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भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

SEBI/HO/MRD2/MRD2_DDAP/P/OW/2022/028927/1 /2022
July 18, 2022

M/s Club Millionaire Financial Services Pvt Ltd

2nd Floor, Butler's Business Centre,
12th Cross Road, Panampilly Nagar
Kochi-682036, Kerala India

Sir,

Subject: Request for Interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 from Club Millionaire Financial Services Pvt. Ltd.

1. This has reference to your letter dated January 27, 2022 seeking informal guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 (the "Scheme") and subsequent correspondence exchanged vide email dated March 02, 2022 in this regard.
2. Vide your letter and subsequent correspondence under reference, you have represented Club Millionaire Financial Services Pvt. Ltd. as a Registered Portfolio Manager with SEBI (Reg. No. INP000005380).
3. In that context, you have sought interpretive letter from SEBI on the following issues:
 - 3.1. "Regulation 2(1) (q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011: Whether a portfolio manager and its client, who is an acquirer are to be considered as Person Acting in Concert ("PAC") in the situation as mentioned above. Whether the Portfolio Manager is accountable for the securities held by PMS (Portfolio Management Services) investors outside its PMS arrangement?"
 - 3.2. Regulation 22(3) of SEBI (Depositories & Participants) Regulation 2018: Whether, in light of above mentioned facts, prior approval of the board has to be obtained for acquiring above 5% of the total paid up equity capital of CDSL, in the capacity as a Portfolio manager?"
4. In this regard, it may be noted that we have considered your submission in your letter under reference and without necessarily agreeing to your analysis, our views on the queries raised by you are as under:

Vijay

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सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
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4.1. In terms of queries raised at para 3.1, the following is informed:

- i. In terms of the Reg. 2(1)(q) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (the “SAST Regulations”),

“ (q) “persons acting in concert” means,—

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

.....

(xi) a portfolio manager and its client, who is an acquirer;”

- ii. In view of the above mentioned provision, a Portfolio Manager along with its clients shall be deemed to be persons acting in concert (the “PACs”), unless the contrary is established. A portfolio manager advises or directs or undertakes on behalf of the client, the management and administration of portfolio of securities of the clients. Moreover, regulation 22(1) of the PMS Regulations requires the portfolio managers to enter into an agreement with the client which defines their relationship, inter se, and sets out their mutual rights, liabilities and obligations. In case the securities are purchased outside the said PMS arrangement, the portfolio manager and its client may not be said to be PACs. The aforementioned understanding is without prejudice to the general definition of the term PAC as mentioned under Regulation 2(1)(q)(1) of the SAST Regulations.
- iii. Accordingly, a portfolio manager may not be held accountable for securities held by its clients outside the PMS arrangement.

4.2. In terms of queries raised at para 3.2, the following is informed:

- i. In terms of the regulation 22(3) of the SEBI (Depositories and Participants) Regulations, 2018 (the “DP Regulations”),

“Any person eligible to acquire or hold more than five percent of the paid up equity share capital under sub-regulation (1) and sub-regulation (2) of regulation 21 may acquire or hold more than five percent of the paid up equity share capital of a depository only if the person has obtained prior approval of the Board.”

VINAY

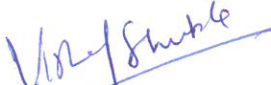


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- ii. The above provision clearly states that a person who is eligible under regulation 21(1) and 21(2) of the DP Regulations is required to obtain a prior approval of SEBI for acquiring or holding more than 5% of paid up equity share capital in a depository.
 - iii. Therefore, in view of the reply to query 1 at para 4.1, prior approval of the Board is required only when the holding exceeds 5%, pursuant to the agreement between the portfolio manager and the client.
5. The above position is based on the information furnished in your letter under reference. Further this letter does not express a decision of the Board on the questions referred.
6. You may also note that the above position/law is expressed only with respect to the clarification sought in your letter under reference in respect to the Regulations as referred above and does not affect the applicability of any other law or requirement of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or the laws administered by any other authority.

Yours faithfully,


Vishal Shukla