



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Registered Post Acknowledgement Due

Deputy General Manager
Division of Foreign Portfolio Investors & Custodians
Investment Management Department
Ph: +91 22 26449619
Email: achals@sebi.gov.in

SEBI/HO/IMD/FIIC/OW/P/2018/8116/1
March 14, 2018

Nicolo Magni
UBS AG
Bahnhofstrasse 45
Zurich, Switzerland
Ph; +852 2971 8888
Email: ol-sesg-asia@ubs.com

Dear Sir/Madam,

Subject: Request for Informal Guidance by way of an Interpretative letter under SEBI (Informal Guidance) Scheme, 2003.

1. This has reference to your letter dated February 14, 2017 (received on February 14, 2018) on the captioned matter.
2. In your letter under reference, you have inter-alia represented the following:
 - a. UBS FPI is desirous of making application in its capacity as an 'acquirer' or 'prospective acquirer' under SEBI (SAST) Regulations, 2011. UBS FPI is not a promoter of any of the listed companies for the purpose of SEBI (ICDR) Regulations, 2009.
 - b. Regulation 32(2)(d) of the FPI Regulations imposes an obligation on the designated depository participant engaged by an FPI to ensure that equity shares held by an FPI are free from all 'encumbrances'.
 - c. Response to Question No. 47 of the FPI FAQs reiterate this obligation on the designated depository participant to satisfy itself that the equity shares held by an FPI are free from all encumbrances and further stipulates that the designated depository participant may, for this purpose, take all requisite steps including obtaining a declaration from FPI applicant.
 - d. The term 'encumbrance' has not been defined in the FPI Regulations

Handwritten mark

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
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.
Tel.: 2644 9950 / 4045 9950 (IVRS), 2644 9000 / 4045 9000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



अनुवर्ती :
Continuation :

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

- e. Chapter- V of the SAST Regulations relating to Disclosures of Shareholding and Control lays down an inclusive definition of the term 'encumbrance' for the specific purpose of this chapter which definition includes pledges, liens or such other transaction, by whatever name called. This chapter describes disclosures to be made to the stock exchanges where the shares of the company are listed (i) by any acquirer of these shares upon acquisition and disposal of shares of such company, beyond the stipulated threshold; and (ii) specifically by promoter of such company upon creation of any encumbrance by such promoter over the shares held by him in the company.
 - f. Response to Question No. 72 of FAQs in relation with SAST Regulations, it is clarified that non disposal undertakings executed by promoters will be covered within the scope of the term 'encumbrance' for the purpose of Regulation 28(3) of the SAST Regulations.
 - g. Circular dated 14 June 2017, under Clause 3 identifies shareholders, primarily promoters, entering into non disposal undertakings for borrowing funds from various lenders and Clause 5.8 of such circular requires depositories to make suitable provisions for capturing details of the company / promoter if they are part of the non-disposal undertaking.
3. In light of the above submissions, you have requested an 'Interpretive Letter' for the following as per the provisions of the SEBI Informal Guidance Scheme, confirming your understanding about interpretation of the legal provisions:
- a. Whether the term 'encumbrance' used in Regulation 32(2)(d) of the FPI Regulations would include non disposal undertakings in relation to FPIs who are investors in the capacity as 'acquirers' and not 'promoters' given that all existing references and connotations to this term have been made specifically in connection with promoters under the SAST Regulations; and
 - b. Whether FPIs are restricted from executing a non disposal undertakings with third parties, whereby they provide a limited undertaking to not to transfer, dispose or create any encumbrances over the equity shares held by them in listed companies in India with designated depository participant or any part thereof without creating any rights in favour of any third party on such equity shares.
4. The submissions made in your letter have been considered and without agreeing with your analysis, our views on the issues are as under:
- a. Yes, the term encumbrance used in Regulation 32(2)(d) of the SEBI(FPI) Regulations, 2014 include non-disposal undertaking(s).

✓



अनुवर्ती :
Continuation :

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

- b. In view of the Regulation 32(2)(d) of the SEBI(FPI) Regulations, 2014, foreign portfolio investors are restricted from executing non-disposal undertaking(s).
5. You may note that the above views are expressed only with respect to the guidance sought on certain provisions of SEBI (FPI) Regulations, 2014 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

(Achal Singh)