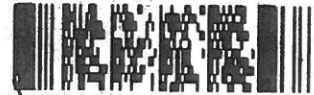


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Investment Management Department - Division of Funds I  
Securities and Exchange Board of India  
SEBI Bhavan  
Plot No.C4-A, 'G' Block Bandra-Kurla Complex  
Bandra (East), Mumbai 400 051  
Maharashtra

January 7, 2021



SEBI/IW/P/20210108/0000001536

***Sub:*** Request for an interpretive 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.

#### ***Background and Key Facts***

1. This is a request for an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003.
2. SV Capital is a sole proprietorship, that is registered with the Securities and Exchange Board of India (SEBI) as an Investment Advisor under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (**IA Regulations**), bearing registration number INA200013372. The proprietor of SV Capital is Shwetha Sundararaman.
3. SV Capital is in the process of converting from a sole proprietorship into a private limited company and will continue as a SEBI registered Investment Advisor after converting into a private limited company. The type of service that SV Capital intends to provide and the manner in which the services will be carried out are specified in the paragraphs below.
4. SV Capital has entered into a contractual agreement with a US company (**US Company**) that has created, owns and provides an online platform (**Platform**) that enables customers, including Indian customers, to purchase and invest in foreign securities, i.e., securities listed on overseas stock exchange in developed markets, such as the United States of America.
5. The Platform will allow a customer, at the customer's discretion to: (a) invest in any individual securities of a company listed on an overseas stock exchange v, and offered for sale through a third party registered US Stock Broker (**US Stock Broker**) that are made available to customers on the Platform; and / or (b) invest in stacks, i.e., a pre-configured basket of foreign securities, i.e., securities listed on overseas stock exchange that are made available to customers on the Platform (**Stacks**).
6. As part of the onboarding process for the Platform, Indian customers will directly open a brokerage account with the US Stock Broker. All purchase of foreign securities, i.e., securities listed on overseas stock exchange using the Platform is carried out through the US Brokerage Account opened with the US Stock Broker and all payment for such purchase is made by the Indian customer directly to the US Stock Broker.
7. Under the contractual agreement with the US Company, SV Capital will: (a) create the Stacks exclusively for the US Company based on certain predefined financial or qualitative criteria (by way of



example, a technology stack having foreign securities of Alphabet Inc., Facebook and Amazon in a certain ratio); and (b) rebalance the Stacks purchased by the customer using the Platform, exclusively for the US Company, on a quarterly basis (in line with the predefined financial or qualitative criteria) without any involvement or inputs from or any contact with customers.

8. SV Capital or the US Company, will not, directly or indirectly, provide any 'advice' to Indian customers including on the investment amounts, choice of Stacks, financial planning, portfolio management or on buying or selling of foreign securities, i.e., securities listed on overseas stock exchange. Indian customers are free to invest in the Stacks and / or in any foreign security(ies), i.e., security(ies) listed on overseas stock exchange per their own counsel (or on the advice of such Indian customer's personal third-party adviser).

9. SV Capital will also obtain a right to use the Platform from the US Company to onboard customers i.e., facilitate the KYC process for the Indian customers signing up to the Platform for the reason set out in paragraph 10 below.

10. Under the laws applicable to the US Stock Broker, the US Stock Broker must only enter into contractual agreements with a regulated entity i.e., in the Indian context, with either a SEBI registered investment advisor or stock broker. Accordingly, SV Capital intends to enter into an agreement with the US Stock Broker, primarily, to facilitate purchase of foreign securities, i.e., securities listed on overseas stock exchange through the Platform, individually or through Stacks and to facilitate the KYC process for the Indian customers signing up to the Platform.

11. Under the agreement with the US Company and as consideration for the services provided by SV Capital, SV Capital will be entitled under its agreement with the US Company to a service fee from the US Company for the services specified in paragraphs 7 (a) and 7 (b) above.

12. Under the agreement with the US Broker and as consideration for services provided by SV Capital, SV Capital will be entitled to a trailing commission on the brokerage charged by the US Stock Broker.

13. The proprietor of SV Capital is the wife of the founder and director of the US Company. Although, SV Capital is not as on date a subsidiary, holding or associate company of the US Company, subject to the responses to this interpretative letter, it intends to become a subsidiary of the US Company.

### ***Extract of Key Regulations***

14. Relevant defined terms and provisions under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 are summarised below.

a. **2(g), definition of consideration:** "*consideration*" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice.

b. **2(h), definition of financial planning:** "*financial planning*" shall include analysis of clients' current financial situation, identification of their financial goals, and developing and recommending financial strategies to realise such goals.

c. **2(l), definition of investment advice:** "*investment advice*" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice



on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:

Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations.

d. **2(m), definition of investment adviser:** "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

e. **4, Exemption from registration:** The following persons shall not be required to seek registration under regulation 3 subject to the fulfilment of the conditions stipulated therefor,

(a) [...]

(b) [...]

(c) [...]

(d) [...]

(e) [...]

(f) [...]

(g) [...]

(h) [...]

(i) any person who provides investment advice exclusively to clients based out of India:

Provided that persons providing investment advice to Non-Resident Indian or Person of Indian Origin shall fall within the purview of these regulations.

f. **13, Conditions of certificate:** The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(a) [...]

(b) [...]

(c) the investment adviser, not being an individual, shall include the words 'investment adviser' in its name:

Provided that if the investment advisory service is being provided by a separately identifiable department or division or a subsidiary, then such separately identifiable department or division or subsidiary shall include the words 'investment adviser' in its name.

g. **15 (2), General responsibility:** An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.

h. **15 (4), General responsibility:** An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.





i. **15(A), Fees:** *Investment Adviser shall be entitled to charge fees for providing investment advice from a client in the manner as specified by the Board.*

j. **22(3), Client level segregation of advisory and distribution activities:** *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.*

(iii) *'Group' for this purpose shall mean an entity which is a holding, subsidiary, associate, subsidiary of a holding company to which it is also a subsidiary or an investing company or the venturer of the company as per the provisions of Companies Act, 2013 for non-individual investment adviser which is a company under the said Act and in any other case, an entity which has a controlling interest or is subject to the controlling interest of a non-individual investment adviser.*

k. **22(4), Client level segregation of advisory and distribution activities:** *Non-individual investment adviser shall maintain an arm's length relationship between its activities as investment adviser and distributor by providing advisory services through a separately identifiable department or division.*

15. Relevant defined terms under the Securities and Exchange Board of India (Certification of Associated Persons in the Securities Markets) Regulations, 2007 are summarised below.

a. **2(g), definition of distributor:** *"distributor" means any person engaged by an intermediary or an issuer for the purpose of sale or distribution of securities.*

b. **2(h), definition of intermediary:** *"intermediary" means an entity registered under sections 11 or 12 of the Act and includes any person required to obtain any membership or approval from a stock exchange or a self-regulatory organizations.*

c. **2(i), definition of issuer:** *"issuer" means a company or a mutual fund or a collective investment scheme which has issued or proposes to issue securities to the public in accordance with the relevant regulations or guidelines made by the Board and also includes a venture capital fund registered under the relevant regulations or guidelines made by the Board.*

### **Questions**

16. Does the service provided by SV Capital as described in paragraphs 7 (a) and 7 (b) above, i.e., creating and rebalancing Stacks for the US Company constitute 'investment advice' for the purposes of IA Regulations?

17. Does the service provided by SV Capital as described in paragraph 4 and paragraph 9 above i.e., entering into a contractual agreement with the US Company and the US Stock Broker to facilitate purchase of foreign securities, i.e., securities listed on overseas stock exchange through the Platform constitute 'distribution' services, given that SV Capital is not engaged by an intermediary or an issuer?



SV Capital

18. Can SV Capital receive both the fee specified in paragraph 11 above from the US Company i.e., a service fee for creating and rebalancing the Stacks for the US Company and paragraph 12 above from the US Stock Broker i.e., a trailing commission on the brokerage charged by the US Stock Broker?

***Fee***

19. As required under the informal guidance scheme, a demand draft for INR 25,000 bearing number 06012021, drawn on HDFC Bank, World Trade Centre branch, Bengaluru dated January 6, 2021 in favour of Securities Exchange Board of India is annexed hereto.

20. We will be grateful if we receive the informal guidance at the earliest. In case any further query or information is required, we will be glad to provide the same or appear in person to explain in detail, as you deem fit.

Yours sincerely

For SV Capital  
**For SV CAPITAL**  
  
**Proprietor**

Proprietor: Shwetha Sundararaman

Name: SV Capital

Date: January 7, 2021