



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

SEBI/HO/IMD/DF1/OW/P/2021/000008743/1

April 9, 2021

Paytm Money Limited
B-121, Sector-5,
Noida,
Uttar Pradesh- 201301

Dear Sir,

Sub: Request for interpretative letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 by Paytm Money Limited (PML)

1. This has reference to your email dated October 08, 2020 and subsequent communications including email dated March 23, 2021, seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003.

2. In your letters and subsequent emails under reference you have, *inter alia*, represented as follows:

2.1. Paytm Money Limited, is registered with SEBI as Investment Adviser (IA) (INA100009859), Stock Broker (INZ000240532) and Depository Participant (IN-DP-416-2019).

3. In view of the above, you have sought an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following:

3.1. As per Reg. 22A of the SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations"), SEBI permits a non-individual Investment Advisers ("IA") to offer execution services for its advisory clients without getting any commission or brokerage. Currently PML does not charge advisory or execution fees, and intends to avail of reimbursement of the service related out-of-pocket expenses such as KYC, PG, technology hosting, platform maintenance etc. from Asset Management Companies (AMC) whose direct plans they are selling, as PML is bearing the cost

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दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर.एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051.

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अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

that the AMC would have borne in case the investments were directly routed through them. SEBI may clarify that this is not in violation of the aforesaid regulation.

3.2. As per Reg. 19(1)(d) of the IA Regulations and Point 2(ii) of SEBI Circular dated September 23, 2020, there has to be a mandatory agreement between IA and customers. SEBI may please clarify on whether PML can seek electronic consent of the clients on all the points mentioned in Annexure A of the circular and share the same with the client on their registered email address for their records and reference. It would not only save expenses, it would also expedite the entire process. PML would maintain all relevant records in this regard.

3.3. Principal Officer has been defined as per Reg. 2(1)(s) of the SEBI (Investment Advisers) Regulations, 2013. In this regard, PML have requested SEBI to define as what would be considered as, equivalent management body who is responsible for the overall function of the business and operations, whether a committee appointed by the Board of PML to oversee the advisory functions and operations can be considered as a management body and a member of the said committee can be appointed as a Principal Officer. Whether the Department Head in charge of Advisory business who is a member of management advisory committee appointed by the board can be appointed as Principal officer as such a person would be responsible for the overall function of the advisory business.

4. Our Comments

The submissions made in your letter and emails have been considered. Without necessarily agreeing with your analysis, our response on the queries raised in your communications are as under:

4.1. In terms of queries raised in para 3.1, the following may be stated:

i. Regulation 22A of IA Regulations states that:

1) *Investment adviser may provide implementation services to the advisory clients in securities market:*

Provided that investment advisers shall ensure that no consideration including any commission or referral fees, whether embedded or indirect or otherwise, by whatever name called is received; directly or indirectly, at investment adviser's group or family level for the said service, as the case maybe.

2) *Investment adviser shall provide implementation services to its advisory clients only through direct schemes/products in the securities market.*



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनियम बोर्ड
**Securities and Exchange
Board of India**

- 3) *Investment adviser or group or family of investment adviser shall not charge any implementation fees from the client.*
- 4) *The client shall not be under any obligation to avail implementation services offered by the investment adviser.*

- ii. Thus, Regulation 22A (3) restricts a registered IA or its group or family to charge any implementation fees from its client. Further, Regulation 22A (1) states that the IAs cannot receive any consideration, by whatever name called and whether directly or indirectly, at the IA's group or family level for the said implementation service given.
- iii. In view of the above, PML cannot avail reimbursement of any amount for the services given to its clients, from the Asset Management Companies whose direct plans are being sold by them to clients.

4.2. In terms of the queries sought in para 3.2, the following may be stated:

- i. As per the provisions of Regulation 19(1)(d) of the IA Regulations and the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, an IA is required to enter into an investment advisory agreement with its clients which cover mandatory terms and conditions as per the specified format and maintain copies of the same. Further, the IAs are required to ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and has been provided a copy of the signed agreement.
- ii. In this regard, it is envisaged that a registered IA shall not render any investment advice until consent is received from its client on the terms and conditions. Further, in order to ensure enforceability, an agreement was mandated between IA and the client incorporating the terms and conditions in the document as specified by the SEBI.
- iii. Considering the same, it is stated that merely seeking an electronic consent and sharing the same with the clients on their registered email addresses may not be considered as sufficient compliance with IA Regulations and circular.

4.3. In terms of queries asked in para 3.3 the following may be stated:

- i. Regulation 2(1)(s) of IA regulations defines the term "Principal Officer" as under:



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

“principal officer” shall mean the managing director or designated director or managing partner or executive chairman of the board or equivalent management body who is responsible for the overall function of the business and operations of non-individual investment adviser.]”

- ii. In terms of definition of Principal Officer (PO) under the IA Regulations, only a person who is the managing director or designated director or managing partner or executive chairman of the Board or equivalent management body of the IA can be appointed as a PO.
 - iii. Thus, Regulations mandates the head / member of the Board of directors of a corporate IA to be responsible for the functions of the business and operations of the IA. In the context of use of the term “equivalent management body”, the same is understood to be in respect of non-individual IAs other than a company, such as a Limited Liability Partnership which do not have Board of directors. In such instances, the Executive Chairman of the aforesaid equivalent management body can be the Principal Officer for the IA.
 - iv. In view of the above, a member of committee (including a Department Head in charge of Advisory business) appointed by the board of IA to oversee the advisory functions and operations cannot be the Principal Officer of the IA, unless he is also the managing director or designated director or managing partner or executive chairman of the Board or equivalent management body of the IA.
5. This above position is based on the information furnished in your letters under reference. Different facts or conditions might lead to different interpretation. Further this letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought in your letters under reference with respect to the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and do not affect the applicability of any other law and requirements of any other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,


Manaswini Mahapatra