

Anant Barua



IPAMC/MF/SEBI/430/13-14

October 15, 2013

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To
The Executive Director
Investment Management Department
Securities and Exchange Board of India
SEBI Bhavan -G Block
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051



SEBI/IW/P/20131016/0000113127

Kind Attention: Mr. Ananta Barua

Sub: Request for Informal Guidance by way of an interpretive letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (the Scheme) in connection with appointment of common independent director on the boards of an Asset Management Company and its Sponsor

We refer to our letters dated September 24, 2013 and October 07, 2013 with regard to the subject matter.

In this regard, we would like to inform you that we withdraw our request on the confidentiality treatment of 90 days sought by us under clause 11 of SEBI (Informal Guidance) Scheme, 2003, in respect of the query raised by us in the aforementioned letters.

We request you to kindly take the above on your records and look forward to hearing from you and receiving the interpretive letter in relation to the subject matter.

Thanking You,

Yours' Sincerely

For ICICI Prudential Asset Management Company Limited

Supriya Sapre
Head - Compliance and Legal

17-10-13

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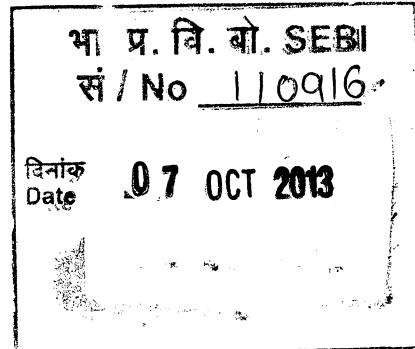


IPAMC/MF/SEBI/413/13-14

October 07, 2013

To
The Executive Director
Investment Management Department
Securities and Exchange Board of India
SEBI Bhavan -G Block
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051

Kind Attention: Mr. Ananta Barua



Sub: Request for Informal Guidance by way of an interpretive letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (the Scheme) in connection with appointment of common independent director on the boards of an Asset Management Company and its Sponsor

We refer to our earlier letter dated September 24, 2013 with regard to the subject matter seeking guidance with respect to interpretation of SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001 issued to all Mutual Funds registered with SEBI.

In addition to the provisions stated in our aforementioned letter, we would like to highlight provisions of section 149(6)(b) of Companies Act, 2013 (Act of 2013) pertaining to 'Independent Directors'. The relevant provisions of the Act of 2013 are reproduced below:

"(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, —

(a) ...

(b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;..."

From the aforesaid, it is clear that an independent director shall not be a promoter of the Company or its holding, subsidiary or associate company. Further, an independent director 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.



SEBI/IW/P/20131007/0000110916

Page 1 of 2

ICICI Prudential Asset Management Company Limited

Registered Office : 12th Floor, Narain Manzil, 23, Barakhamba Road, New Delhi - 110 001.

Corporate Office : 3rd Floor, Hallmark Business Plaza, Sant Dyaneshwar Marg, Bandra (E), Mumbai - 400 051. Tel.: 91-22-2642 8000 Fax: 91-22-2655 4165 www.icicipruamc.com

Central Service Office : 2nd Floor, Block B-2, Nirlon Knowledge Park, Western Express Highway, Goregaon (E), Mumbai - 63. Tel.: 91-22-2685 2000 Fax: 91-22-2686 8313 www.icicipruamc.com

Customer Care helpline : 1800 222 999 (MTNL / BSNL Lines) & 1800 200 6666 (Non MTNL / BSNL Lines)

Email : enquiry@icicipruamc.com

With regard to the above provisions, we would like to highlight that the concerned Director in the instant case is neither the Promoter of the Company nor the promoter of the holding company. Further, the concerned Director is neither related to the promoter or director of the Company nor is related to the promoter or director of its holding company. It is also pertinent to note here that the holding company of IPAMC does not have any promoter.

In light of the above, it is most respectfully submitted that the Act of 2013 in the aforesaid provisions clarifies that the director will be treated as independent if he fulfills the conditions as prescribed in section 149(6)(b) of the Act of 2013.

Thus, in addition to the provisions stated in our letter dated September 24, 2013, the above provisions of the Act of 2013 substantiates the inference that the independent director of the company shall not cease to be independent upon appointment on the Board of the Holding Company (Sponsor Company) as an independent director.

We request you to kindly take the above on record by considering this letter as supplementary to our request dated September 24, 2013 and we look forward to hearing from you and receiving the interpretive letter in relation to the our request.

Thanking You,

Yours' Sincerely

For ICICI Prudential Asset Management Company Limited



Supriya Sapre
Head – Compliance and Legal

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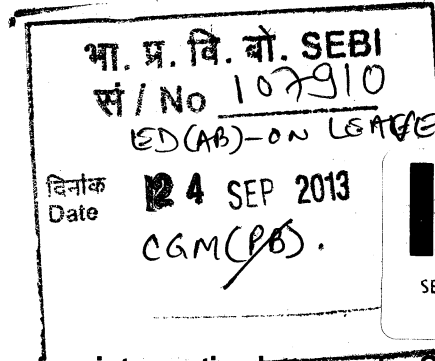


IPAMC/MF/SEBI/386/13-14

September 24, 2013

Executive Director
Investment Management Department
Securities and Exchange Board of India
SEBI Bhavan -G Block
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051

Kind Attention: Mr. Ananta Barua



Am (Am)
26/9/13
Matter being dealt
by IND-DF-3.
26/9/13
DGM (RG)



SEBI/IW/P/20130924/0000107910

Sub: Request for Informal Guidance by way of an interpretive letter under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (the Scheme) in connection with appointment of common independent director on the boards of an Asset Management Company and its Sponsor

We refer to our earlier letter dated August 02, 2013 with respect to the subject matter and would like to submit the following facts for your consideration and seek guidance with respect to interpretation of SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001 issued to all Mutual Funds registered with SEBI.

A. MATERIAL FACTS

1. ICICI Prudential Asset Management Company Limited (IPAMC/ the Company) is registered under the Companies Act, 1956 and registered with SEBI vide registration no. IIMARP/MF/22356 to act as an Investment Manager to the schemes of ICICI Prudential Mutual Fund (the Mutual Fund).
2. An independent director (the Director) was duly appointed on the Board of the Company as per Regulation 25(12) of SEBI (Mutual Funds) Regulations, 1996 (SEBI Regulations) with effect from July 23, 2008.
3. The Director is a member of the Audit and Risk Committee of the Board of Directors of the Company.
4. Subsequently, with effect from May 08, 2013, the Director has been appointed as an independent director on the Board of the holding company of IPAMC, which is also one of the sponsors (the Sponsor) of the Mutual Fund.
5. The said Director is also a member of the Audit Committee of the Board of Directors of the Sponsor.
6. The Director does not hold any executive position with the Sponsor.
7. The Director does not have any professional association and has no material pecuniary relationship with IPAMC or any of its sponsors.

Page 1 of 6

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B. REQUEST

1. Regulation 21(1)(d) of SEBI Regulations provides as under:

"(d) the board of directors of such asset management company has at least fifty per cent directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees;"

Further, SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001 (the Circular) had stipulated that an independent director should not be associated in any manner with the sponsor. It was also clarified that relatives (as defined in the Companies Act) of sponsor or **directors of the Sponsor Company** (emphasis supplied) shall be considered as associate directors.

Therefore, as per the aforesaid circular, the director of the Sponsor Company shall be considered as an associate director of the AMC. However, the Circular does not specify whether the term 'directors of the Sponsor Company' includes independent director of the Sponsor.

The subject matter of this letter is to seek informal guidance on whether an independent director of the Company, who is otherwise satisfying tests of "independence" becomes non – independent upon appointment on the Board of the Sponsor Company as an independent director.

C. APPLICABLE LEGAL PROVISIONS

The applicable legal provisions clarifying the intent of SEBI Regulations are enumerated as under:

1. Specific clarification given on the term 'associate director' by SEBI

SEBI vide its Circular MFD/CIR/11/354/2001, dated December 20, 2001, provided guidance on when a person would be treated as an 'associate director'. The relevant provisions of the Circular are as follows:

"2. "The nominees of the companies who are stakeholders in the Sponsor Company or AMC (even if they are not deemed sponsors by virtue of holding less than 40% of net worth of AMC), shall be considered as associate directors.

3: A person who is an "associate" in accordance with definition in the Regulations cannot be appointed as independent director even after he ceases to be an



"associate" unless a cooling off period of three years has elapsed from the date of his disassociation.

- *For the sake of clarity and to avoid any ambiguity, an example is given here. Supposing an employee of the sponsor or their associate companies or AMC or trustee company resigns on December 1, 2001, then he cannot be appointed as an independent director till December 1, 2004. During this intervening period, he can be appointed only as associate director. However, once he is taken as an associate director, say on December 2, 2001, he cannot be considered as "independent" from December 2, 2004. There must be a cooling off period of 3 years from the date he ceases to be an associate director."*

Applying the principle that the nominees of the companies who are stakeholders in the Sponsor Company or AMC, shall be considered as associate directors, it is clear that only when a person is appointed on the board of an AMC as a 'nominee' of the stakeholder or sponsor he would be termed as an 'associate director'.

The guideline goes on to further specify that any person who has previously been an associate cannot be treated as an independent director until a cooling period of three years is completed from the date of cessation of his being an associate.

The guideline also gives the example of an employee of the sponsor and how the 3 years test should be applied in such cases.

It is submitted that it very clearly established through the typology used in the illustration that the persons who are to be deemed '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'.

It is well settled that when a specific clarification is given, any interpretation must be on the specific clarification and not in generic terms as otherwise it could defeat/dilute the very purpose for which the specific clarification is given.

2. Clarification given by SEBI for the term 'associated with'

SEBI vide its Circular MFD/CIR/13/16799/ 2002, dated August 29, 2002 further came out with a clarification on the nature of 'association' for ascertaining the independence of a person. The guideline stipulates the following:

"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."

Based on the above, the person(s) shall not be considered as independent if they provide professional service to either the AMC, the fund or sponsors or who have material pecuniary relationship with any of the aforesaid entities.

It is important to note that the concerned Director does not have any material pecuniary relationship or professional association with the Company as well as the Sponsor and thus he satisfies this test of independence also.

3. Clause 49 of the Listing Agreement with Stock Exchanges as prescribed by SEBI

Under Clause III of Clause 49 of the listing agreement, as prescribed by SEBI under sub-heading 'Subsidiary Companies', it is stipulated that:

"i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of directors of a material non-listed Indian subsidiary."

Hence, under Clause 49, where a person holds office as an independent director of the holding company, such person where appointed as a director in its material subsidiary continues to be treated as 'independent'.

Similarly, where a person who holds office as an independent director of a holding company and is appointed as a director of any subsidiary, across all segments of the industry including those regulated by other regulators in India, the status of his appointment continues as independent as long as tests of independence are fulfilled. For example, common director on the Board of the holding company and its insurance subsidiary is treated as independent by Insurance Regulatory and Development Authority (IRDA).

Thus, in our view the intent of SEBI whilst prescribing the requirements relating to 'independent director' under Clause 49 was not to dilute or take away the status of independence of such person upon his appointment in the material subsidiary.

It is therefore most humbly submitted that the status of independence cannot be taken away on account of mere association with the sponsor or holding company,



where the established tests of independence are otherwise fulfilled by the individual.

4. Our Submissions

A combined reading of the SEBI circulars referred hereinabove leads to the inference that a person should be subject to the following questions to pass the test of independence:

- Whether the person proposed to be appointed is a nominee of the holding company or sponsor?
- Whether the person was associated with the sponsor, AMC/MF in an 'executive' capacity or was holding this position in the last 3 years?
- Whether the person has any material pecuniary or professional association with the AMC/MF or the sponsor(s)?

If all three questions are answered in the negative, the person would certainly be eligible to be considered as independent subject to meeting the other fit and proper criteria.

Our submission is that mere association as an 'independent director' of the holding company cannot impair 'independence'. Only where such association fails the prescribed tests of independence as set out and illustrated in the circulars issued by SEBI in December 2001 and August 2002, would the person(s) not be considered independent.

Further, from clause 49 of the listing agreement, it is submitted that a person who holds office as an independent director of an AMC cannot be termed 'non-independent' if he assumes office as an 'independent director' on the Board of a sponsor as long as he continues to fulfill the tests of independence submitted above.

We also wish to reiterate the following key aspects:

- 1) The independent director was appointed on the IPAMC Board on July 23, 2008.
- 2) That independent director is not holding any executive position with the Sponsor.
- 3) He fulfills all tests of independence prescribed under the SEBI prescribed Clause 49 provisions applicable to the Sponsor as a listed company.



- 4) He holds no form of professional association and has no material pecuniary relationship with IPAMC or any of its sponsors which would make him non-independent.

5. Our query is as under

The subject matter of this letter is to seek informal guidance on whether in light of SEBI circular no. MFD/CIR/11/354/2001 dated December 20, 2001, an independent director of the Company, who is otherwise satisfying tests of "independence" becomes non – independent upon appointment on the Board of the Sponsor Company as an independent director.

6. Request for Confidentiality

We request, as per Clause 11 of the SEBI (Informal Guidance) Scheme, 2003 that confidentiality treatment of 90 days be granted in respect of the query raised hereinabove. The information provided and the guidance sought under this letter is confidential, material and sensitive to the Company.

We request you to kindly consider our application and look forward to hearing from you and receiving the interpretive letter in relation to the above.

Enclosed herewith is the demand draft no. 235464 of Rs. 25,000/- (Rupees Twenty Five Thousand only) in favour of 'Securities and Exchange Board of India' drawn on ICICI Bank, Backbay Reclamation Branch, towards the fees as specified under clause 6 (ii) of the Scheme.

Thanking You,
Yours' Sincerely

For ICICI Prudential Asset Management Company Limited



Supriya Sapre
Head – Compliance and Legal

Encl: As above