



भारतीय प्रतिभूति
और विनियम बोर्ड
Securities and Exchange
Board of India

GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

SEBI/HO/IMD/DF1/OWIP/2021/31147/1
October 29, 2021

Mr. Somnath Mukherjee
ASK Wealth Advisors Private Limited
Birla Aurora, Level 16, Office Floor 9,
Dr. Annie Besant Road, Worli,
Mumbai-400030.

Dear Sir,

Sub: Request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020 by ASK Wealth Advisors Private Limited.

1. This has reference to your letter dated May 21, 2021 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003 and further correspondence.
2. In your letter under reference you have represented ASK Wealth Advisors Private Limited as a SEBI registered Portfolio Manager with registration number INP000007003.
3. In that context, you have sought an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following issues:—
 - i. Clarification on the following understanding-
“Subject to the compliance with the restriction imposed under Regulation 24(4) of the SEBI (Portfolio Managers) Regulations, 2020 (“PMS Regulations”) and Master Direction – Liberalised Remittance Scheme (LRS) (“LRS Circular”), a portfolio manager may invest funds of resident individual clients, who are rendered non-discretionary and advisory services by the portfolio manager, in securities of companies outside India, and units of offshore mutual funds or offshore venture capital funds. Accordingly, portfolio managers may invest funds of their individual clients who avail non-discretionary portfolio manager services in offshore shares and securities (as per the terms of the LRS Circular) up to 25% of their assets under management since such offshore shares and

सहा भवन, प्लॉट नं. सी 4-ए, "जी" ब्लॉक, बान्द्रा-कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई वी आर.एस.), 2644 9000 / 4045 9000 फॅक्स : 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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securities are not listed or traded on an Indian stock exchange. This is on the basis that the shares of offshore companies, or units of offshore mutual funds or venture capital funds which are not listed in Indian stock exchanges cannot be classified as 'securities listed or traded on recognised stock exchange', and hence would be classified as 'unlisted securities'.

- ii. *"Request that a clarification to Regulation 24(4) of the PM Regulations be issued by SEBI stating that it should be permissible for both clients of portfolio managers to facilitate investments of their discretionary as well as their non-discretionary portfolio management services in shares of a company undergoing an IPO process upon the issue becoming open for subscription by the public."*

4. Our Comments

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

- i. In regards to query at 3 (i), the following is informed:
- a. In terms of regulation 2 (1) (o) of the PMS Regulations,
"portfolio manager" means a body corporate, which pursuant to a contract with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or goods or funds of the client, as the case may be.
- b. The term 'Securities' has been defined under Section 2 (h)(i) of the Securities Contracts (Regulation) Act, 1956 (the "SCRA/ Act") which, *inter-alia*, includes, *"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."* In terms of Section 1(2) of the SCRA, the Act is applicable to the territory of India, and therefore, the term 'securities' as defined under the SCRA may be construed to be applicable to securities issued, listed or proposed to be listed in India.
- c. Further, under Section 24 of the Companies Act, 2013, SEBI is empowered to regulate the matters related to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to



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get their securities listed on any recognized stock exchange in India. Therefore, SEBI may regulate the issue and transfer of only securities of those companies incorporated in India, which are listed or intend to get listed in the recognised stock exchange(s).

- d. Thus, the extant legal framework governing portfolio managers does not envisage investment in/ advice on offshore shares and securities which are neither listed or intend to get listed in the recognised stock exchange(s).
5. In regards to query at 3 (ii), response is not provided in terms of clause 8 (viii) of SEBI (Informal Guidance) Scheme, 2003 which states the following:
"SEBI may not respond to the following types of requests: ...
viii. those cases where policy concerns require that the Department does not respond."
6. 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.
7. 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 (Portfolio Managers) Regulations, 2020 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