

WATERFIELD

To,

The Chief General Manager,
Division of Funds - 1,
Investment Management Department,
The Securities and Exchange Board of India,
SEBI Bhavan,
Plot C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051

Dear Sirs,

Sub: Request for informal guidance by way of an Interpretive Letter under SEBI (Informal Guidance) Scheme 2003 ("Informal Guidance Scheme") in connection to SEBI (Investment Advisers) Regulations, 2013

We are enclosing herewith a request letter for the above captioned subject matter along with a Demand Draft No. 032389 dated December 28, 2020 for INR 25,000/- (Rupees Twenty Five Thousand Only) drawn on HDFC Bank in favour of Securities and Exchange Board of India, payable at Mumbai.

We would be happy to provide any further information, as may be required to process this application. In case of any additional clarifications or information in connection with the subject matter, please feel free to contact at email id: kartik.kini@waterfielddadvisors.com or Shilpa.dadhich@waterfielddadvisors.com and Mobile: 9820349123/ 9987538394.

Thanking You,



Name: Kartik Kini
Designation: Chief Operating Officer
Date: December 31, 2020
Place: Mumbai

Encl: As above

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Trust with integrity

To,

The Chief General Manager,
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Dear Sirs,

Sub: Request for informal guidance by way of an Interpretive Letter under SEBI (Informal Guidance) Scheme 2003 ("Informal Guidance Scheme") in connection to SEBI (Investment Advisers) Regulations, 2013.

1. Background:

- 1.1 Waterfield Financial and Investment Advisors Private Limited ("WFPL/ Company"), is a company incorporated under Companies Act, 1956, registered as an investment advisor under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 ("SEBI IA Regulations") bearing registration number INA000001811, and is engaged in providing investment advisory services to its clients and having its registered office at 142, 14th Floor, Maker Chambers VI, 220 Jamnalal Bajaj Marg, Nariman Point, Mumbai 400021, India.
- 1.2 As a part of the WFPL's investment advisory services, WFPL also provides implementation services to its clients, in accordance with the conditions set out in Regulation 22A of the SEBI IA Regulations. In this regard, clients of WFPL may, at their volition, issue a Limited Power of Attorney ("POA") to WFPL, permitting WFPL to liaise with the custodian and receive information from / transmitting information to the custodian, in connection with the client's investments and financial products, at all times, only after receiving the consent and instructions from the client. Please note that WFPL does not intend to unilaterally execute any investment decisions on behalf of the client, or otherwise execute / sign any documents in connection with the client's investments under any circumstances and does not unilaterally communicate with the custodian, without the client's prior written approval / instructions.
- 1.3 Once a client independently consents to take any investment decision (purchase or redemption of an investment product), WFPL simply forwards such documentation to a custodian bank and requests the custodian to take relevant actions to give effect to the investment decision of the client (at all times, after receiving written / electronic instructions from the client, consenting to implement such investment decision). It is clarified that at no point of time does WFPL take any investment decisions for the client, or otherwise execute any documents relating to investments to be made by the client. In addition to the foregoing, as part of its functions as an investment adviser to the client, WFPL may seek information relating to client's investments / investment products from the custodian pursuant to the powers under the POA, on an ongoing basis, and relay such information to the client.
- 1.4 We submit that WFPL executes a POA only with such of its clients who wish to avail of such

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support services from Custodians, and clients are free to not execute a POA with WFPL. Further, the client also separately executes a power of attorney and a separate custodian agreement with the custodian, in relation to the custodian services provided to client.

2. Relevant Regulations:

2.1 As per Regulation 19(1)(d) of the SEBI IA Regulations, an investment adviser is required to enter into an investment advisory agreement with its clients, incorporating the terms and conditions as may be specified by the SEBI. In this regard, as per Paragraph 2(ii) of the Circular dated September 23, 2020, on Guidelines for Investment Advisers (SEBI/HO/IMD/DF1/CIR/P/2020/182) ("**SEBI Circular**"), investment advisors are required to ensure that by April 1, 2021, all investment advisory agreements mandatorily cover the terms and conditions provided in Annexure A of the SEBI Circular.

2.2 Specifically, Annexure A of the SEBI Circular inter alia provides for the following terms and conditions to be incorporated in the investment advisory agreement (among other conditions), by April 1, 2021:

*"13. **Representation to client:** The investment adviser to ensure that it will take all consents and permissions from the client prior to undertaking any actions in relation to the securities or investment product advised by the investment adviser."*

*"14. **No right to seek Power of Attorney:** The Investment Adviser to clearly declare that it shall not seek any power of attorney or authorizations from its clients for implementation of investment advice."*

2.3 Specifically, Paragraph 14 of Annexure A to the SEBI Circular requires all investment advisors to declare in their respect investment advisory agreements, that they shall not seek any POA or authorisations from their respective clients, to implement the investment advice provided to their respective clients.

2.4 The aforesaid provision was originally set out in the SEBI's Consultation Paper on Review of Regulatory Framework for Investment Advisers dated 15 January 2020 ("**SEBI IA Consultation Paper**"), where SEBI had suggested the investment advisory agreement to specifically set out the following:

*"**No right to seek Power of Attorney:** The Investment Adviser to clearly declare that it shall not seek any power of attorney or authorizations from its clients for auto implementation of investment advice."*

2.5 Further, as per Regulation 22A of the SEBI IA Regulations, an investment adviser is permitted to provide implementation or execution services to its clients, subject to the following conditions:

- (i) the investment adviser shall not charge any consideration (including commission or referral fees), directly or indirectly, whether embedded or indirect or otherwise, at the investment adviser's group level for the said service;
- (ii) the investment adviser shall provide implementation services to its advisory clients only through direct schemes / products in the securities market:

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- (iii) the client shall not be under any obligation to avail implementation services offered by the investment adviser.

Accordingly, Regulation 22A of the SEBI IA Regulations permits investment advisors to provide implementation services to its clients, subject to the conditions set forth therein. Also, we note that Paragraph 13 of Annexure A to the SEBI Circular requires investment advisors to ensure that they obtain the prior consent of the client, before "undertaking any actions in relation to the securities or investment product advised by the investment adviser."

3. Guidance Sought:

In light of the above submission and relevant regulations, we most humbly request your good office to confirm our understanding and issue an informal guidance by way of interpretive letter under para 5 of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("**Informal Guidance Scheme**") on the following:

- (i) Whether WFPL's clients can, at their volition, grant a Power of Attorney to WFPL, authorising WFPL to: (a) make inquiries concerning the client's account with the custodian (such as account balances, transaction details, etc.); and (b) liaise with the Client's custodian and receive information from / transmit information to the custodian, in relation to the client's investment decisions / client's investment products; under the POA; at all times, after receiving the written consent and instructions from the client?
- (ii) Whether the said arrangement between WFPL and its clients whereby WFPL's role, pursuant to the POA, is limited to the activities set out in (i) above would be considered as 'implementation services' in terms of the SEBI IA Regulations?

4. Our Understanding:

- 4.1 Para 14 to Annexure A of the SEBI Circular is primarily intended to ensure that all investment advisory agreements executed: (i) do not impose an obligation on clients to necessarily execute POAs in favour of investment advisors; and (ii) the POAs if executed, do not allow investment advisers to act unilaterally and auto implement / execute investment advice provided to their clients, pursuant to the POA. Para 13 to Annexure A of the SEBI Circular allows investment advisers to render implementation services to take actions in relation to the securities / investment products advised by the investment adviser after obtaining consents / permissions from the client. Accordingly, both Para 13 and Para 14 to Annexure A of the SEBI Circular will be required to be read harmoniously.
- 4.2 WFPL does not execute any documents or otherwise unilaterally implement the investment advice provided to its clients, pursuant to the POA. All of the actions undertaken under the POA are undertaken only pursuant to the written consent of the client.
- 4.3 WFPL effectively acts as an interface between the custodian and client, basis the POA. Such support services, in our view, is not intended to fall within the restriction under Para 14 to Annexure A of the SEBI Circular.

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5. **Request for Confidentiality:**

In accordance with para 11 of the Informal Guidance Scheme, we request that this letter and its contents be kept confidential for maximum period possible i.e., until 90 days after the response to this letter been tendered.

6. **Compliance with Para 6 of the Informal Guidance Scheme:**

In accordance with Para 6, this request for informal guidance is accompanied with a Demand Draft No. 032389 dated December 28, 2020 for INR 25,000/- (Rupees Twenty Five Thousand Only) drawn on HDFC Bank in favour of Securities and Exchange Board of India, payable at Mumbai.

All material facts, circumstances, and legal provisions which in our opinion are relevant for the purposes of determining of this request are stated herein.

We would be happy to provide any further information, as may be required to process this application. In case of any additional clarifications or information in connection with the subject matter, please feel free to contact at email id: kartik.kini@waterfieldadvisors.com or Shilpa.dadhich@waterfieldadvisors.com and Mobile: 9820349123/ 9987538394.

Thanking You,



Name: Kartik Kini
Designation: Chief Operating Officer
Date: December 31, 2020
Place: Mumbai

Encl: As above