



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
DIVISION OF COLLECTIVE INVESTMENT SCHEMES

26547
IMD/CIS/RKD/OW/ /2013
October 17, 2013

Mr. Anand Trivedi
Director (Mktg.)
MMTC Limited
Core-1, "Scope Complex"
7 Institutional Area, Lodhi Road,
New Delhi – 110 003

Sir,

Sub:- Request for interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 by MMTC Limited on applicability of Section 11AA of the SEBI Act, 1992 on the proposed business activity of MMTC-PAMP India Pvt. Ltd.

1. This has reference to the letter dated May 17, 2013 received from MMTC-PAMP India Pvt. Ltd. (MPIPL) seeking an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 and your letter dated August 06, 2013 requesting that MMTC Limited may be deemed as an applicant for the said informal guidance application in place of MPIPL.
2. In the aforesaid letters under reference, it is *inter alia* represented as follows:-
 - a. MPIPL is in the business of refining precious metals (both gold & silver, primarily gold) and selling the same to wholesalers located across India. Currently, MPIPL does not sell gold directly to customers.
 - b. MPIPL intends to secure and grow its market share and enhance its sales by also reaching out to end customers directly, particularly customers who aspire to purchase gold but have limited financial resources for an outright purchase.
 - c. MPIPL proposes to present to end customers the flexibility to purchase and accumulate fractional amounts of gold.
 - d. The customer has the discretion to decide the quantity of gold that the customer intends to buy. The timing and frequency of the purchase is also at the customer's discretion. The customer is not required to make any fixed or

Page 1 of 5

सेबी भवन, प्लॉट सं. 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 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.
Tel.: 2644 9950 / 4045 9950 (IVRS), 2644 9000 / 4045 9000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



अनुवर्ती :
Continuation :

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

periodic payments. The price, quantity and timelines, delivery is entirely at the discretion of the customer.

- e. The customer also has the option to instruct for a physical delivery as low as one gram of gold. The option of taking delivery can be exercised no sooner the cumulated purchase quantity reaches of 1.00 grams and multiples thereof. The fractional entitlement is redeemable as a purchase by MPIPL.
 - f. The customer shall be required to take at least one physical delivery of its gold (of 1.00 grams) purchased within 365 calendar days from the date of first purchase.
 - g. In the event only a fractional weight of gold has been accumulated or remains in the customer's account, and thereafter no activity is conducted by the customer during the entire period of customer selected payment duration, the account will stand automatically closed on the expiry of the payment duration. The gold will be bought back by MPIPL and the value credited to the customer after deduction of all charges (VAT etc.) incurred by the company
 - h. The whole scheme is only a transaction of purchase and sale of the gold and the business proposed to be conducted does not fall under the ambit of Collective Investment Scheme.
 - i. The business proposed to be conducted does not contemplate dealing in or creation of 'securities' as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956. The proposed business is outside the purview of SEBI.
3. In view of the above submissions, you have sought interpretive letter under SEBI (Informal Guidance) Scheme, 2003 from SEBI with respect to whether the proposed scheme for sale and purchase of Gold would be treated as Collective Investment Scheme (CIS) as per Section 11AA of SEBI Act, 1992.

4. Our Comments

The submissions made in the aforesaid letters of MPIPL and MMTC Ltd. have been considered and without necessarily agreeing with your analysis, our views on the issues raised in your letter under reference are as under:-

- a. As per your submission the proposed business of MPIPL is a straightforward sale transaction and no unit, bond certificate or any instrument in the form of



अनुवर्ती :
Continuation :

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

securities (as defined under Section 2(h) of the Securities Contracts (Regulation) Act, 1956) is contemplated to be issued.

- b. The proviso to sub section (1) of Section 11AA of the SEBI Act introduced by Securities Laws (Amendment) Ordinance, 2013, provides that, any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.
- c. Further, under Section 11AA(2) of the SEBI Act, any scheme or arrangement made or offered by any person under which:
- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
 - (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
 - (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
 - (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.
- Shall be a Collective Investment Scheme
- d. Further, as per Section 11AA(3) of the SEBI Act, notwithstanding anything contained in sub-section (2) or sub-section (2A), any scheme or arrangement—
- (i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
 - (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
 - (iii) being a contract of insurance to which the Insurance Act, 1938 (4 of 1938), applies;



अनुवर्ती :
Continuation :

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

- (iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952);
 - (v) under which deposits are accepted under section 58A of the Companies Act, 1956 (1 of 1956);
 - (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956 (1 of 1956);
 - (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982 (40 of 1982);
 - (viii) under which contributions made are in the nature of subscription to a mutual fund;
 - (ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify, shall not be a collective investment scheme.
- e. The proposed business activity primarily contemplates purchase or accumulation of gold by such customers who aspire to purchase gold but have limited financial resources for an outright purchase. The timing, quantity, and frequency of purchase are at the discretion of the customer.
- f. For every 1 gram, the customer can take delivery and fractional entitlement can be redeemed.
- g. A customer entering the flexible gold purchase scheme of MPIPL retains control over his investment at all point of times. In other words, the customer is not under any obligation to make continuous or recurring payments. On the other hand, he can take delivery of gold and redeem the fractional entitlement (if any).
- h. In order to become a member of the proposed scheme, KYC norms need to be complied. All the payments against the gold shall be through net banking, credit card and debit cards only.
- i. The customer will pay the amount to MPIPL and on credit of such amount, the sale transaction shall happen. Against each sale, MPIPL shall raise the necessary invoices and pay the VAT on each sale. The gold so purchased by the customer shall be set-aside in an allocated enclosure within the secured vault of the plant of MPIPL, with full insurance and security.



अनुवर्ती :
Continuation :

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

- j. Delivery of minimum 1 gram in a calendar year is mandatory as per the terms of MPIPL.
 - k. As per the structure of the proposed business activity, only the quantity of gold against which payments have been made will be delivered to the customer. MPIPL is not making any projection of offering any kind of returns etc. under the proposed activity. There is no pooling of funds of the purchasers. The individual customers are entering into independent obligations of purchase/redemption of fractional entitlement of gold.
 - l. In view of the above, the proposed business activities of MPIPL do not appear to fall within the purview of Section 11AA of the SEBI Act, 1992.
 - m. This position is based on the representation made to the Division of CIS in your letters under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
5. Vide your letter dated May 17, 2013; you have sought confidentiality treatment in respect of your request for Interpretive Letter. Acceding to your request, it has been decided that the Interpretive Letter issued to you in this matter will not be available to the public for a period of 90 days from the date of issuance of the said letter.
6. You may note that the above views are expressed only with respect to the clarification sought on whether the proposed scheme of MPIPL for sale and purchase of Gold would be treated as Collective Investment Scheme as per Section 11AA of the SEBI Act, 1992. The above views do not affect the applicability of any of the Acts, Rules or Regulations, Guidelines and Circulars administered by SEBI or any other authority. You may ensure compliance of other statute as may be applicable on the proposed activity.

Yours faithfully,

Rajesh Kumar Dangeti