup> mgt. responsibility
- conducting due diligence and participating in drafting session.

### ② MB has to coordinate with other intermediaries to ensure success of IPO.

### ③ Issuer's Domestic counsel.

- Advising company for compliance with domestic regulation applicable to them.
- Drafting of Escrow and syndicate agreement.

### ④ Underwriter's Domestic counsel.

- conducting due diligence and reviewing DRHP / RHP / Prospectus
- Advising underwriters on compliance with domestic regulation.

### ⑤ International counsel.

- Drafting underwriting agreement negotiating comfort letter and co-ordination with auditor.
- Provide legal opinion and assisting in 'closing'.

### ⑥ Statutory Auditors.

- Provide Auditors report and requisite certificates.
- Provide comfort letter.

### ⑦ Printers.

- printing of DRHP / RHP / Prospectus app and other stationery.

### ⑧ Registrar to an issue

- Analysis of e-book.
- Arranging for refunds, demat cr.
- co-ordinating with escrow bankers SCSBs, BRLMs for submitting report to SEBI.

### ⑨ Advertising / PR Agency

- corporate and issue advertising
- public relations
- managing logistics for roadshows

### ⑩ Depository

- Tripartite agreement
- Dematerialisation of company's shares

### ⑪ Escrow collection Banks.

- colln of app<sup>n</sup> money for Anchor invest

### ⑫ To address investor's grievances on accounts of ASBA bids → SCSB

## Activities & Timeline - IPO. - LM Role will include -

→ Providing Advice on fin. aspects of the offering incl. advice as to the pricing, timing, structure of offering and acting as bookrunners of the off.

→ Advising on the appointment of other professional advisers.

→ Advising the shareholders, promoters selling sh.hol. & co. on determining the price range and pricing of the offering.

→ Advising on market strategy, app<sup>n</sup>. marketing campaign in respect of both institutional & retail offering

→ co-ordinating the work of selling sh.hold. and promoter selling sh.h. and the co.'s other adviser in the offering.

→ co-ordinating the activities of other members of the syndicate;

→ Assisting together with other advisers and legal counsel, the selling sh.hol. the p-selling sh.h. and the co. in making an application for the listing of its sec. on NSE and BSE.

→ Assisting together with other advisers and the legal counsel, the selling sh.hol. the p-selling sh.h. and co. in furnish report, certif and other info as may be req. by the SEBI.

→ Assisting together with other advisers and legal counsel with the completion of the necessary due diligence exercise.

Portfolio Managers.

Portfolio M → Body corpo.  
↓  
which pursuant to a contract with a client, advice, direct or undertake.

→ Management or Administration.

→ Portfolio → Funds or Goods or securities of client.

Discretionary P.M. service

• Here, portfolio manager individually & independently manages the Funds and the securities of each client in accordance with the need of the client.

Non-Discretionary P.M. service

• Here portfolio manager manages the Fund in accordance with the direction of the client.

SEBI (Portfolio Managers) Reg, 2020.

Sy No.	Points	Explanation
I	<u>Registration.</u>	→ P.M. has to obtain Reg. from SEBI.
II	<u>Net worth Requirement</u>	→ Min 5 cr.
III	<u>Fees for service rendered</u>	→ The P.M. shall charge a fee as per the agreement bet <sup>n</sup> the client. → It may be a fixed amount or a performance based fees or combination of both. → No upfront fees shall be charged directly or indirectly. → Agreement → quantum + manner of fees
IV	<u>Investment rules for P.M. for invt. of client's Fund.</u>	→ P.M. shall before enter in to an agreement with such client clearly defines the inter se relationship and <u>set out their mutual rights, liabilities and obligation relating to management of Portfolio.</u> → The investment shall be <u>in accordance with terms of agreement bet<sup>n</sup> the pm and client.</u> → P.M. may make investment in the sec. of its <u>related parties or its associates only after obtaining prior consent of the client</u>

- Under discretionary Portfolio mgt service  
 PM shall invest funds of its client in
- securities listed / traded on RSE
  - Money market instrument
  - Units of Mutual Fund.
- ↓
- Through Direct plan and other securities as specified by SEBI.
- Under Non-Discretionary P.M. services.  
 PM may invest up to 25% of the asset under management (AUM) of a client in unlisted securities in addition to sec. Permitted for discretionary P.M. service.
- P.M. shall ensure that existing client of Non-discretionary PMS who already invested in unlisted sec. does not subscribe to right issue of such unlisted securities which may result in breach of 25%.
- Active breach → Non-compliance (right issue)
  - Passive breach → Not consider as Non-compliance (bonus issue)
- PM required to accept Min 50 lacs or sec. having Min N.W. worth of ₹ 50 lacs.
- client may withdraw partical amount from his portfolio with the terms of agreement. However value of investment after such withdrawal shall not be less than applicable investment amount.
- client need not top up his account if the portfolio value falls below the minimum investment amount

V Management & Administration of client's Portfolio

- The money / security accepted by the portfolio manager shall be, in terms of the agreement, of PM invested & client

VI Appointment of custodian

- Every P.M. shall appoint a custodian in respect of sec. managed or administered by it.

VII Maintainance of Books of Accounts, Records etc.

- The P.M. shall preserve the Books of account and other records and docs. mentioned under this chapter for a min period of 5 years.

<p>VIII <u>basis for calculation of performance of the P.M.</u></p>	<p>→ The performance of Discretionary P.M. is calculated using <u>Time weighted Rate of Return (TWRR) method</u> For the <u>immediately preceding 3 years</u>.</p>
<p>IX <u>Reports provided by the P.M. to the client.</u></p>	<p>→ P.M. shall furnish periodically a report → client as per the agreement, but <u>not exceeding a period of 3 months</u>. Report <u>shall contain</u></p> <ul style="list-style-type: none"> <li>→ The composition and the value of the Portfolio, description of sec. and goods No. of sec, value of each sec held in portfolio Units of goods, value of goods, cash bal. and aggreg. value of Portfolio as on the date of report.</li> <li>→ <u>Trans<sup>n</sup> undertaken during the period of report</u> incl. date of transaction and details of purchase and sale.</li> <li>→ <u>Beneficial int. received during that period</u> (in the form of int, dividend, Bonus sh.)</li> <li>→ Details of risk foreseen by the P.M. and risk relating to sec. recommended by P.M.</li> <li>→ Default in payment of coupons or any other default in payment in underlying sec. and downgrading to default rating by the rating agency.</li> <li>→ details of commission paid to distributors</li> </ul>
<p>X <u>Disclosure mechanism of the P.M. → client.</u></p>	<p>→ <u>P.M.</u> <u>Disclosure Doc.</u> → client → Prior to enter into agreement</p> <p style="margin-left: 100px;">↓ <u>contains</u></p> <ul style="list-style-type: none"> <li>→ quantum &amp; manner of payment of fees.</li> <li>→ Portfolio Risk</li> <li>→ Transaction with related parties</li> <li>→ Performance of P.M.</li> <li>→ Audited Financial statement of P.M. (imm. P. 3 yrs).</li> </ul> <p>→ An investor has to invest in the securities services based on the terms and condition laid out in the disclosure doc. and agreement</p> <p>→ P.M. <u>copy of</u> <u>Discl. doc.</u> → SEBI, after grant of certificate of Reg before circulating it to any client incl. change in invt.</p> <p>→ P.M. shall file the discl. doc. with the material change <u>within 7 WD</u> from the date of change.</p>

XI	<u>Rules Governing Services of a P.M.</u>	<ul style="list-style-type: none"> <li>→ The services of P.M. are governed by the agreement bet<sup>n</sup> P.M. and the investor. Agreement should cover min details as specified in the Regu<sup>n</sup>.</li> <li>→ P.M. cannot impose a lock in on the invt of their clients. However a P.M. can charge applicable exit fees from the client for early exit.</li> <li>→ P.M. cannot offer indicative or guaranteed returns.</li> </ul>
XII	<u>Sources of info. for investors about P.M.</u>	<ul style="list-style-type: none"> <li>→ Investors can log on to the website of www.sebi.gov.in for info on SEBI regu<sup>n</sup> and circulars pertaining to P.M.</li> </ul>
XIII	<u>complaints by investors.</u>	<ul style="list-style-type: none"> <li>→ In the grievance redressal and dispute mechanism also mentioned in the disci.doc.</li> <li>→ In case of non redressal of the complaint by the P.M. investor can approach SEBI for redressal of their complaint. investors may lodge their complaint thr. SCORES</li> </ul>

### ∴ Role of Company Secretary :-

- CS of a listed or to be listed entity proposes a FPO or a right issue is pivotal in as much that there are lot of task incl. co-ordination with various regulator, intermediaries for the success of IPO.
- Under reg. 6 of SEBI (LODR) Reg. 2015, CS has to be appointed as the compliance officer of a listed entity.
- There is a need to co-ordinate with a number of intermediaries SEBI registered and otherwise. specifically, the intermediaries with whom the CS has to co-ordinate are as under.
  - Merchant Banker / Book Running lead manager.
  - Statutory Auditor of issuer co.
  - Lawyer / legal counsel.
  - credit Rating Agency / Industry Report
  - Deb. trustee, if applicable.
  - Banker to an issue - Escrow Account
  - Registrar to the issue.
  - Printers.
  - syndicate Broker
  - Advt. agencies / Newspapers.
- During the course of due diligence various laws need to be refer:
  - companies Act 2013
  - The Depository Act, 1998
  - The SCRA, 1956
  - The SEBI Act, 1992
  - The ICDR, Act 2018
  - The LODR Act 2015.