



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

IMD/ DoF-1/IA/ 14508 / 2017
June 21, 2017

FRR Shares & Securities Ltd.

103/C, Mittal Tower,
10th Floor,
Nariman Point,
Mumbai-400 021.

Sir/ Madam,

Sub:- Request for interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 by FRR Shares & Securities Ltd. (FRR).

Ref.- Your letter dated February 14, 2017 and subsequent e-mail dated April 17, 2017 seeking an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 in connection with the applicability of the SEBI (Investment Advisers) Regulations, 2013 {IA Regulations} as well as SEBI (Merchant Bankers) regulations, 1992, for introducing high net worth individuals to regional Centers approved by U.S. Citizenship and Immigration Services (USCIS) under EB-5 program of USA.

1. In your letter under reference you have *inter alia* represented as follows:-

- FRR is registered with SEBI as a stock broker, depository participant and research analyst.
- FRR has received a business proposal from certain Regional Centres (RC) for introducing HNIs who may be interested in the EB-5 program.
- Under American statutes, EB-5 security offerings generally fall under the category of "Private Placements". Since such an offering does not qualify as a public sale of securities, it does not need to be registered with the Securities and Exchange Commission (SEC), USA and is exempt from the usual reporting requirements.
- The primary objective of the investor is not to earn profit on the EB-5 investment but to obtain the US citizenship.
- The role of FRR is restricted to introducing the HNI clients to the RC who will be visiting India for the purpose of inviting applications for the EB-5 program and for

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (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.
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अनुवर्ती :
Continuation :

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this purpose will be conducting road shows/meetings. FRR shall inform their clients about the details of such road shows/meetings.

- f. FRR will not be party to any contract/ memorandum of understanding /arrangement between the Indian Investor and the RC.
 - g. FRR will not be rendering any services to HNI clients and as such will not be executing any form or agreement with them.
 - h. FRR will not provide any investment advice to the HNI client whether written or oral in connection with investment under EB-5 program.
 - i. FRR will not provide any assurance (written or oral) to the HNIs about returns on investments under EB-5 program.
 - j. FRR will not be charging any fees from the HNIs for the introduction to the RCs and for informing them about the schedule of the road shows/meetings.
 - k. The RC will conduct meetings, road shows in India entirely at its own expense. No part of the expenses will be borne by FRR. FRR will not be a party to the arrangements for these meetings/road shows in any manner.
 - l. FRR will execute an agreement with RC for rendering of services by way of introduction of clients to the EB-5 program. However by way of this agreement FRR will not be ensuring any guaranteed amount or number of subscriptions to the RCs.
 - m. Further, FRR will not take any responsibility of establishing source of funds of Indian Investor to the RC.
 - n. As part of the arrangement with the RCs, FRR will get introductory fees from them in case of any investment under EB-5 program by HNI client based on terms agreed with the RC. FRR will raise invoice periodically for such agreed fees upon getting information from the RC for the EB-5 investment during the specified period.
2. On the basis of the above, you have sought an interpretive letter under SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following points:
- i. Whether activity of introducing the HNIs to the RC approved by USCIS for investment under EB5-program could be interpreted as 'investment advice' under clause 2 (I) of SEBI (Investment Advisers) Regulations, 2013?
 - ii. Whether EB5 program can be classified as 'securities' or 'investment product' under clause 2 (I) of SEBI (Investment Advisers) Regulations, 2013?



अनुवर्ती :
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- iii. Whether for activity of introducing the HNIs to the RC approved by USCIS for investment under EB5-program, FRR can be treated as 'merchant banker' under clause 2(cb) of SEBI (Merchant Bankers) Regulations, 1992?

3. Our Comments

The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our view on the issues raised in your letter under reference are given below:-

In respect of query no. (i) and (ii):

- a. Regulation 2(1) (m) of the IA regulations defines an "investment adviser" as under:
"investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;
- b. Regulation 2(1) (g) of the IA regulations defines the term "consideration" as under:
"consideration" means any form of economic benefit including non-cash benefit, received or receivable for providing investment advice;
- c. In terms of Regulation 2(1)(l) of IA Regulations, *"investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning;*
- d. Therefore, we are of the view that:
- i. In terms of IA Regulations, an investment adviser is a person who is engaged in the business of providing suitable investment advice in respect of securities or investment products to the clients for consideration.
- ii. Since FRR does not propose to provide any kind of investment advice to the clients for consideration, the proposed activity of FRR in respect of introducing the HNIs to the RCs approved by USCIS does not fall within the ambit of IA Regulations.



अनुवर्ती :
Continuation :

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In respect of query no. (iii):

- e. In terms of Regulation 2(cb) of SEBI (Merchant Bankers) Regulations, 1992 (MB Regulations) "*merchant banker*" means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management;
 - f. As stated in the SEBI RMB Circular No. 1, dated June 05, 1998, a merchant banker shall undertake only those activities which are related to the Securities market. Further, the said circular lists out 10 activities which may be carried out by the Merchant Bankers.
 - g. Therefore, we are of the view as under:
Since the proposed activities of FRR do not pertain to issue management and though advisory do not pertain to Indian markets, the activity of introducing high networth individuals to RCs approved by USCIS for investments under EB-5 program may not fall within the ambit of the MB Regulations and may not necessitate registration under these regulations.
4. This position is based on the representation made to the Division in your letters under reference. Different facts or conditions might yield a different result. This letter does not express decision of the Board on the questions referred.
 5. You may note that the above views are expressed only with respect to the clarification sought on SEBI (Investment Advisers) Regulations, 2013 and SEBI (Merchant Bankers) Regulations, 1992 and do not affect the applicability of any law and other SEBI Regulations, guidelines and circulars administered by SEBI or any other authority.

Yours faithfully,

Naveen Sharma

AMRUTA S. NAIK

From: nitin.lakhotia@frrshares.com
Sent: 21/04/2017 12:48 PM
To: AMRUTA S. NAIK
Subject: re: Request for Informal Guidance by FRR Shares & Securities Ltd. (FRR)

Dear Madam,

We revise our questions as under:

Question-1: Whether activity of introducing high net worth individuals to Regional Centers approved by USCIS for investment under EB5-program could be interpreted as 'investment advice' under clause 2 (I) of SEBI (Investment Advisers) Regulations, 2013

Question-2: Whether EB5 program can be classified as 'securities' or 'investment product' under clause 2 (I) of SEBI (Investment Advisers) Regulations, 2013

Question 3: Whether for activity of introducing high net worth individuals to Regional Centers approved by USCIS for investment under EB5-program, FRR Shares can be treated as 'merchant banker' under clause 2 C B of SEBI (Merchant Bankers) Regulations, 1992.

Regards

Nitin Lakhotia
Compliance Officer
9320174101

AMRUTA S. NAIK

From: AMRUTA S. NAIK
Sent: 10/04/2017 2:49 PM
To: 'nitin.lakhotia@frrshares.com'
Subject: FW: Request for Informal Guidance by FRR Shares & Securities Ltd. (FRR)

From: AMRUTA S. NAIK
Sent: 05/04/2017 5:13 PM
To: 'nitin.lakhotia@frrshares.com'
Subject: Request for Informal Guidance by FRR Shares & Securities Ltd. (FRR)

Dear Sir,

This has reference to your request for an interpretative letter dated February 14, 2017 under SEBI (Informal Guidance) Scheme, 2003 in connection with the applicability of the SEBI (Investment Advisers) Regulations, 2013 {IA Regulations} as well as SEBI (Merchant Bankers) regulations, 1992, for introducing high net worth individuals to regional Centers approved by USCIS under EB-5 programme.

It may be noted that, in terms of Para. 8(iv) of SEBI (Informal Guidance) Scheme, 2003, SEBI may not respond to the requests where the applicable legal provisions are not cited.

On perusal of your request, it is observed that, you have sought clarification on your proposed business plan without citing applicable legal provisions which is not in accordance with SEBI (Informal Guidance) Scheme, 2003. In this regard, you are advised to provide the clarification within 3 days of receipt of this email.

Regards,

CA. Amruta S. Naik

Manager

Investment Management Department, Division of Funds I

Securities and Exchange Board of India

SEBI Bhavan | C4-A, G Block | Bandra Kurla Complex | Mumbai - 400 051 | INDIA |

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Before printing, think about the Environment

February 14, 2017

To Manager,
Investment Management Department,
Division of Collective Investment Scheme
Securities And Exchange Board of India (SEBI)
SEBI Bhavan,
Bandra Kurla Complex
Mumbai 400 0551



SEBI/IW/P/20170224/0000021408

Dear Sir,

Sub: Request for informal guidance by way of interpretive letter under SEBI (Informal Guidance Scheme), 2003 in connection with SEBI (Investment Advisers) Regulations, 2013, SEBI (Merchant Banker) Regulations, 1992

We introduce ourselves as FRR Shares And Securities Limited (FRR), an intermediary registered with SEBI as trading member of BSE (INB/F 011397230), NSE (INB/F/E 231397234), depository participant of CDSL (IND 12068100) and Research Entity (INH 000001725)

We provide share broking and depository services to a large number of High Net-worth individuals. In our interactions with these individuals, some of them have expressed a desire to obtain the citizenship of USA through the investment- leading to employment generation options provided by the laws of that country. This program is referred to as the EB-5 program and has been gaining popularity in the recent times. Other important details of this program have been dealt with in the ensuing paragraphs

The content of this letter is with respect to certain clarification and confirmations that we wish to seek on the scope of our services for introduction to our HNI clients to the EB-5 program and the applicability of SEBI (Investment Advisers) Regulations, 2013, SEBI (Merchant Banker) Regulations, 1992.

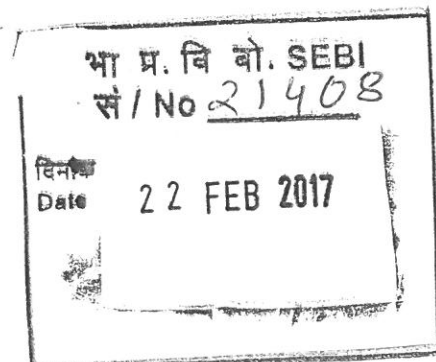
Note on EB-5 program of USA

U.S. Citizenship and Immigration Services (USCIS) administers the Immigrant Investor Program, known as "EB-5", created by the US Congress in 1990 to stimulate the U.S. Economy through job creation and capital investment by foreign investors.

The EB-5 visa provides a method of obtaining a green card for foreign nationals who invest money in the United States of America.

Under this program, entrepreneurs (and their spouses and unmarried children under 21) are eligible to apply for a green card (permanent residence) if they:

- Make the necessary investment in a commercial enterprise in the United States; and
- Plan to create or preserve 10 permanent full-time jobs for qualified U.S. workers.



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Phone : 022 – 65563031 Fax : 022 – 25001804 Email : demat@frrshares.com Web : www.frrshares.com

SEBI Regn. No. INB/INF231397234 (NSE) INB/INF011397230 (BSE) CDSL DP – IN-DP-CDSL-591-2010



This program is known as EB-5 for the name of the "employment-based fifth preference visa" that participants receive.

Initially, under the first EB-5 program, the foreign investor was required to create an entirely new commercial enterprise; however, under the Pilot Program investments can be made directly in a job generating commercial enterprise (new, or existing - "Troubled Business"), or into a "Regional Center" - a 3rd party-managed investment vehicle (private or public), which assume the responsibility of creating the requisite jobs. These Regional Centers would offer EB-5 security to the Indian HNIs against their investment towards the EB-5 program.

What is an EB-5 security under American statutes?

Under American statutes, EB-5 security offerings generally fall under the category of "Private Placements". A private placement is when a company makes an offering of securities to an individual or a small group of investors. Since such an offering does not qualify as a public sale of securities, it does not need to be registered with the Securities and Exchange Commission (SEC), USA and is exempt from the usual reporting requirements.

How EB-5 program and securities are regulated by both USCIS and SEC:

EB-5 Regional Center investments fall under the definition of a "Security". A security in the US, briefly, is "any proof of ownership or debt that has been assigned a value and may be sold. For the holder, a security represents an investment as an owner, creditor or rights to ownership on which the person hopes to gain profit. Examples are stocks, bonds and options." All securities in the US are subject to oversight from the SEC (Securities and Exchange Commission), USA. While the EB-5 investor enters into a contract with the Regional Centers, to buy a security, the investor ultimately hopes to be granted a permanent green card equivalent of a citizenship of the USA. The process of approving and granting the green card falls under the jurisdiction of the USCIS (United States Citizenship and Immigration Services).

Disclosures and Documents provided by Regional Centers to Prospective Investors:

The primary objective of the investor is not to earn profit on the EB-5 investment but to obtain the US citizenship. All investors are provided with a Confidential Offering Memorandum (CIM). This document discloses clearly all of the risks involved with the project. The investor is clearly alerted that he or she may lose part or all of their funds. Investors are also warned that in addition to financial risks, there are numerous risks during the immigration process that may slow or even prevent the awarding of a green card.

What instrument/s will be executed in India? What is flow of Investment?

Investors will first need to fill out an "Investor Questionnaire". This questionnaire will provide information about the prospective investor to the Regional Center so that it can properly evaluate the suitability of the EB-5 project for the investor. If the investor is deemed suitable, he or she will be provided with the "Offering Documents". After careful review, the investor will sign the offering documents if they wish to proceed with the EB-5 investment. After the offering documents are accepted by the Regional Center and such acceptance communicated the investor will wire the necessary funds into the Regional Center's escrow account.

Regional Center through the help of 'Broker-Dealer' in USA invests money in Special Purpose Vehicle (SPV- Issuer of securities). At that point, the sale /investment is considered consummated.

Investment by India Investor would be equity investment in SPV which is a 'Security' under US laws. Tenure of investment would be for 5 years. Investors will be allotted of units by SPV against their investments.

SPV in turn invests money into Operating Entity (Project) in the form of Debt.

Points to note_ :

Regional Centers (RC) _____
are approved by USCIS.

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Phone : 022 – 65563031 **Fax :** 022 – 25001804 **Email :** demat@frrshares.com **Web :** www.frrshares.com

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Broker Dealers are regulated by Regulatory Agencies in USA i.e. SEC and FINRA to ensure compliance with Securities Laws in USA.

Investment in EB-5 is exposed to market risk and return on investments are not guaranteed.

Our Role:

We have received business proposal from certain RCs for introducing HNIs who may be interested in the EB-5 Program of USA.

- Our Role is restricted to introducing our HNI clients to the Regional Center who will be visiting India for the purpose of inviting applications for the EB-5 program and for this purpose will be conducting road shows/meetings. We shall inform our clients about the details of such road shows/meetings.
- We will not be party to any contract/ memorandum of understanding / arrangement between the Indian investor and the Regional Center.
- We will not be rendering any services to HNI clients and as such will not be executing any form or agreement with them.
- We will not provide any investment advice to HNI client whether written or oral in connection with investment under EB5 program.
- We will not provide any assurance (written or oral) to the HNIs about returns on investments under EB-5 program.
- We will not be charging any fees from the HNIs for the introduction to the RCs and for informing them about the schedule of the road shows/meetings.
- Regional Center will conduct meetings, road shows in India entirely at its own expense. No part of the expenses will be borne by us. We will not be a party to the arrangements for these meetings/road shows in any manner.
- We will execute an agreement with RC for rendering of services by way of introduction of clients to the EB-5 program. However by way of this agreement we will not be ensuring any guaranteed amount or number of subscriptions to the RCs.
- Further, we will not take any responsibility of establishing source of funds of Indian investor to Regional Center.
- As part of our arrangement with the RCs, we will get introductory fees from them in case of any investment under EB-5 program by HNI client based on terms agreed with Regional Center. We will raise invoice periodically for such agreed fees upon getting information from the RC for the EB-5 investment during the specified period.

We request you to review above business plan and clarify on following:

Question-1 : Whether activity of introducing high net worth individuals to Regional Centers approved by USCIS for investment under EB5-program falls within the ambit of SEBI (Investment Advisers) Regulations, 2013 and necessitates registration under these regulations?

Question-2 : Whether activity of introducing high net worth individuals to Regional Centers approved by USCIS for investment under EB5-program falls within the ambit of SEBI (Merchant Banker) Regulations, 1992 and necessitates registration under these regulations?

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