



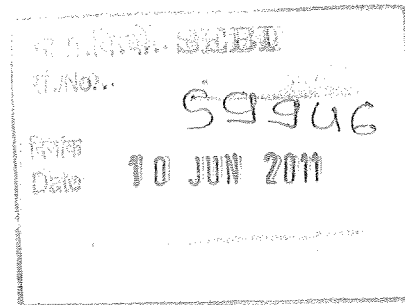
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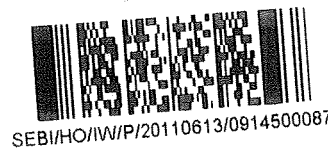
GM (SKS)

18/6

May 20, 2011



To,
The Corporation Finance Department
Division of Corporate Restructuring
Securities and Exchange Board of India
Plot No.C4-A,'G' Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai 400051



Attn: Ms. Usha Narayan, Executive Director

Re: Request for informal guidance in the form of a no-action letter under paragraphs 4 and 5(i) of the Securities Exchange Board of India (Informal Guidance) Scheme, 2003 for the dispensation from the treatment of requesting persons acting in concert for purposes of Regulation 2(1)(e) of the SEBI Takeover Regulations.

Dear Madam,

This is to request a no-action letter ("No-Action Letter") under paragraph 5(i) of the Securities Exchange Board of India (Informal Guidance) Scheme, 2003 ("Scheme") on the basis of the submissions below.

A. FACTS

1. Massachusetts Mutual Life Insurance Company (MassMutual) is a mutual life insurance company domiciled in the Commonwealth of Massachusetts. Founded in 1851, MassMutual is an unlisted mutual life insurance company owned by its policyholders.
2. MassMutual is the direct or indirect parent of other financial services companies, including Baring Asset Management Limited (BAML) and affiliates (Baring)¹ and

¹ The term Baring includes MassMutual Baring Holding LLC, Baring Asset Management LLC, MassMutual Holdings (Bermuda) Limited, Baring Asset Management Limited, Baring International Investment Limited, Baring International Investment Management Holdings, Baring Fund Managers Limited, Baring Pension Trustees Limited, Baring Investment Services Limited, Baring Asset Management UK Holdings Limited, Baring France SAS, Baring Asset Management GmbH, Baring Asset Management (Asia) Holdings Limited, Baring International Fund Managers (Ireland) Limited, Baring Asset Management (CI) Limited, Baring SICE (Taiwan) Limited, Baring International Fund Managers (Bermuda) Limited, Baring Asset Management (Asia) Limited, Baring Asset Management (Japan) Limited, Baring Asset Management (Australia) Pty Limited, Baring Korea Limited and future direct or indirect subsidiaries of MassMutual Baring Holding LLC.

OppenheimerFunds, Inc. and affiliates (Oppenheimer).² Baring is an international investment management enterprise whose business activities date back to 1762. Oppenheimer is an asset management enterprise whose business activities date back to 1960.

3. Please refer to **Exhibit A** enclosed herewith for an organization diagram of MassMutual's primary financial services organizations, including Baring and Oppenheimer.

B. APPLICATION UNDER THE SCHEME

4. The Scheme permits the following persons to make a request for informal guidance:
 - (a) any intermediary registered with the SEBI under Section 12 of the SEBI Act, 1992;
 - (b) any listed company;
 - (c) any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the SEBI or the Central Listing Authority;
 - (d) any mutual fund trustee company or asset management company; and
 - (e) any acquirer or prospective acquirer under the SEBI Takeover Regulations.
5. MassMutual, Baring and Oppenheimer being prospective acquirers under the SEBI Takeover Regulations are making this request for informal guidance under paragraph 4 of the Scheme. In addition, BAML and OppenheimerFunds, Inc. (OFI) are both foreign institutional investors and categorized as intermediaries registered with the SEBI under Section 12 of the SEBI Act, 1992.

C. LEGAL FRAMEWORK

6. Regulation 2(1)(e) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (SEBI Takeover Regulations) defines "persons acting in concert" (PAC) as *"persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company."*
7. Regulation 2(1)(e)(2) of the SEBI Takeover Regulations provides for the inclusion of a certain defined category of persons to be "deemed persons acting in concert" with the

² The term Oppenheimer includes Oppenheimer Acquisition Corp., OppenheimerFunds, Inc., OppenheimerFunds Distributor, Inc., Oppenheimer Real Asset Mgmt. Inc., Shareholder Financial Services, Inc., Shareholder Services, Inc., OppenheimerFunds International, Ltd., OFI Institutional Asset Management, Inc., Centennial Asset Management Corporation, OFI Private Investments, Inc., OFI Trust Company, HarbourView Asset Management Corporation, Trinity Investment Management Corporation and future direct or indirect subsidiaries of Oppenheimer Acquisition Corp.

acquirer, unless the contrary is established. Specifically, Regulation 2(1)(e)(2)(i) creates a presumption that both direct and indirect subsidiaries of a company are PACs. Accordingly MassMutual, Baring and Oppenheimer are presumed to be PACs for the purposes of the SEBI Takeover Regulations.

8. We note that Justice P.N. Bhagwati Committee Report on Takeovers dated January 18, 1997 (the “**Bhagwati Committee Report**”) sets out the determination of the relationship between an acquirer and persons acting in concert as follows:

“To be acting in concert with an acquirer, persons must fulfill certain "bright line" tests. They must have commonality of objectives and a community of interests which could be acquisition of shares or voting rights beyond the threshold limit, or gaining control over the company and their act of acquiring the shares or voting rights in a company must serve this common objective. Implicit in the concerted action of these persons must be an element of cooperation. And as has been observed, this cooperation could be extended in several ways, directly or indirectly, or through an agreement - formal or informal.”

9. We further note that in the matter of *Swedish Match AB v. Securities and Exchange Board of India*, the Securities Appellate Tribunal in the order under Appeal No. 33/2002, has, relying on the aforesaid extract from the Bhagwati Committee Report, held that the relationship of a person acting in concert with the acquirer is not a permanent one and that the same would depend on the intention and actions of the person.
10. In the matter of *K.K. Modi v. Securities Appellate Tribunal* (reported at [2003]113CompCas418(Bom)), the High Court of Bombay has held that the analysis of whether a person is acting in concert with the acquirer would be dependent upon the factual determination of whether there exists a commonality of objective between such person and the acquirer:

“Regulation 2(1)(e)(2) also makes this clear. The persons named therein are deemed to be persons acting in concert with other persons in the same category, unless the contrary is established. It, therefore, follows that even though there is a presumption that the persons described therein may be deemed to be persons acting in concert with the acquirer, the presumption is rebuttable, and, therefore, in each case, the facts have to be examined to reach a conclusion as to whether a person is or is not acting in concert with the acquirer for the purpose of substantial acquisition of shares or voting rights or gaining control over the target company. He may do so by an express agreement or understanding, and the agreement or understanding may be proved by evidence on record. Similarly, he may co-operate with the acquirer directly or indirectly. What is important is that it must be shown that he is acting in concert with the acquirer.”

11. In the matter of *Daiichi Sankyo Company Ltd v. Jayaram Chigurupati & Others* (decision of the Supreme Court dated July 8, 2010), the Supreme Court of India stated that:

“There can be no “persons acting in concert” unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company. For, dehors the element of the shared common objective or purpose the idea of “person acting in concert” is as meaningless as criminal conspiracy without any agreement to commit a criminal offence. The idea of “persons acting in concert” is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company...”

D. REQUEST FOR NO-ACTION LETTER

12. Whilst, MassMutual, Baring and Oppenheimer may be “deemed” persons acting in concert with one another for the purposes of Regulation 2(1)(e) of the SEBI Takeover Regulations, based on the cases quoted above and for the reasons set out below, MassMutual, Baring and Oppenheimer request dispensation from the treatment of MassMutual, Baring and Oppenheimer as “persons acting in concert” for purposes of aggregation under the SEBI Takeover Regulations:
- (a) Baring companies maintain separate corporate forms and regulatory registrations and operate their asset management organizations independently from MassMutual and Oppenheimer.
 - (b) The Oppenheimer companies maintain separate corporate forms and regulatory registrations and operate their asset management organizations independently from MassMutual and Baring.
 - (c) Baring and Oppenheimer currently transact and may transact in the future in Indian-listed issuers on behalf of their respective advisory client accounts and funds.
 - (d) MassMutual, Baring and Oppenheimer do not have any common objective or purpose (or act in concert) to acquire shares, voting rights, or control of Indian-listed issuers.
 - (e) MassMutual, Baring and Oppenheimer do not have any formal or informal agreements or understandings to co-operate in the acquisition of shares, voting rights or control of Indian-listed issuers.
 - (f) Baring and Oppenheimer do not share investment or voting power with each other or with MassMutual with respect to Indian-listed issuers.

- (g) Information barriers (e.g., firewalls) have been erected between MassMutual, Baring and Oppenheimer to prevent the improper sharing of voting or investment decision-making information between and among MassMutual, Baring and Oppenheimer.
 - (h) The securities of Indian-listed issuers are acquired by Baring and Oppenheimer on behalf of various clients and funds for investment purposes only. MassMutual, Baring, and Oppenheimer do not currently exercise or intend to exercise control over Indian-listed issuers.
13. Although MassMutual's Chairman, President and Chief Executive Officer ("MassMutual's CEO"), MassMutual's Senior Vice President and Chief Enterprise Risk Officer and MassMutual's Executive Vice President and Chief Financial Officer ("MassMutual's CFO") serve as board members to Oppenheimer Acquisition Corp., the holding company for the Oppenheimer companies, and OFI, the registered investment adviser that manages the OppenheimerFunds mutual funds, this does not take away from the arguments set out above that MassMutual and Oppenheimer are not, in fact, persons acting in concert, for the following reasons:
- (a) Under United States corporate law, the board of directors does not have responsibility for the day-to-day management of a corporation. Thus, the investment decisions of OFI, for example, come under the purview of the day-to-day management of OFI and this responsibility is vested with the officers of OFI. Accordingly, MassMutual and Baring do not participate in any way, directly or indirectly, in the decisions made by OFI with respect to the selection of investments for its clients' accounts, or with respect to proxy voting for securities held in its clients' accounts.
 - (b) Under United States corporate law, board members have an obligation as fiduciaries of the corporation on whose board they sit to serve that corporation with a duty of loyalty, and not to misuse or appropriate that corporation's proprietary business information for other purposes.
 - (c) OFI, as an investment adviser registered with the United States Securities and Exchange Commission ("SEC"), has a statutory obligation as a fiduciary to exercise its judgment in selecting investments for its clients' accounts, as well as having a separate contractual obligation to those clients.
 - (d) In filings made to the SEC, as to securities positions held by client accounts for which investment discretion is held, MassMutual expressly disclaims responsibility for investment decisions made by OFI on behalf of its clients' accounts.

14. Although MassMutual's CEO, MassMutual's CFO and MassMutual's Senior Vice President, Corporate Development ("MassMutual's SVP") serve as non executive board members to BAML; MassMutual's CFO also serves as director of MassMutual Holdings (Bermuda) Limited (the holding company for the Baring companies); MassMutual's SVP also serves as director and Deputy Chairman of MassMutual Holdings (Bermuda) Limited; and from time to time MassMutual employees may serve as officers of certain Baring entities, this does not take away from the arguments set out above that MassMutual and Baring are not, in fact, persons acting in concert, for the following reasons:
- (a) Under English company law, the non executive directors sitting on the board do not have responsibility for the day-to-day management of a company. Thus, the investment decisions of BAML, for example, come under the purview of the day-to-day management of BAML and this responsibility is vested with the officers of BAML. Accordingly, MassMutual and OFI do not participate in any way, directly or indirectly, in the decisions made by BAML with respect to the selection of investments for its clients' accounts, or with respect to proxy voting for securities held in its clients' accounts.
 - (b) Under English company law, board members have an obligation as fiduciaries of the company on whose board they sit to serve that company with a duty of loyalty, and not to misuse or appropriate that company's proprietary business information for other purposes.
 - (c) BAML, as a company authorized and regulated by the UK Financial Services Authority, has a regulatory obligation as a fiduciary to exercise its judgment in selecting investments for its clients' accounts, as well as having a separate contractual obligation to those clients.
 - (d) MassMutual employees that may serve as officers to certain Baring entities do not have any responsibility for the day-to-day management of the Baring entity at hand; nor do they participate, directly or indirectly, in the selection of investments for clients' accounts, or with respect to proxy voting for securities held in clients' accounts.
15. In the event that any MassMutual employee assumes responsibility for investment and/or proxy voting with respect to Indian-listed issuers at Baring or Oppenheimer, we will notify the Securities and Exchange Board of India of such circumstances.
16. Therefore, based on the facts presented above, MassMutual, Baring and Oppenheimer each submit that there is no commonality of objective between them. Having rebutted the presumption of the deeming provision set out in Regulation 2(1)(e)(2)(i) of the SAEBI Takeover Regulations, MassMutual, Baring and Oppenheimer respectfully request dispensation from the treatment of MassMutual, Baring, and Oppenheimer as a PAC for purposes of the SEBI Takeover Regulations.

17. We seek your considered Informal Guidance to this effect and extend our full co-operation in the event that you may require any further information. We shall be pleased to furnish any additional information as may be required in support of this application. Any request for further information may be addressed to:

Philip Wellman
Vice President
Massachusetts Mutual Life Insurance Company
1295 State Street
Springfield, MA 01111
Telephone: 001-413-744-7575
Fax: 001-413-744-4161

Ms. Vandana Shroff / Ms. Amita Choudary
Amarchand & Mangaldas & Suresh A. Shroff & Co.
Peninsula Chambers, 5th Floor
Peninsula Corporate Park
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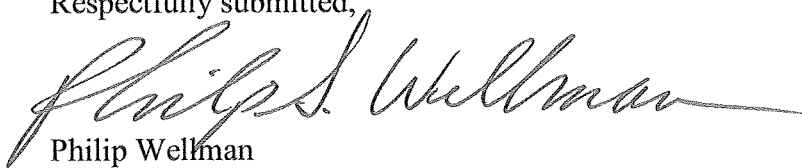
E. REQUEST FOR CONFIDENTIALITY

18. In accordance with paragraph 11 of the Scheme, we request that this letter and its contents be kept confidential for the maximum period possible, i.e. until 90 days after the response to this letter has been tendered.

F. COMPLIANCE WITH PARAGRAPH 6 OF THE SCHEME

19. In accordance with paragraph 6 of the Scheme, this request for informal guidance is accompanied with a draft for Rs.25,000/- (Rupees Twenty Five Thousand Only) drawn on Deutsche Bank, payable at Mumbai, dated March 14, 2011
20. All material facts, circumstances and legal provisions which in our opinion are relevant for the purposes of determination of this request are stated herein.

Respectfully submitted,



Philip Wellman
Vice President
For Massachusetts Mutual Life Insurance Company

Respectfully submitted,

Philip Wellman
Vice President
For Massachusetts Mutual Life Insurance Company

A handwritten signature in black ink, appearing to read 'S. Okoro', with a large circular flourish at the end.

Sandie Okoro
Secretary
For MassMutual Baring Holding LLC

Robert Zach
Vice President, Secretary & General Counsel
For Oppenheimer Acquisition Corp.

**Sandie Okoro
Secretary
For MassMutual Baring Holding LLC**

A handwritten signature in cursive script, appearing to read "Robert E. Zack", written in dark ink.

**Robert Zack
Vice President, Secretary & General Counsel
For Oppenheimer Acquisition Corp.**

Exhibit A

