



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

SEBI/HO/IMD/DF1/OW/P/2021/32411/1
November 12, 2021

SV Capital
C1104, Tower 4, The Crest, Phoenix Maketcity,
142 Velachery Main Road, Velachery, Chennai,
Tamil Nadu : 600042

Kind Attention: Ms. Shwetha Sundararaman

Dear Sir,

Sub: Request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 by SV Capital (SVC)

1. This has reference to your letter dated January 07, 2021 and subsequent communications including email dated June 08, 2021 seeking an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letters and subsequent emails under reference you have, *inter alia*, represented as follows:
 - 2.1. SV Capital (SVC) is registered with SEBI as Investment Adviser (Registration number (INA200013372)).
3. In view of the above, you have sought an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following:
 - 3.1. Does the service of creation and rebalancing of Stacks (a basket of foreign securities) for the US Company (which provides an online platform to Indian customers, to deal in foreign securities) based on certain predefined financial or qualitative criteria constitutes "investment advice" for the purpose of SEBI (Investment Advisers) Regulations, 2013 (the "IA Regulations")? (Ref. Regulation 2(I) of IA Regulations). SVC or the US Company, will not, directly or indirectly,

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दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर.एस.), 2644 9000 / 4045 9000 फ़ैक्स : 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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provide any advice to customers including on the investment amounts, choice of Stocks, rebalancing of Stocks, financial planning, portfolio management or on buying or selling of foreign securities. Customers are free to invest in the Stocks and / or in any foreign security(ies) per their own counsel.

3.2. SV Capital has also been appointed by the US Company to execute the agreement with the US Stock Broker identified by the US Company under which, SV Capital will facilitate the purchase of foreign securities by customers through the Platform by providing the facilitation services described to the US Stock Broker. Under the US Stock Broker Agreement, SV Capital will facilitate the account opening process of the customers with the US Stock Broker. We understand from the US Stock Broker that under the laws applicable to US Stock Broker, the US Stock Broker must only enter into contractual agreements for sale of securities only with a regulated entity i.e., in the Indian context, with either a SEBI registered investment advisor or stock broker. Given that SV Capital is a SEBI registered investment adviser, the US Company has engaged SV Capital to provide the facilitation services.

Do the services provided by SV capital to US Company and US Stock Broker to facilitate purchase of foreign securities i.e. securities listed on overseas stock exchange through the platform constitute "distribution" services, given that SV Capital is not engaged by an intermediary or an issuer? {Regulation 22(3) and 22(4) of the IA Regulations}

3.3. Under the US Stock Broker Agreement, SV Capital will facilitate the account opening process of the customers with the US Stock Broker. In consideration for the services under the US Stock Broker Agreement, the US Stock Broker will pay SV Capital a trailing commission on the brokerage charged by the US Stock Broker. Under the agreement with the US company, for the service of creation and rebalancing of Stocks, the US Company will provide a fixed monthly retainer amount to SV Capital.

Can SV Capital receive both the fee from the US Company and from US Broker? {Regulation 15(A) and 22(3) of the IA Regulations read with guideline 2(iii) of the Circular dated September 23, 2020.}

4. The submissions made in your letter and emails have been considered. Without necessarily agreeing with your analysis, our response on the queries raised in your communications is as under:



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4.1. In terms of queries raised in paras 3.1, 3.2 and 3.3, the following may be stated:

- 4.1.1. In this regard, as per 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".
- 4.1.2. Further, as per Regulation 2(1)(m) of the IA Regulations, "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.
- 4.1.3. Thus, for an activity to be covered under the IA Regulations vis-à-vis the aforesaid definitions of investment advice and investment advisor, the same has to be in the nature of providing an investment advice for a consideration, and includes financial planning.
- 4.1.4. In the instant case, as per an agreement between SVC and a US Company, SVC will be required to create the stacks exclusively for the US Company based on certain predefined financial or qualitative criteria and rebalance the said stacks purchased by the customer using the Platform, exclusively for the US Company, on a quarterly basis. As per the submissions, the customers as mentioned above will be Indian investors.
- 4.1.5. Further, as per agreement with the US Broker, SVC will be required to facilitate the purchase of foreign securities by Indian customers through the platform by providing the facilitation services to the US Stock Broker and will facilitate the account opening process of the Indian customers with the US Stock Broker.
- 4.1.6. In this regard, the applicant has submitted that it will not, directly or indirectly, provide any advice to Indian investors. Further, it is submitted that all payments for purchase is made by the Indian customer directly to the US Stock Broker.
- 4.1.7. Considering the submissions of the applicant, the following is observed: -



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- a. SVC will have agreements with US Company and US Broker and not with any Indian investor.
- b. SVC will provide services to US Company and US Broker in order to facilitate purchase of foreign securities by Indian investors.
- c. SVC will only facilitate account opening process of Indian investors for US Broker but will not provide any direct service including advice w.r.t investment to any Indian investor.
- d. SVC will not receive any consideration from any Indian investor.
- e. SVC shall receive trailing commission from US Broker and fixed monthly retainer from US Company.

4.1.8. It is stated that on the basis of submissions made by SVC, the proposed services by SVC, i.e., creating and rebalancing stacks for a US Company which provides an online platform for customers, including Indian Customers, to purchase and invest in foreign securities, and receiving compensation for the same in the form of commission or fixed monthly retainer does not appear to be an activity for providing 'investment advice' as envisaged under the IA Regulations. Consequently, the proposed services to be provided by SVC shall not come under the purview of IA Regulations. Hence, in the capacity of a SEBI registered investment adviser, SVC cannot provide the proposed services.

5. This above position is based on the information furnished in your letters under reference. Different facts or conditions might lead to different interpretation. Further this letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought in your letters under reference with respect to the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and do not affect the applicability of any other law and requirements of any other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,


Manaswini Mahapatra