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CFD/DIL/IG/SK/VT/180/2010

April 5, 2010

Mr. Ajai Jain

Vice President (Legal) & Company Secretary,
Siemens Ltd.
130, Pandurang Budhkar Marg,
Worli, Mumbai – 400 018.

Dear Sir,

Sub: Request under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 – Siemens Limited

1.0 Please refer to your letter dated December 21, 2009 seeking interpretive guidance under the SEBI (Informal Guidance) Scheme 2003.

2.0 In your letter under reference you have, inter-alia, represented as follows:

2.1. Siemens Limited is an Indian company having its Registered Office at 130, Pandurang Budhkar Marg, Worli, Mumbai – 400 018 (**the “Company”**). The shares of the Company are listed on the Bombay Stock Exchange and National Stock Exchange. The Company is a subsidiary of Siemens AG, which currently holds 55.18 % of the total issued share capital of the Company.

2.2. The Company is contemplating to formulate and implement an employee benefit scheme designed to offer to eligible employees of the Company and its Indian subsidiaries, the possibility to acquire shares of the Company in lieu of a defined percentage of their annual performance bonus (**the ‘Scheme’**).

2.3. SUMMARY OF THE SCHEME:

- (a) No fresh equity shares will be issued by the Company in terms of the Scheme.
- (b) Scheme would be administered and managed either through (i) an Employee Welfare Benefit Trust (to be established by the Company), or

- (ii) a service provider (to be nominated by the Company). Trust or service provider, as the case may be, is hereinafter referred to as “**Third Party**”.
- (c) Employees will make investment in the shares of the Company through the Third Party (“Investment Shares”). Such Investment Shares will be purchased by the Third Party only from the secondary market.
- (d) Employees will contribute for the Investment Shares from their annual performance bonus (subject to maximum and minimum cap) paid to the Third Party. Such contribution by the employees is discretionary. An employee may exercise to purchase the Investment Shares in terms of the Scheme by filling up a purchase order during the offering period.
- (e) Investment Shares will be purchased by the Third Party (on behalf of employees) from the secondary market based on the prevailing market price (no discount) on designated dates. Third Party would endeavor to procure the necessary number of Investment Shares at same market price but would be guided by market conditions as on the date(s) of such purchases.
- (f) Third Party would thereafter allocate the Investment Shares to each employee either at purchase value or at an average price of procurement, as the case may be.
- (g) Investment Shares so allocated will be held in a custody account maintained by or with the Third Party.
- (h) Investment Shares purchased under the Scheme would entitle the participating employees to a matching cash incentive or matching share incentive at the end of 3 years PROVIDED THAT (1) employee shall have remained in the employment of the Company, and (2) employee shall have held the Investment Shares. Subject to satisfaction of the above conditions, a matching cash incentive will be granted by the Company in the proportion of 3:1 (i.e. 3 Investment Shares will entitle cash incentive equivalent to the then market value of 1 share of the Company) (“Matching Cash Incentive”). Alternatively, the Company may (in its discretion) choose to grant free matching shares in the proportion of 3:1 (i.e. 3 full Investment Shares will entitle to 1 free share) (“Matching Share Incentive”). If the Company decides to provide Matching Share Incentive instead of the Matching Cash Incentive, the Company would

procure such shares from the secondary market through the Third Party at the relevant time.

- (i) Any employee, who does not meet with the conditions in (h) above, would not be entitled to receive Matching Cash Incentive or Matching Share Incentive, as the case may be.
- (j) At the end of the 3 year period, the Company would be responsible to credit the value of Matching Cash Incentive to participating employees, subject to tax as per the applicable law. In case of Matching Share Incentive, the Company would credit monies (net of taxes) to the Third Party in order to procure the matching share from the secondary market.
- (k) Company will be responsible to pay/reimburse all costs related to the administration and management of the Scheme, including fees/expenses of the Third Party and Demat account(s) of the Third Party or employees, as the case may be.

2.4. Workings of Third Party (Trust or service provider) route are summarized as follows:

- **Trust Route** - The Company would constitute an Employee Welfare Benefit Trust to administer and manage the Scheme. The Company proposes to appoint its Independent non-Executive Directors / employees as trustees of such Trust.

Under the route, participating employees during the election period would elect their subscription by providing purchase order(s) to the Trust. The Trust (through the trustees) would then procure Investment Shares from the secondary market from the funds contributed by the participating employees from their annual gross performance pay. Investment Shares so procured by the Trust would be held in a collective custody account opened in the name of the Trust and related voting rights would be exercised in terms of the Trust Deed.

Dividend, if any, would be paid in the name of the trustees and distribution amongst the participating employees would be managed and administered in terms of the Trust Deed. The Trust will provide statements to participants and hold/manage the custody account as well as the entitlement of participants to Matching Cash Incentive/Matching Share Incentive.

- **Service Provider Route** - The Company would appoint an external independent service provider (such as Investment House, Bank, etc.) to administer and manage the Scheme. Participating employees would directly contract with such service provider in order to participate in the Scheme. Under the route, participating employees during the election period would elect their subscription by providing purchase order(s) to the service provider. Service provider would then procure the Investment Shares from the secondary market from the funds contributed by the participating employees from their annual gross performance pay.

Investment Shares so procured by the service provider would be held in individual custody accounts opened with the service provided in the name of respective participants. Accordingly the name of the participating employees will be inscribed as a shareholder in the share register of the Company. Relationship between the service provider and participating employees would be governed in terms of the agreement to be entered into between the participating employees and service provider.

3.0 You have sought interpretive guidance with respect to the following:

I. QUERIES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (EMPLOYEE STOCK OPTION SCHEME AND EMPLOYEE STOCK PURCHASE SCHEME) GUIDELINES, 1999

- (A) Whether the Scheme will be deemed as amounting to an Employee Stock Purchase Scheme (ESPS) under the provisions of the SEBI (ESOS & ESPS) Guidelines, 1999? If yes, is it possible to grant the Matching Cash Incentive or Matching Share Incentive as contemplated in the Scheme in terms of the SEBI (ESOS & ESPS) Guidelines, 1999?
- (B) To attract applicability of the SEBI (ESOS & ESPS) Guidelines, 1999, is it at all relevant, if:
- (i) Incentive paid by the Company at the end of the 3 year vesting period is by way of Matching Cash Incentive; or
 - (ii) Incentive paid by the Company at the end of the 3 year vesting period is by way of Matching Share Incentive; or
 - (iii) No Matching Cash Incentive or Matching Share Incentive is offered in terms of the Scheme and only Investment Shares are offered to employees?

- (C) Whether the Investment Shares will be subject to any lock in period in terms of Clause 18.2 of the SEBI (ESOS & ESPS) Guidelines, 1999?
- (D) Whether the Matching Share Incentive (if any) will be subject to any lock in period in terms of Clause 18.2 of the SEBI (ESOS & ESPS) Guidelines, 1999?
- (E) Whether a third party service provider can be legally appointed for the administration and management of the proposed Scheme in terms of the SEBI (ESOS & ESPS) Guidelines, 1999? If yes, please clarify the accounting policies that the Company would be required to follow in such case. Are the transactions of the Service provider to be reflected in the financials of the Company as if these were carried out by the Company?
- (F) As no fresh shares of the Company would be issued in terms of the Scheme, will intimation to the Stock Exchange be required in terms of the SEBI (ESOS & ESPS) Guidelines, 1999?
- (G) As no fresh shares of the Company would be issued in terms of the Scheme, will the Company be required to appoint a Merchant Banker for implementation of the Scheme in terms of Clause 22.8 of the SEBI (ESOS & ESPS) Guidelines, 1999?
- (H) 'Employees Stock Purchase Scheme' (ESPS) entails issue of shares as a part of a public issue or otherwise [Para 2.1(4) of the SEBI (ESOS & ESPS) Guidelines, 1999]. Does the words '*Or otherwise*' as per clause 2.1(4) also include purchase of shares from the secondary market. Hence, purchase of shares by employees by way of an open market purchase could be construed to be covered by the SEBI (ESOS & ESPS) Guidelines, 1999?

II. QUERIES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

- (A) Under the Trust route, the Company intends to appoint its Independent Non-Executive Directors as trustees of the Trust constituted for the implementation and administration of the Scheme. As the Independent non-Executive Directors of the Company would be covered by the definition of 'Insiders' in terms of the SEBI (PIT) Regulations, 1992, will such persons be barred from trading in the Company's share on behalf of the Trust in terms of the SEBI (PIT) Regulations, 1992?

- (B) If the answer to the above query is in affirmative, can other employees of the Company (e.g. trustees of the gratuity or superannuation trust of the Company) be appointed as trustee? Please clarify how knowledge of the fact that the Company intends to incorporate a Trust which would procure shares of the Company from the open market be treated for the purpose of satisfying the definition of 'Insiders' in terms of the SEBI (PIT) Regulations, 1992?
- (C) In terms of Regulation 13(4) of the SEBI (PIT) Regulations, 1992, Directors and officers of the Company are required to disclose any change in their shareholding or voting rights if the change exceeds the previous disclosure made by such director/employee in terms of Regulation 13(2) or 13(4) or if the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. Under the Trust route, will the trustees (either Directors/officer of the Company) be required to make the aforesaid disclosure under Regulation 13(4) in respect of shares/ voting rights acquired/disposed by them as trustees on behalf of such trust?
- (D) Under the Service Provider route, the Company intends to appoint an external service provider (such as Investment House, Banks, etc.) for the implementation and administration of the Scheme. As the external service provider would have knowledge of the fact that the Company intends to implement the Scheme and shares of the Company would be procured from the open market, will such service provider be classified as an 'Insiders' in terms of the SEBI (PIT) Regulations, 1992 and accordingly be barred from trading in the Company's share even for the purpose of the Scheme?

III. QUERIES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES & TAKEOVERS) REGULATIONS, 1997

- (A) Under the Trust route, the Company intends to appoint its Independent non-Executive Directors or other officers of the Company as trustees. Please clarify, if the independent non-Executive directors or other officers acting in the capacity of trustees will be deemed as person acting in concert with the promoters/majority shareholders of the Company and/or with any trustees in their individual capacity?
- (B) For the purpose of disclosures under the takeover regulations, would the shares and voting rights held by the trust need to be aggregated with the shares and voting rights held by the trustees in their individual capacity?

4.0 Without necessarily, agreeing with your analysis, our views on the issues are as under:

As per SEBI (ESOS & ESPS) Guidelines, 1999, "Employee Stock Purchase Scheme (ESPS)" means a scheme under which the company offers shares to employees as part of a public issue or otherwise. The word "otherwise" in the definition is to be interpreted to include only issuance of fresh shares but not shares purchased from the secondary market. This is substantiated by the provisions prescribed in various other clauses of the SEBI (ESOS & ESPS) Guidelines, 1999 which, inter-alia, elaborate the procedure for issuance, obtaining shareholders approval for allotment, pricing and listing of shares issued under ESPS. In the instant case, since the scheme elaborated in the application mentions about the purchase of shares from the secondary market, the scheme proposed by the company would not fall within the purview of SEBI (ESOP and ESPS) Guidelines, 1999.

In view of the above, the queries sought are not being replied to.

5.0 This position is based on the representation made to the division in your aforesaid letters under reference. Different facts or condition might require different results. This letter does not express a decision of the Board on the question referred.

6.0 Please note that the above position is expressed only with respect to the clarifications sought on the applicability of the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 as referred above and does not affect the applicability of any law and other SEBI Regulations, Guidelines and circulars administered by SEBI or the requirements of Listing Agreement.

Yours faithfully,

Sunil Kadam