



SICOMORO

Informal Guidance Application Letter

Date: May 14, 2021

To,

General Manager,
Investment Management Department,
Division of Funds-I,
Securities and Exchange Board of India,
Plot No. C4-A, 'G' Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051.

Sub: Request for a no-action letter under paragraph 5(i) of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in relation to the implementation of advice or execution by Sicomoro Advisors Private Limited, an investment adviser under Regulation 22A of the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

Dear Sir/ Ma'am,

We, Sicomoro Advisors Private Limited ("Sicomoro"), are registered as an Investment Adviser with Securities and Exchange Board of India ("SEBI"), bearing registration number INA000009834, and having our registered address at 102, 1st Floor, Pharma Search House, B. G. Kher Marg, Worli, Mumbai - 400018. Please find below our queries regarding the implementation of advice or execution services that can be provided by Sicomoro, in respect of which we seek a no-action letter, from your good offices.



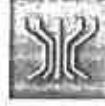
Sicomoro Advisors Pvt. Ltd.

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Tel. No. - 022 62322255

CIN Number - U67150MH2017PTC301619



SICOMORO

A. BACKGROUND

1. Details of Sicomoro

1.1. Sicomoro is a private limited company incorporated under the laws of India on November 9, 2017, bearing corporate identification number U67190MH2017PTC301619, and has its registered office at 102, 1st Floor, Pharma Search House, B. G. Kher Marg, Worli, Mumbai – 400018.

1.2. The main object clause as per the Memorandum of Association of the Company is as under:

"1. To carry on in India and abroad the business of investment advisers, financial/ investment/ management/ business/ strategy consultants, advisors, distributors, agents, brokers, sub-brokers, portfolio managers, depository participants, representatives and advisors for corporates, individuals, trusts, firms and other entities for managing their finances, deploying funds, syndication of loans and borrowings, acquiring/ disposing/ managing assets (including shares, debentures, bonds, mutual funds, venture capital funds, private equity funds, exchange traded funds, bullion, currencies, structured products, real estate, real estate funds, alternative investment funds, commodities, derivatives, art, paintings, artefacts, sculptures), making, effecting, broking, distributing insurance products (both life and non-life), to provide research, support and training in financial management and investment products, and provide advice/ services/ consultancy in various fields, including financial planning, asset allocation, commercial, financial, accounting, legal, economic, direct and indirect taxation, trust formation and estate and succession planning.

2. To carry on in India and abroad the business of investment banking, merchant banking, advisory services for corporates, firms, individuals, trusts, Government and Semi-government organizations, banks, financial institutions, multilateral agencies and other entities for assessing and advising on structuring, restructuring, rehabilitation, reconstruction, liquidations, mergers and acquisitions, amalgamations, demergers, divestitures and sales, public offers, private placements, offers for sale, primary and secondary issuances of securities, buy-backs, takeovers including valuation, offers and negotiations."

1.3. On February 15, 2018, Sicomoro had obtained its registration as an investment adviser with SEBI bearing registration no. INA000009834.

Pursuant thereto, Sicomoro has been in the business of providing investment advice and distribution services to various clients, in accordance with the provisions of the SEBI



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- 1.4. (Investment Advisers) Regulations, 2013 (“IA Regulations”). It is pertinent to note that Sicomoro had ensured that the investment advisory services are segregated from its distribution and execution services, in accordance with the erstwhile Regulation 22 (*Segregation of execution Services*) of the IA Regulations.
- 1.5. Under the SEBI (Investment Advisers) (Amendment) Regulations, 2020 (“IA Amendment”), dated July 3, 2020, which came into effect from September 30, 2020, Regulation 22 of the IA Regulations was substituted, and the investment advisers are now required to adhere to a client level segregation at group level for investment advisory and distribution services.
- 1.6. Pursuant thereof, Sicomoro had decided to act as a pure investment adviser and not provide any distribution services to its clients.

2. Prospective Business

- 2.1. Sicomoro, proposes to provide implementation services to its advisory clients, in accordance with Regulation 22A (*Implementation of advice or execution*) of the IA Regulations, through the following products, collectively referred to as “Proposed Investment Products”:
 - 2.1.1. Investment in the units of Alternative Investment Funds (“AIFs”);
 - 2.1.2. Investment in Government related securities;
 - 2.1.3. Investment in private equity funds and venture capital funds that invest in securities;
 - 2.1.4. Investment in mutual funds investing in offshore jurisdictions; and
 - 2.1.5. Investment in Corporate Deposits offered by corporate bodies including Non-Banking Financial Companies (“NBFCs”).
- 2.2. As there are no direct schemes, plans or investment options available in India with respect to the Proposed Investment Products, any consideration including commission or referral fees received by Sicomoro from any third party for providing the implementation services in relation to the Proposed Investment Products would immediately be transferred to the clients, without any deductions, in any manner whatsoever (“Prospective Business”).
- 2.3. It is clarified that under the Prospective Business, no consideration including any commissions or referral fees would be charged by Sicomoro to its client, directly or indirectly, whether embedded or indirect or otherwise by whatever name called for the implementation services in relation to the Proposed Investment Products.



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B. LEGAL FRAMEWORK

For ease of reference, the relevant provisions of the IA Regulations and the relevant circulars issued by SEBI thereunder and the Securities Contracts (Regulation) Act, 1956 ("SCRA"), are set out hereunder:

3. Regulation 22A of the IA Regulations

"Implementation of advice or execution.

- (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.*
- (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."*

(emphasis supplied)

4. Regulation 2 (l) of IA Regulations

"investment advice' means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning;

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations."

(emphasis supplied)

5. Section 2 (h) of SCRA



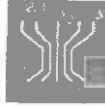
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“securities”— include

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation. - For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);

(ida) units or any other instrument issued by any pooled investment vehicle;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;”

(emphasis supplied)

6. SEBI circular dated September 23, 2020 bearing circular no. SEBI/HO/IMD/ DF1/CIR/P/2020/182 pertaining to the ‘Guidelines for Investment Advisers’ (“Guidelines for Investment Advisers Circular”)

“(i) Client Level Segregation of Advisory and Distribution Activities

To ensure client level segregation at Investment Adviser’s group/family level, as per Regulation 22(5) of amended IA Regulations, following compliance and monitoring process shall be adopted:



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...

b. IA shall, wherever available, advice direct plans (non-commission based) of products only.

..."

(emphasis supplied)

7: SEBI Circular dated September 13, 2012 bearing Circular No. CIR/IMD/DF/21/2012 on 'Steps to re-energise Mutual Fund Industry' ("Mutual Funds Circular")

...

D. Separate option for direct investments

(1) *Mutual funds/AMCs shall provide a separate plan for direct investments, i.e., investments not routed through a distributor, in existing as well as new schemes.*

..."



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C. SUBMISSIONS

In accordance with the provisions of Paragraph 5(i) of the SEBI (Informal Guidance) Scheme, 2003, we wish to seek a no-action letter from SEBI confirming that the implementation services provided through Proposed Investment Products and the Prospective Business, are in accordance with Regulation 22A of the IA Regulations, and a confirmation that our understanding and analysis set out hereunder is correct.

8. Implementation services through the Proposed Investment Products have not been restricted under the provisions of the IA Regulations including Regulation 22A

8.1. Under the provisions of IA Regulations, an investment adviser is permitted to provide advice in relation to, *inter alia*:

8.1.1. investing in, purchasing, selling or otherwise dealing in securities and investment products;

8.1.2. investment portfolio containing securities or investment products,

8.2. As per Regulation 22A of the IA Regulations, an investment adviser may provide implementation services to the advisory clients through *products in the securities market*. In our view, the Proposed Investment Products would fall within the purview of products of the securities market. In this regard, as the securities market has not been defined under any applicable laws, we have referred to the following:

8.2.1. In the case of *Karnavati Fincap Ltd. and Ors. vs. Securities and Exchange Board of India* ([1996] 87 Comp Case 186 (Guj)), the Hon'ble Gujarat High Court described the meaning of 'securities market':

"the term "securities market" has not been defined under the statute. But taking the meaning of "securities" as defined in the Securities (Contracts) Regulation Act, 1956, because that is the definition of "securities" adopted under the SEBI Act, and the ordinary meaning of the word "market", it will mean a place or institution where the business of selling or buying of securities is carried on. Selling, buying or dealing with securities is the essential ingredient of a market."

SEBI under Section 11(2) of the SEBI Act, 1992 is bound to regulate the business in the stock exchanges and other securities markets. The National Institute of Securities Markets ("NISM"), a public trust, was established in 2006 by SEBI.



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8.2.2. NISM, being an educational initiative of SEBI is required to enhance the quality standards in the securities markets. NISM on its website, explains the structure of the Indian securities markets as:

"The market in which securities are issued, purchased by investors, and subsequently transferred among investors is called the securities market. The securities market has two interdependent and inseparable segments, viz., the primary market and secondary market. The primary market, also called the new issue market, is where issuers raise capital by issuing securities to investors. The secondary market, also called the stock exchange facilitates trade in already-issued securities, thereby enabling investors to exit from an investment. The risk in a security investment is transferred from one investor (seller) to another (buyer) in the secondary markets. The primary market creates financial assets, and the secondary market makes them marketable."

8.3. Therefore, in light of the above, in our view Sicomoro can provide implementation services in all the products listed under the definition of the term 'securities' under the SCRA which would cover all the Proposed Investment Products, in the following manner:

'Securities' under SCRA	Proposed Investment Products
Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate	Investment in Private Equity Funds and Venture Capital Funds that invest in securities
Units or any other instrument issued by any pooled investment vehicle	Investment in units of AIFs
Government securities	Investment in government related securities
Units or any other such instrument issued to the investors under any mutual fund scheme	Investment in mutual funds investing in offshore jurisdictions
Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be	Corporate deposits offered by corporate bodies including NBFCs





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9. **Prospective Business is in compliance with Regulation 22A of the IA Regulations**

- 9.1. The objective of the IA Regulations *inter alia* was to lay down the framework for advisers who act in a fiduciary capacity towards their clients and to address the conflict of interest arising due to the dual role played by the entity as adviser and distributor of financial products. An investment adviser is required to act in the best interests of its clients when providing advisory services and disclose any conflict of interest to the clients.
- 9.2. In order to avoid such conflicts of interest due to multiple activities, SEBI *inter alia* proposed segregation of advisory and distribution activities and provision of implementation services without charging any implementation fees from the client, vide several consultation papers and also sought public comments thereto. SEBI had also constituted a working group to address the diverse views received from the consultation process, which submitted its report in December 2019.
- 9.3. On February 17, 2020, SEBI in its board meeting deliberated and approved the proposal regarding the amendments to the IA Regulations in order to avoid conflict of interest, wherein the client level segregation of advisory and distribution services was done and the implementation services were permitted through direct schemes or products in the securities market *for the convenience of investors*, without payment of any consideration.
- 9.4. On July 3, 2020, SEBI issued the IA Amendment which would come into force on September 30, 2020. However, on September 23, 2020, SEBI issued the Guidelines for Investment Advisers Circular which would be in addition to the IA Amendment, which stated that the investment adviser under Regulation 22A, can *wherever applicable*, advise direct plan (non-commission based) of products only.

It is crucial to examine what are direct plans and in what products are they available for investors. In this regard, SEBI vide the Mutual Funds Circular had taken some steps to re-




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- 9.5. energise the mutual fund industry and stated that mutual funds or asset management companies shall provide a separate plan for direct investments, i.e., investments not routed through a distributor, in existing as well as new schemes. However, the same was not mandated for all the investment products in the securities market.
- 9.6. Further, SEBI also recognised that direct plans/ schemes are currently not available in respect of all the investment products, and therefore, inserted the phrase 'wherever available' in the Guidelines for Investment Advisers Circular.
- 9.7. In light of the above, the phrase '*wherever available*' has to be liberally interpreted, as currently direct plans are not available in all the investment products in the securities market. There are various investment products, including the Proposed Investment Products for which there is no option available to provide implementation services through direct plans/ schemes.
- 9.8. In our opinion, in the event the direct plan / scheme is not available in relation to any investment product, an investment advisor can provide implementation services in relation to such a product, provided that no consideration is received from the client, and there is no conflict of interest in any manner whatsoever.
- 9.9. Under the Prospective Business, Sicomoro proposes to provide implementation services in relation to the Proposed Investment Products, by accepting the commission / fee from the issuer of such Proposed Investment Products and immediately providing credit for or remitting to the relevant clients the entire monetary benefit, and Sicomoro shall in no manner derive any benefit from such commission or fees for itself, or for its group companies, directly or indirectly. Therefore, in our view, the Prospective Business is in compliance with the intent and objective of the IA Amendment.
10. Considering the aforementioned, it is our humble submission that the Proposed Investment Products would be included under the purview of products in the securities market and providing implementation services through the Proposed Investment Products where direct plans / schemes are not available, and that Sicomoro can provide advice and implementation services, in relation to the Proposed Investment Products.



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D. QUERIES

11. We request SEBI to issue a no-action letter under Paragraph 5(i) of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 confirming that the:
- 11.1. Implementation services through Proposed Investment Products are permitted under the Regulation 22A of the IA Regulations; and
- 11.2. Prospective Business is in accordance with Regulation 22A of the IA Regulations.

We remain available and would be pleased to provide any further information / clarification that your good offices may require in this regard.

We request that this letter and your response thereof be treated as strictly confidential in accordance with Paragraph 11 of the Securities and Exchange Board of India (Informal Guidance Scheme), 2003.

We have paid an amount of Rs. 25,000 (Rupees Twenty Five Thousand) towards the fees for the informal guidance by way of the details set out in Annexure A. We would be grateful if you could confirm the receipt of this letter and its enclosure in good order by way of an email to the undersigned.

Thanking you,

For Sicomoro Advisors Private Limited

Name: Amit Khandelwal

Designation: Director

Contact No.: 98332 14333

Email: compliance@sicomoro.in and amit.khandelwal@sicomoro.in



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