



भारतीय प्रतिभूति  
और विनिमय बोर्ड  
Securities and Exchange  
Board of India

DEPUTY GENERAL MANAGER  
INTEGRATED SURVEILLANCE DEPARTMENT

SEBI/HO/ISD1/P/OW/2022/11110/1  
March 16, 2022

Shri Shivanand Shettigar  
Company Secretary  
Yes Bank Limited  
YES BANK House, Off Western Express Highway,  
Santacruz East, Mumbai – 400055  
Email: Shivanand.Shettigar@yesbank.in

Sir,

**Sub: Request for an Interpretative Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003**

1. This has reference to the letter dated January 13, 2022, seeking an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003.
2. In the said letter, the following submissions have been made:
  - 2.1. Yes Bank Limited ("YBL /Company/Bank") operates its Investment Banking, Merchant Banking & Brokerage businesses through YES Securities (India) Limited, wholly owned subsidiary of the Bank. YBL has adopted a referral model for doing business of Alternate Investment Funds (AIFs) wherein YBL Customers are referred to AIF AMCs signed up with YBL and commission is passed on to the Bank basis the agreed commission structure with AIF AMC.
  - 2.2. Employees (including immediate relatives) of the Bank may choose to invest their funds through AIF service offered by the Bank.
  - 2.3. Investments made by the Fund Manager in AIF schemes on behalf of the Investor (including the DP and their immediate relatives as Investor) may include investments in the companies whose UPSI is with the Bank and in turn with the DP. However, the Investor has no direct/ indirect control or influence over the investment making decisions of Fund Manager. Further, the DPs in any manner are not allowed to communicate any form of UPSI available with them with the Fund Manager, which can influence the investment decision of Fund Manager.

3. In light of the aforesaid submissions, informal guidance has been sought in the form of an interpretative letter on the following queries:



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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.

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- 3.1. *Whether the units allotted under AIF scheme are covered under the definition of Securities for the purpose of PIT Regulations?*
- 3.2. *Whether the employees of the Bank covered as Designated Persons and their immediate relatives in terms of PIT Regulations are allowed to invest in AIF (Category; I, II & III)?*
4. Without necessarily agreeing to your analysis given in the captioned letter, the interpretation to your above queries is as under:
- 4.1. Relevant provisions of the Securities Contracts (Regulation) Act, 1956 ("SCRA") are as follows:

**Securities Contracts (Regulation) Act, 1956**

Definitions.

2. In this Act, unless the context otherwise requires,—

(da) "pooled investment vehicle" means a fund established in India in the form of a trust or otherwise, such as mutual fund, alternative investment fund, collective investment scheme or a business trust as defined in sub-section (13A) of section 2 of the Income tax Act, 1961 and registered with the Securities and Exchange Board of India, or such other fund, which raises or collects monies from investors and invests such funds in accordance with such regulations as may be made by the Securities and Exchange Board of India in this behalf;

(h) "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;

.....

.....

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

.....

.....

4.2. Relevant provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") are as follows:

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:—



(Sd)



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(g) "insider" means any person who is:

- i) a connected person; or
- ii) in possession of or having access to unpublished price sensitive information;

(i) "securities" shall have the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or any modification thereof except units of a mutual fund;

*Communication or procurement of unpublished price sensitive information.*

3. (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

*Trading when in possession of unpublished price sensitive information.*

4. (1)- No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

[Explanation - .....]

Provided that the insider may prove his innocence by demonstrating the circumstances including the following:-

(i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

[Provided that .....]

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.....]"



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**“Code of Conduct.**

9. (1) The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

NOTE: It is intended that every company whose securities are listed on stock exchanges and every intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by designated persons and their immediate relatives. The standards set out in the schedules are required to be addressed by such code of conduct.

4.3. Relevant provisions of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”) are as follows:

**“Definitions.**

2(1)(a).....

(b) “Alternative Investment Fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which,-

(i) is a privately pooled investment vehicle which collects funds from investors, whether Indian or foreign, for investing it in accordance with a defined investment policy for the benefit of its investors; and

.....”

**4.4. With respect to the query at Point 3.1**

4.4.1. As per section 2 (h) of the SCRA, “securities” include units or any other instrument issued by any pooled investment vehicle. As per section 2 (da) of the SCRA and also as per Regulation 2 (1) (b) of the AIF Regulations, AIFs are pooled investment vehicles. Therefore, units of AIF are securities in terms of the provisions of the SCRA.

4.4.2. In terms of Regulation 2 (1) (i) of the PIT Regulations, the term “securities” has the same meaning as contained in the SCRA, with only exception being the specific exclusion of units issued by mutual funds.





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4.4.3. Therefore, units of AIF are covered under the definition of “securities” for the purposes of PIT Regulations.

**4.5. With respect to query at Point 3.2:**

4.5.1. It is stated in your captioned letter that investments made by the fund manager in AIF schemes on behalf of the Designated Persons (“DPs”) and their immediate relatives may include investments in the companies whose unpublished price sensitive information (“UPSI”) is with YBL and in turn with the DP.

4.5.2. In this regard, Regulation 9(1) of PIT Regulations states that the board of directors of every listed company and of intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct to regulate, monitor and report trading by its DPs and immediate relatives of DPs towards achieving compliance with PIT Regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to the PIT Regulations.

4.5.3. Further, Regulation 3 of PIT Regulations prohibits communication or procurement of UPSI to any person including other insiders except where such communication is used for legitimate purposes and for performance of duties or discharge of legal obligations. Also, Regulation 4(1) of the PIT Regulations states that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of the UPSI. In view of the above provisions, the fact remains that a DP in possession of or having access to UPSI shall be treated as an insider and shall have to ensure compliance with provisions of the PIT Regulations.

4.5.4. You may be aware that as per AIF Regulations, AIF schemes can invest in securities that are listed, proposed to be listed or unlisted. Further, in terms of the PIT Regulations, any person who is in possession of or having access to UPSI is considered an ‘insider’. In the scenario presented by you, as the AIF scheme may invest in securities that are listed or proposed to be listed, and DP investing in such scheme may have access to UPSI in relation to such securities, the DP would be considered as insider and the provisions of PIT Regulations may get attracted based on the facts and circumstances of a specific case. Hence, Regulations 3, Regulations 4(1) of the PIT Regulations and the code of conduct specified in Regulation 9 read with Schedule B to the PIT Regulations may get attracted when there is trading/investment by the DPs (of YBL) or their immediate relatives in units of AIF schemes that invest in securities that are listed or proposed to be



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listed when the DPs are in possession of or having access to any UPSI in relation to such securities.

4.5.5. Therefore, your employees covered as DPs and their immediate relatives may invest in units of AIF, subject to compliance with applicable provisions of PIT Regulations and AIF Regulations.

5. This position is specific to the information furnished in the letter under reference. Different facts or conditions may entail different interpretation. Further, this letter does not contain any decision of the Board on the queries referred.
6. It may also be noted that the above views are expressed only with respect to the clarification sought in the letter under reference with respect to the PIT Regulations and do not affect the requirements or applicability of any of the provisions of the SEBI Act, 1992, or the rules or the Regulations made thereunder that are administered by SEBI or by any other authority.

Yours faithfully,

**S Prabhakar**

