



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

**GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1**

SEBI/HO/IMD/DF1/OW/P/2022/ 21437/1
May 20, 2022

M/s Guardian Capital Investment Advisors Private Limited
4B, 4th Floor Saha Building,
8-2-616/1, Road No. 11 Banjara Hills,
Hyderabad – 500 034
Telangana, India
Mobile- 9560030404
Email – aseem.gupta@gcia.in

Dear Sir,

Sub: Request for interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 by Guardian Capital Investment Advisors Private Limited:

1. This has reference to your letter dated March 04, 2022 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 (the “Scheme”).

2. In your letter under reference, you have represented yourself as a SEBI registered Investment Adviser with registration number INA200005380. Further, you have sought an interpretive letter under the Scheme from SEBI on the following issues:

i. *“SEBI Provision: Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.” SEBI Circular Sept 23, 2020, Clause 2 (iii) (A)(c).*

a) *Before the change in regulation, if there were both financial planning & distribution clients being managed by the RIA under the regular mode of MF investments, then as per the new regulation, all those wishing to continue financial planning were to be moved to direct mode of MF before Apr 1, 2021. If a distribution client in the future (post-Apr 1, 2021) wants to also get financial planning advice from us and wants to move to an Advisory arrangement, are we allowed to do that?*

सेबी भवन, प्लॉट सं. सी 4-ए, “जी” ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051. • दूरभाष: 2644 9000 • फैक्स: 2644 9019 to 2644 9022

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b) In that case, additional money invested by the client will be in direct mode while the older investments will continue to be as the pre-existing distribution arrangement. Please let us know if that is allowed."

ii. *"SEBI Provision: " IA shall, wherever applicable, advice direct plans (non-commission based) on products only" - SEBI Circular Sept 23, 2020, Clause 2(i)(h)*

Given the current interest rate scenario, we find that Fixed Deposits (FDs) of certain banks and NBFCs offer better interest rates as compared to debt-based mutual funds. They make better investment recommendations for clients looking for debt investments. But currently, no such FDs are available in the regular mode of investing.

In this scenario, it makes more sense for us to advise FDs with the regular mode of investment so that the clients are not charged excessively (since there is no option of lower direct fees being charged by the bank/ NBFC).

The same is also true for some other products like Private Equity funds.

a) Our question is - "For such products, can we advise an advisory client with regular mode and earn commissions from the product manufacturer, as that is more favorable for the client?"

iii. *"SEBI Provision: "IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of onboarding/last change of mode. "SEBI Circular Sept 23, 2020, Clause 2 (iii) (B)(b).*

a) Our question is that in case add-on services are provided to the client (for example, tax filing service, expense management services, etc. provided by the RIA), can a separate fixed fee be charged for the same along with the AUA based fee being charged for investment advisory.

b) Also, additionally, for a distribution client can we provide advisory services such as financial planning and not charge them? Eg taxes, financial plans"

3. The submissions made in your letter have been considered, and without necessarily agreeing with your analysis, our views on the queries raised in your letter are as under:

3.1 With Regards to query 2.i.a) and 2.i.b), the following is informed:

i. Regulation 22 of the SEBI (Investment Advisers) Regulations, 2013 (the "IA Regulations") states as under:



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"(1)

(2)

(3) *A non-individual investment adviser shall have client level segregation at group level for investment advisory and distribution services*

Explanation. —

(i) *The same client cannot be offered both advisory and distribution services within the group of the non-individual entity.*

(ii) *A client can either be an advisory client where no distributor consideration is received at the group level or distribution services client where no advisory fee is collected from the client at the group level."*

ii. Further, relevant provisions of the SEBI Circular dated September 23, 2020 states as under:

"(a) Existing clients, who wish to take advisory services, will not be eligible for availing distribution services within the group/family of IA. Similarly, existing clients who wish to take distribution services will not be eligible for availing advisory services within the group/family of IA.

(b) A new client will be eligible to avail either advisory or distribution services within the group/family of IA. However, the option to avail either advisory services or distribution services shall be made available to such client at the time of on boarding

(c)...

(d) The client shall have discretion to continue holding assets prior to the applicability of this segregation under the existing advisory/distribution arrangement. However, the client shall not be forced to liquidate/switch such existing holdings."

iii. Thus, in terms of the IA Regulations, it is mandatory for the non-individual investment adviser (the "IA") to maintain a client level segregation and the same client cannot be offered both advisory and distribution services within the group of the non-individual IA in view of the regulation 22(3) of the IA Regulations. Further clients shall have the discretion to continue to hold assets prior to the applicability of the aforesaid provision, under the existing advisory/distribution arrangement with the IA.

3.2 With regard to query at para 2.ii.a), in view of the SEBI Circular dated September 23, 2020 which, *inter alia*, states that "IA shall, wherever applicable, advice direct plans (non-commission based) on products only", it is informed that the extant provisions envisage IAs advising its clients only in direct plans on



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products and not on regular mode. Thus, you may advise your clients only in respect of products where direct plans are available.

3.3 With regards to query 2.iii.a) and 2.iii.b), the following is informed:

i. With regards to query 2.iii.a), while you have quoted Clause 2(iii)(B)(b) of the SEBI Circular dated September 23, 2020 which mentions that an IA can charge fee from a client in either asset under advice mode or fixed fee mode, your query at 2.iii.a) does not pertain to the same. Thus, you have not cited the correct legal provision for interpretation purposes. Therefore, the same is not being addressed in view of the guideline 8(iv) of the Scheme.

ii. With regards to query 2.iii.b), as per the IA Regulations and circular dated September 23, 2020, an IA is required to ensure clear segregation of advisory and distribution clients. Thus a client can be provided either of advisory or distribution services by the IA.

4. This above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to different interpretation. Further this letter does not express decision of the Board on the questions referred.

5. You may note that the above views are expressed only with respect to the clarification sought in your letters under reference with respect to the SEBI (Investment Advisers) Regulations, 2013 and do not affect the applicability of any other law and requirements of any other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,


Manaswini Mahapatra