

FM/CS/2018/745

August 09, 2018

Securities and Exchange Board of India  
Integrated Surveillance Department  
SEBI Bhavan  
Bandra Kurla Complex  
Bandra (East)  
Mumbai - 400 051

Kind Attn: Mr. A. Sunil Kumar, Chief General Manager

Dear Sir,

**Sub: Request for interpretive letter under SEBI (Informal Guidance) Scheme, 2003, regarding clarification on whether investments by the employees of SBI Funds Management Private Limited ("SBIFM") in schemes of Alternative Investment Funds ("AIFs") would amount to 'insider trading'**

We write to you seeking an informal guidance in relation to the following queries:

Query

1. Whether employees of SBIFM can invest in the schemes of AIFs?
2. Whether the Code of Conduct mentioned under SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") is applicable for investments by employees of SBIFM in AIF schemes?

References to Insider Trading Regulations

In terms of Regulation 4 (1) of PIT Regulations, 2015, no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information ("UPSI"). Also, per the explanatory notes to Regulation 4, PIT Regulations, "*when a person who has traded in securities has been in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession*".

Facts and Background

SBI Alternative Equity Fund ("the Fund"), a category III AIF registered with SEBI, has been established in the form of Trust, in terms of Regulation 2(1) (b) of SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"). The Fund launches various schemes from time to time as per the market demand. SBIFM is the 'manager' of the Fund in terms of the AIF Regulations. SBIFM is also registered with SEBI as the asset management company of SBI Mutual Fund under the SEBI

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Trustee: **SBI Mutual Fund Trustee Company Private Limited** (CIN: U65991MH2003PTC138496)

9th Floor, Crescenzo, Plot C-38 & 39, G Block, Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051.

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(Mutual Funds) Regulations, 1996, and also as a Portfolio Manager under SEBI (Portfolio Managers) Regulations, 1993.

SBIFM has adopted an 'employee dealing policy' ("Policy") and Code of Conduct in line with SEBI circular no. MFD/CIR/ No.4/216/2001 dated May 8, 2001 ("Employee Dealing Circular"), as amended from time to time and the PIT Regulations, which provides the policies and procedure for making investment in securities by the employees of SBIFM in line with the applicable regulations. The Employee Dealing Circular and the Code of Conduct does not specifically mention 'investments in the AIF Schemes' within the ambit of securities to which the Employee Dealing Circular and the Code of Conduct apply. Given the above and also since the Fund is a new business vertical of SBIFM, the Policy is currently silent about investments being made by SBIFM's employees in units of AIF schemes.

The functioning of investment processes/ strategies of AIFs are akin to Mutual Funds where the fund managers take independent decisions based on research in the portfolio. The fund manager maintains confidentiality about the trades being executed by the AIF scheme and are not influenced in any manner by the investors. AIF schemes may invest in listed/ unlisted securities in line with their respective investment strategy and the investors do not have any direct/ indirect control or influence over the investment decisions of AIFs.

Some of SBIFM's employees including fund managers and research analysts are interested in investing in AIF schemes to *inter alia* increase the investor confidence and better governance in line with international practice. Please note that the SEBI (Mutual Funds) Regulations, 1996, and the rules/circulars issued thereunder, do not prohibit investments made by employees including fund managers. Additionally, the SEBI (Alternative Investment Funds) Regulations, 2012 also allows the employees of the 'manager' to make investment(s) into the Schemes of Alternative Investment Funds.

However, such employees of SBIFM or select employees of SBIFM who are interested in making such investments, by virtue of their employment with SBIFM, may be aware of the securities being bought and sold by SBIFM.

#### **Prohibition under Regulation 4, PIT Regulations, not applicable to AIFs**

For the purposes of ascertaining the applicability of the prohibition under Regulation 4, PIT Regulations, the definition of 'securities' is pertinent. The definition of 'securities' under the SCRA covers units/ any other instrument issued to the investors under any mutual fund scheme/ collective investment scheme, it does not specifically state that units of an AIF scheme also falling within the definition of 'securities' under the SCRA. Regulation 2(1)(i), PIT Regulations defines 'securities' as the meaning assigned to it under the Securities Contracts (Regulation) Act, 1956 ("SCRA") or any modification thereof except units of a mutual fund. Since, units of a mutual fund have been excluded from the definition of 'securities' under the PIT Regulations and given the abovementioned similarity between functioning of AIFs with mutual funds, the PIT Regulation shouldn't apply to investments in AIFs as well.

Furthermore, Regulation 4 (1), PIT Regulations, only applies to trading in "securities which are listed or proposed to be listed". AIF schemes raise funds from investors by way of issue of units to the investors. Such units themselves are not listed or proposed to be listed and consequently, any investments made in such units should fall outside the purview of the restrictions imposed per Regulation 4 (1), PIT Regulations.

Given the above, investments in units of AIF schemes, by employees having information about securities being bought and sold by the SBIFM, will not tantamount to indirect possession of UPSI and will not violate the provisions of Regulation 4(1), PIT Regulations in case the employees make investment in the AIF schemes.

**Conclusion**

1. In view of the above, the SBIFM's employees may invest in the AIF schemes and such investments would be exempt from the restrictions imposed under Regulation 4, PIT Regulations, 2015.
2. Also, the Code of Conduct under the PIT Regulations will not be applicable for investments by employees of SBIFM in AIF schemes.

We request for an interpretive letter from you on the above matter in accordance with SEBI (Informal Guidance) Scheme, 2003 on the applicability of regulations under the PIT Regulations for AIFs.

We are enclosing herewith a demand draft no. 848070 of Rs. 25,000/- dated 09/08/2018 drawn on State Bank of India in favor of the Securities and Exchange Board of India, payable at Mumbai, towards fees for informal guidance and request for your opinion.

We would appreciate quick response in the matter.

Thanking you,

Yours faithfully,

**For SBI Funds Management Private Limited**

*V. Datar*

**Vinaya Datar**  
**Head – Compliance & Company Secretary**