



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

**Deputy General Manager
Investment Management Department**

**Mr. Nimesh Shah
Chief Executive Officer**

ICICI Prudential Asset Management Co. Ltd.,
3rd Floor, Hallmark Business Plaza,
Sant Dyaneshwar Marg,
Bandra (E),
Mumbai- 400051

Dear Sir,

Sub: Request for an Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

1. Please refer to your letters dated September 24, October 7 & 15, 2013 in the captioned matter.

2. Your Submissions:

- a. An independent Director (hereinafter referred to as "the Director") was duly appointed on the Board of ICICI Prudential Asset Management Company Limited (hereinafter referred to as "IPAMC/the company") as per Regulation 25(12) of SEBI (Mutual Funds) Regulations, 1996 [hereinafter referred to as "the Regulations"] w.e.f. July 23, 2008. The Director is a member of Audit and Risk Committee of the Board of Directors of the Company.
- b. On May 08, 2013, the Director was appointed as independent director on the Board of the holding company of IPAMC, which is also one of the sponsors (hereinafter referred to as "the Sponsor") of the Mutual Fund. The Director is also a member of the Audit Committee of the Board of Directors of the Sponsor.
- c. The Director does not hold any executive position with the Sponsor and does not have any professional association and has no material pecuniary relationship with IPAMC or any of its sponsors.
- d. Regulation 21(1)(d) of the Regulations provides that: "(d) the board of directors of such asset management company has at least fifty percent associated in any manner with the sponsor. It is clarified that relatives (as



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directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees."

- e. As per SEBI's Circular no. MFD/CIR/11/354/2001 dated December 20, 2001, it is clearly established that 'associate' are only those who hold or have held 'executive' positions or who are 'nominees' of the sponsor and not persons who are themselves 'independent of the sponsor'.
- f. SEBI's Circular no. MFD/CIR/13/16799/2002, dated August 29, 2002 stipulates that a person shall not be considered as independent if he provides professional service to either the AMC, the fund or sponsors or who have material pecuniary relationship any of the aforesaid entities.
- g. As per the provisions of Clause 49 of the Listing Agreement, where a person holds office as an independent director of the holding company, such person where appointed as a director in its material subsidiary company continue to be treated as 'independent'.
- h. In addition to the aforementioned provisions, vide letter dated October 07, 2013, you have referred to Section 149(6) (b) of the Companies Act, 2013. The said section says that an independent director shall not be a promoter of the company or its holding, subsidiary or associate company and shall not be related to promoter or directors in the company, or related to the promoters or directors of the holding, subsidiary or associate company.

3. Clarification sought by you:

In light of the above submissions, you have sought interpretative guidance as to:

Whether an independent director of the Company, who is otherwise satisfying tests of "independence" becomes non-independent upon appointment on the Board of Sponsor Company as independent director.

4. Our views:

In this respect, it is informed that we have considered the submissions made by you and without necessarily agreeing with your analysis; our view on the issue is that the proposal referred to in the aforementioned letters is not acceded to for the below mentioned reasons:

- a. SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001 on "Independent Directors on Boards of AMCs and Trustee Companies", inter-alia states that,

"According to Regulation 16(5), an independent trustee should not be associated in any manner with the sponsor. It is clarified that relatives (as



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5. The defined in the Companies Act) of sponsor or directors of the sponsor company or relatives of associate directors of the AMCs and trustee companies shall be considered as associate directors."

6. b. Vide Circular no. MFD/CIR/13/16799 / 2002 dated August 29, 2002, it was further clarified that: "With a view to implementing the regulation in letter and spirit and improving corporate governance standards in mutual funds, it is now clarified that the persons providing any type of professional service to the mutual fund, asset management company, trustee company and the sponsors shall be considered as associate directors of AMCs or trustee companies, as the case may be. Also, the persons having any material pecuniary relationship with these entities which in the judgement of the trustees may affect independence of directors shall be treated as associate directors."

c. The aforementioned clarifications have also been included in the Master Circular for Mutual Funds dated September 11, 2013.

d. In this regard, your attention is drawn to Clause 6.3.2 of the said Master Circular which defines "associate" as :

"6.3.2 An 'associate' shall be defined as:

6.3.2.1 Relatives of Sponsor(s) or directors of the Sponsor Company or relatives of Associate Directors of the AMC(s) and Trustee.

6.3.2.2 Persons providing any type of professional service to the Mutual Funds, the AMC and the Trustees and the Sponsor(s). Also, persons having a material pecuniary relationship with the above mentioned entities that may, in the judgment of the Trustees, affect their independence.

6.3.2.3 Nominees of the companies who are stakeholders in the Sponsor company or AMC(s) (even if they are not deemed sponsors by virtue of holding less than 40% of net worth of AMC(s))."

e. In the instant case, the person being one of the directors of the Sponsor Company, who is otherwise satisfying the test of "independence", appears to qualify as an "associate" by virtue of the definition mentioned above.

f. Further, the applicability of specific provisions with regard to "associate" directors as laid down by SEBI (Mutual Fund) Regulations and the applicable circulars would be more appropriate in the present situation as compared to the provisions of Companies Act, 2013, Listing Agreement.



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5. The above position is based on the information furnished in your letters under reference. Different facts or conditions may lead to a different result. Further, this letter does not express a decision of the Board on the question(s) referred.
6. You may note that the above views are expressed only with respect to the SEBI (Mutual Funds) Regulations, 1996; SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001; SEBI Circular no. MFD/CIR/13/16799/2002, dated August 29, 2002 and Master Circular for Mutual Funds dated September 11, 2013 and do not affect the applicability of any other law or requirements of any other SEBI Regulations, Guidelines and Circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully

Rajesh Gujjar

Rajesh Gujar for an Interpretive Letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003