

THE SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. no.	Name of the Noticee	PAN
1.	The India Debt Opportunities Fund Limited	AABCI7850G

Background:

1. The present proceedings have emanated out of a show cause notice dated June 26, 2019 (hereinafter referred to as '**SCN**') issued by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') to The India Debt Opportunities Fund Limited (hereinafter referred to as '**IDOF**' or 'the Noticee'), a Category II Foreign Portfolio Investor (hereinafter referred to as '**FPI**'). The background of the case is as under.
2. SEBI examined the operations of IDOF and India Debt Opportunities Fund Scheme (hereinafter referred to as '**IDOF Scheme**'), a scheme of UTI Mutual Fund. The said examination *prima facie* revealed violation of the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2014 (hereinafter referred to as '**FPI Regulations, 2014**') and various circulars issued by SEBI. Accordingly, SCN dated June 26, 2019 was issued alleging the following.

Investment in IDOF Scheme not being a permitted security for investment by FPIs

3. SEBI vide letter dated September 20, 2004 granted in-principle approval under Regulation 24(2) of the SEBI (Mutual Funds) Regulations, 1996 [currently read as Regulation 24(b) of SEBI (Mutual Funds) Regulations, 1996] to UTI AMC for management and advisory services in respect of IDOF / Noticee as Offshore

Fund (hereinafter referred to as "**OSF**"). In the said approval letter, the following conditions were, *inter-alia*, stated:

- (i) UTI Mutual Fund shall launch scheme for investment in India and units issued by said scheme shall be subscribed by IDOF only.
 - (ii) The activities of the AMC in respect of the offshore funds are segregated with the activities of UTI Mutual Fund.
 - (iii) Any financial obligation arising out of the operations of the offshore fund / scheme shall be met separately without affecting the interests of the unit holders in other domestic mutual fund schemes managed by the AMC or the capital adequacy requirement of the AMC.
 - (iv) The offshore funds shall be broad based on an ongoing basis, as per the provisions of SEBI (Foreign Institutional Investors) Regulations, 1995 ('**FII Regulations, 1995**') [now SEBI (Foreign Portfolio Investors) Regulations, 2014 ('**FPI Regulations, 2014**')] and guidelines issued thereunder.
 - (v) The offshore fund shall comply with all investment restrictions, as specified under FII Regulations, 1995 (now FPI Regulations, 2014) and the guidelines issued thereunder.
4. UTI AMC, vide letter dated March 01, 2005 had, *inter-alia*, submitted to SEBI that the Noticee (an OSF) shall invest substantially all its assets in an underlying domestic mutual fund scheme i.e. IDOF Scheme to be launched by UTI AMC Pvt. Ltd. with the approval of UTI Trustee Company Pvt. Ltd.
5. UTI AMC, vide letter dated November 24, 2011 had, *inter-alia*, stated that "*the domestic mutual fund scheme (i.e. India Debt Opportunities Unit Scheme) invests in the debt securities and as neither the domestic mutual fund scheme nor the offshore fund is a FII, hence, it is submitted that the offshore fund / domestic mutual fund scheme is not required to avail the debt limits required for FIIs for investment in debt securities in India.*"
6. Subsequently, SEBI vide letter dated November 25, 2011 advised that OSFs were required to obtain debt limits as prerequisite for all the debt investments. Accordingly, the Noticee took a registration of sub-account on August 17, 2012 under the erstwhile FII - UTI INTERNATIONAL LTD. (INUKFA096204) and

subsequent to notification of FPI Regulations, 2014, it was converted to a category II FPI - INMUFP201315 on September 29, 2015.

7. The Noticee invested in the IDOF Scheme, which in turn invested in debt instruments in India. The comparative holding of IDOF Scheme in various debt instruments as on April 30, 2015, March 31, 2018 and November 22, 2018 is as under:

Table 1			Rs. in Crores
Debt Instruments	Value as on April 30, 2015	Value as on March 31, 2018	Value as on November 22, 2018
Non-convertible Bonds	199.26	275.06	0
G-SEC	2,964.78	1,319.53	0
Commercial Paper	0	2,041.10	0
Certificate of deposit	3,047.22	3,806.59	391.05
CBLO	94.96	316.61	16.90
Cash	23.07	0	0
Total	6,329.29	7,758.89	407.95

8. During the FY 2018-19 (till September 2018), the Noticee, on aggregate basis, sold securities worth Rs. 6,298.63 Crore. Details of Noticee's transactions in IDOF Scheme are as under:

Date of transactions	Value (Rs. in Crores)
April 17, 2018	-3,144.00
May 11, 2018	-985.19
May 21, 2018	9.41
June 11, 2018	-594.00
July 02, 2018	0.38
July 06, 2018	-1,187.50
July 13, 2018	3.75
August 03, 2018	-397.50
August 07, 2018	-1.90
September 26, 2018	-2.08
Total	-6,298.63

9. As already mentioned above, UTI AMC, vide letter dated March 01, 2005 had, *inter-alia*, intimated SEBI that the Noticee (an OSF) would invest substantially all its assets in an underlying domestic mutual fund scheme *i.e.* IDOF Scheme to

be launched by UTI AMC Pvt. Ltd. with the approval of UTI Trustee Company Pvt. Ltd.

10. Regulation 15 of the then FII Regulations, 1995 specified that FIIs may, *inter-alia*, invest in the units of schemes floated by domestic mutual funds, including Unit Trust of India, whether listed in the recognized stock exchange or not. The notification No. FEMA 20/2000-RB dated 03/05/2000 contained similar provision relating to portfolio investment by FIIs whereby FIIs were allowed, *inter-alia*, to purchase units of domestic mutual funds. However, SEBI approval letter dated September 20, 2004 stated that the offshore schemes/ funds shall not be regulated by SEBI under SEBI (Mutual Funds) Regulations, 1996 (**'MF Regulations, 2016'**).
11. Regulation 21 of FPI Regulations, 2014 specifies that an FPI shall invest, *inter-alia*, in units of schemes floated by domestic mutual funds, whether listed on a recognized stock exchange or not. In the instant matter, it was observed that the Noticee had invested in the IDOF Scheme of UTI AMC by giving the colour of a domestic mutual fund, since IDOF Scheme was neither launched as per the relevant provisions of MF Regulations, 1996, nor was the said fund governed by the aforesaid Regulation. Further, IDOF Scheme had also not filed any scheme document with SEBI.
12. In view of the above, it was observed that the IDOF Scheme could not be considered as a mutual fund scheme as per the provisions of MF Regulations, 1996 and therefore the investment of IDOF was not a permitted investment under the FPI Regulations, 2014. It was, thus, alleged that the Noticee had violated Regulation 21 of the FPI Regulations, 2014.

Investment in government securities without taking limits

13. In the issue memorandum of the Noticee (an offshore fund) for the offer of USD 1 Billion Notes, under the head 'the investment objective, the following was stated:

"The principal investment objective of the issuer is to generate returns from investments in a diversified portfolio of INR denominated fixed-income securities, and money market instruments such as government securities, corporate debentures, bonds issued by financial institutions, fixed deposits of Banks, commercial paper and certificates of deposits all issued in India (the

underlying investments). With a view to achieve the principal investment objective, the Issuer would make investments in units of UTI Scheme, an open ended dedicated scheme launched in India by UTI AMC, which would make the underlying investments in compliance with the investment restrictions applicable to the UTI Scheme as well as in accordance with the applicable statutory and regulatory requirements including those of the SEBI and RBI."

14. In another private placement memorandum of the Noticee for the offer of redeemable participating shares, under the head 'Investment objective and policies' the following is stated:

"The principal investment objective of the fund is to generate returns from investments in a portfolio of INR denominated fixed-income securities, units of Mutual Funds, and money market instruments such as Corporate Debentures, Bonds issued by Financial Institutions, Fixed deposits of Banks Commercial paper and Certificate of Deposits all issued in India (the Investments). The fund would invest in India via open ended dedicated scheme launched in India by UTI AMC."

15. The various restrictions imposed on investments by FPIs in debt securities and debt oriented mutual funds schemes are as follows:

- (i) SEBI circular dated April 01, 2013, had, *inter-alia*, specified that FPIs can invest in corporate debt without purchasing debt limits till the overall investment reaches 90% after which the auction mechanism shall be initiated for allocation of the remaining limits.
- (ii) SEBI circular dated September 13, 2013, had, *inter-alia*, specified that FPIs/QFIs can invest in Government debt without purchasing debt limits till the overall investment reaches 90% after which the auction mechanism shall be initiated for allocation of the remaining limits.
- (iii) SEBI circular dated July 23, 2014, had, *inter-alia*, specified that FPIs are required to invest in Government bond with a minimum residual maturity of three years. However, in the said circular, it was clarified that there would be no lock-in period and the FPIs were free to sell the securities to the domestic investors.

- (iv) SEBI circular dated February 03, 2015, had, *inter-alia*, specifies that FPIs are not permitted to invest in liquid and money market mutual fund schemes.
16. It was observed that government securities were in auction mode during April-May 2015, when IDOF scheme acquired government securities. As on May 29, 2015, holding of IDOF Scheme in government securities was Rs. 2,972.59 Crore and in CBLO was Rs. 2.87 Crore. Thus, the total holding of the Noticee in Government securities was Rs. 2,975.46 Crore. The Weighted Average of successful bids of Government debt auction, held on April 27, 2015, was 82.12 bps. The bidding fees collected on auction was to be deposited in Consolidated Fund of India. Thus, the Noticee unduly gained Rs. 24.43 Crore (2975.46×0.008212), approximately, by avoiding payment of bidding fees.
17. The investment by IDOF Scheme on behalf of the Noticee, without taking limits for investments in government securities, as a result of which it had made an undue profit of Rs. 24.43 Crore by acquiring Government securities without purchasing debt limit, caused notional loss for the same amount to the Government of India. It was thus alleged that the investment by IDOF Scheme on behalf of IDOF without taking limits for investment in Government Securities was in violation of the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of FPI Regulations, 2014.

Investment in liquid and money market instruments

18. Further, as the Noticee had invested in liquid and money market instruments, which were not permissible instruments for FPIs/OSFs, it was alleged that the Noticee had violated the provisions of SEBI circulars dated April 01, 2013; September 13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1) of FPI Regulations, 2014.

Incorrect statement made by Noticee regarding compliance with broad based requirement

19. SEBI's approval letter dated September 20, 2004, *inter-alia*, specified that the offshore funds shall be broad based on an ongoing basis, as per the provisions of FII Regulations, 1995 (now FPI Regulations, 2014) and guidelines issued thereunder.

20. Explanation 2 to regulation 5 of FPI Regulations, 2014, states that "broad based fund" shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor holding more than forty-nine per cent of the shares or units of the fund. Further, in explanation to FAQ 23, it is stated that in case an FPI applicant has a bank as an investor, then such FPI shall be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations, 2014. This position was the same as was in the FII regime.
21. It was observed that UTI International Ltd. vide letter dated July 07, 2015 had mentioned that fund investment by Deutsche Bank (hereinafter referred to as "**DB**"), Singapore, in IDOF was proprietary money and thus the Noticee met broad based criteria. However, from the documents provided by UTI AMC vide e-mail dated October 25, 2018, it was observed that DB, Singapore was holder of notes issued by IDOF. Further, from the due diligence report of AZB & Partners, provided by DB, it was observed that DB, Singapore, was sole holder of debenture notes issued by the Noticee.
22. As debenture notes are neither shares nor units, investment by DB, Singapore branch in notes of IDOF could not be considered for the purpose of determination of broad based requirement. Further, in its conversion application (Form A) from subaccount to FPI, the Noticee had submitted an undertaking stating that it was a broad based fund (as per FPI Regulations, 2014). It also stated that Deutsche Bank AG, Singapore Branch was the only investor with 100% holding. It was thus observed that the Noticee made incorrect statements regarding compliance with broad based requirement to Designated Depository Participant, Citibank, for Category II FPI status in the application form. Accordingly, it was alleged that IDOF had failed to ensure broad based requirement and thus became ineligible for Category II FPI status and that it submitted wrong information confirming that it met the broad-based criteria. IDOF was therefore alleged to have violated the provisions of Regulations 5(b), 23(1)(a), 23(1)(b) and 24 of FPI Regulations, 2014.
23. In view of the above, the Noticee was called upon to show cause as to why appropriate directions, under Section 11B read with Section 11(4) of SEBI Act, 1992, including directions to disgorge the undue profit of Rs. 24.43 Crores made

by not purchasing debt limit before investing in Government Securities, should not be issued against it for the aforesaid alleged violations.

Reply to the SCN and personal hearing:

24. The SCN was duly delivered to the Noticee. Thereafter, the Noticee sought an inspection of the documents which was granted on August 06, 2019. Subsequently, the Noticee filed a reply dated August 21, 2019 to the SCN. A personal hearing was granted to the Noticee on December 12, 2019. Thereafter, the Noticee filed additional written submissions vide letter dated January 10, 2020. Consequent to my taking charge as the Whole Time Member of SEBI in June 2022, the matter was assigned to me for adjudication. Pursuant to the same, another opportunity of personal hearing was granted to the Noticee on July 25, 2022, which was attended by the Noticee. Thereafter, the Noticee filed additional written submissions vide email dated July 27, 2022. Vide email dated April 20, 2023, the Noticee was advised to file additional written submissions, if any. However, the Noticee replied vide email dated April 28, 2023 and submitted that it did not wish to make further written submissions.
25. The submissions of the Noticee are discussed later in this Order while dealing with the issues at hand.

Consideration of Issues and Findings:

26. I have examined the facts of the case and the allegations against the Noticee mentioned in the SCN, the replies of the Noticee filed from time to time and other material available on record.
27. I note that UTI Asset Management Company Pvt. Ltd. (UTI AMC), vide letter dated May 05, 2004 to SEBI, proposed to launch a new Off-Shore Fund (IDOF), with a principal objective to generate income and capital appreciation from investments in Public Sector Debt securities in India. In response to the same, SEBI vide letter dated September 20, 2004 granted in-principle approval to UTI AMC for management and advisory services in respect of IDOF, for investment in India, subject to the condition *inter alia* that UTI Mutual Fund shall launch a scheme for investment in India and the units issued by the scheme shall be subscribed by the Off-Shore Fund (i.e. IDOF) only. It was further mentioned in

the said letter that the Off-Shore Fund shall be broad based on an ongoing basis as per the provisions of FII Regulations, 1995 and guidelines issued thereunder.

28. Subsequently, UTI AMC, vide letter dated March 01, 2005 to SEBI *inter-alia* submitted that IDOF (the Noticee) shall invest substantially all its assets in an underlying domestic mutual fund scheme to be titled as “India Debt Opportunities Fund Unit Scheme” (hereinafter referred to as “**the Domestic Scheme**”), to be launched by UTI AMC Pvt. Ltd. with the approval of UTI Trustee Company Pvt. Ltd.
29. Accordingly, the Domestic Scheme was launched by UTI AMC and IDOF had subscribed to the units of the Domestic Scheme. However, the Domestic Scheme was neither launched as per the relevant provisions of Mutual Funds Regulations, 1996 nor was IDOF governed by the aforesaid Regulation. Further, IDOF Scheme had also not filed any scheme document with SEBI. In view of the same, SCN alleged that the Domestic Scheme could not be considered as a mutual fund scheme, as per the provisions of Mutual Funds Regulations, 1996. The SCN further alleged that the investment of IDOF in the units of the Domestic Scheme was not was not a permitted security for investment by FPIs, which led to the violation of the provisions of Regulation 21 of the FPI Regulations, 2014.
30. I note that Regulation 21 of the FPI Regulations, 2014 provides the following:

Investment Restrictions:

21. (1) A foreign portfolio investor shall invest only in the following securities, namely –

... ..

(b) Units of schemes floated by domestic mutual funds, whether listed on a recognized stock exchange or not;

31. I note that a similar provision was there in the erstwhile FII Regulations, 1995 in Regulation 15(1)(b) which permitted investment by an FII in “*units of scheme floated by domestic mutual funds including Unit Trust of India,*”.
32. I note that, in the instant case, the primary issue to be decided is whether the Domestic Scheme, which was launched by UTI AMC without complying with the provisions of the MF Regulations, 1996, can be considered as a domestic mutual fund scheme, as referred to in Regulation 21(1)(b) of the FPI Regulations, 2014

and similar provision under FII Regulations, 1995. I note that other issues / allegations raised in the SCN are merely ancillary to the main issue stated above.

33. I note that the Noticee has admitted that the Domestic Scheme was not launched as per the provisions of the Mutual Funds Regulations, 1996. However, it has vehemently contended that the Domestic Scheme still qualified to be a domestic mutual fund scheme, which satisfied the conditions mentioned in SEBI approval letter dated September 20, 2004. The Noticee has submitted that from the provisions of Regulation 21 of the FPI Regulations, 2014, it is abundantly clear that FPIs are permitted to invest in schemes floated by domestic mutual funds. However, at no place did the said provision mention that the “scheme floated by domestic mutual funds” are required to be launched in terms of the Mutual Funds Regulations, 1996.
34. The Noticee has further contended that various communications between UTI AMC and SEBI at different point of time show that SEBI had not, until the issuance of the SCN, objected to the Noticee’s investment in the Domestic Scheme (i.e. IDOF Scheme). In fact, SEBI allowed the launch of the Domestic Scheme with no requirement to comply with the MF Regulations, 1996. Noticee has further contended that SEBI had been aware of this arrangement since issuance of the In-principle approval in 2004.
35. Noticee has further submitted that though all mutual funds schemes are required to be approved and continuously regulated by SEBI under the MF Regulations, 1996, SEBI, in the instant case, did not ask for any of the documents, which are generally required by SEBI in order to monitor the regulatory fulfilments, since 2006 i.e., when the Domestic Scheme was launched. Evidently, it could be seen that SEBI was conscious that this was a bespoke structure approved by SEBI where the Domestic Scheme was not a usual standalone scheme floated for investment by the public but was merely a part of an OSF structure, which would have only a single investor. Therefore, it was clear that SEBI recognized that the usual provisions of the MF Regulations, 1996 viz., minimum 20 unit holders, offer document to public, etc., would not be applicable to such a scheme and only the provisions related to offshore schemes and FIIs would apply.
36. According to the Noticee, it was clear that the Domestic Scheme was in compliance with and was operating within the domain of the specific approvals

granted by SEBI. SEBI at no time raised any issue about the Domestic Scheme not having been approved by SEBI or not being compliant with the MF Regulations, 1996 or the units of the Domestic Scheme not being a permitted security for investments by the Noticee.

37. I note that before going into the question of whether the various communication between UTI AMC and SEBI amounted to implied acceptance on SEBI's part that the Domestic Scheme was a domestic mutual fund scheme or not, it is pertinent to see whether the act of not registering the Domestic Scheme under the provisions of MF Regulations, 1996 rendered the Domestic Scheme ineligible to be considered as a domestic mutual fund scheme in the first place. In this regard, I have observed the following:

(a) Provisions of Regulation 21(1)(b) of the FII Regulations and Regulation 15(1)(b) of the FII Regulations, 1995 refer to "*units of scheme floated by domestic mutual funds...*" The said provisions, as well as the In-principle Approval letter dated September 20, 2004 did not explicitly provide that the scheme launched by the domestic mutual fund (i.e. UTI AMC) had to be under the provisions of MF Regulations, 1996.

(b) As per the definition of "mutual fund" provided under Regulation 2(q) of the MF Regulations, 1996, as existing at the time of launch of the Domestic Scheme, "*mutual fund*" means a fund established in the form of a trust to raise monies through the sale of units to **the public or a section of public** under one or more schemes for investing in securities, including money market instruments or gold or gold related instruments;". (emphasis supplied). From the definition of "mutual fund", it is clear that the activities of a mutual fund involve raising funds from public or a section of public. However, as per the SEBI Approval Letter dated September 20, 2004, the Domestic Scheme was to be launched by UTI AMC exclusively for the Noticee and accordingly, had only one investor, which was the Noticee. Since there was only one investor, which was already pre-decided, the requirement of filing an offer document under the provisions of MF Regulations, 1996 was thus, non-existent.

(c) Further, one of the purposes of regulating mutual fund schemes under MF Regulations, 1996 is ensuring the protection of investors. However, in the instant case, since there was only one investor in the Domestic Scheme, the

need for protecting investor's interest through regulation under the provisions of MF Regulations, 1996 cannot be said to have been present.

- (d) Further, as per SEBI Circular No. SEBI/IMD/CIR No. 10/22701/03 dated December 12, 2003, applicable to all mutual funds registered with SEBI, *"Each scheme and individual plan(s) under the schemes should have a minimum of 20 investors and no single investor should account for more than 25% of the corpus of such scheme/plan."* However, since the In-principle Approval Letter dated September 20, 2004 had itself specified that the units of the Domestic Scheme launched by UTI AMC had to be exclusively subscribed by the Noticee, the condition mentioned under the abovementioned Circular could not have been complied with by the Domestic Scheme, unlike any mutual fund scheme launched under the provisions of MF Regulations, 1996.
- (e) As per the Noticee, UTI AMC had been submitting the monthly/ quarterly reports with SEBI since 2006 in respect of the Domestic Scheme. The reports, *inter-alia*, expressly informed SEBI of the assets under management, deployment of funds, etc., by the Domestic Scheme. Considering the above, it is clear that all the information about deployment of funds by the Domestic Scheme was regularly available with SEBI, as in the case of any mutual fund scheme floated under MF Regulations, 1996. The periodical filing of reports with SEBI meant that the activities of the Domestic Scheme was under observation and watch of SEBI.
38. Considering all the above observations, I am of the opinion that the mere fact that the Domestic Scheme was not launched under the provisions of the MF Regulations, 1996 does not render it ineligible to be treated as a domestic mutual fund scheme. I agree with the contention of the Noticee that the Domestic Scheme was a unique arrangement, which though not registered under MF Regulations, 1996, still qualified to be a domestic mutual fund scheme.
39. Accordingly, I hold that the allegation that the Noticee's investment in the Domestic Scheme was not a permitted investment and that the same was in violation of Regulation 21 of the FPI Regulations, 2014 is not established.
40. The next allegation against the Noticee is that the Noticee unduly gained Rs.24.43 Crore, by avoiding payment of bidding fees for the investment of

Rs.2975.46 Crore by the Domestic Scheme in Government Debt. The SCN alleged that the Noticee had violated the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of the FPI Regulations, 2014. The details of the abovementioned allegation are provided in paras 15 to 17 above.

41. I note that Regulations 21(5) and 23((1)(a) of the FPI Regulations, 2014 provide that an FPI has to comply with the provisions of the FPI Regulations, 2014 and other terms and conditions, as specified by SEBI or RBI from time to time. In this regard, I note that vide SEBI Circular No. CIR/IMD/FIIC/15/2013 dated September 13, 2013, SEBI had *inter alia* extended the allocation mechanism, as applicable for corporate debt securities, to FII/QFI investment in Government Securities also, whereby FIIs/QFIs could now invest in Government Debt without purchasing debt limits till the overall investment reached 90%, after which the auction mechanism was to be initiated for allocation of the remaining limits.
42. In this regard, the Noticee has submitted that SEBI vide Circular dated November 29, 2004 had clarified that investment in securities, other than Government Securities (G-Secs) and Treasury Bills, constituted corporate debt. Furthermore, vide SEBI Circular dated January 31, 2008, it was provided *inter alia* that investments by FIIs / Sub Accounts in debt oriented mutual fund units shall be considered as corporate debt investments and reckoned within the stipulated limit of US\$ 1.5 Billion, earmarked for FII/ Sub Account investments in corporate debt.
43. The Noticee has contended that given that G-Secs and corporate debt have always been considered as two distinct categories of debt, the investments by FIIs (and subsequently by FPIs) in debt oriented mutual fund units, in terms of SEBI Circular dated January 31, 2008 read with SEBI Circular dated September 13, 2013, was only considered as corporate debt investments. The Noticee has further contended that, in the instant case, it had not invested in G-Secs. The investment made by the Noticee in the units of the Domestic Scheme, which was a debt-oriented mutual fund, was indeed corporate debt investment. At the relevant time, in corporate debt, there was freely available limit and thus, the Noticee was not required to participate in the auction. Specifically on April 27, 2015 (date of Government Debt auction), the corporate debt limits were freely

available, since only 77.45% of the corporate debt limit was exhausted. The Noticee has also provided the debt utilization status as on April 27, 2015.

44. I note that the abovementioned allegation that the Noticee had invested in Government Debt without availing limit through bidding process has been made by treating the Noticee's investment in Domestic Scheme as falling outside the ambit of domestic mutual fund scheme. However, it has already been concluded above that the Domestic Scheme qualified to be a domestic mutual fund scheme. Further, from the nature of debt instruments listed in the Table 2 under para 7 above, in which the Domestic Scheme had invested, it is clear that the Domestic Scheme was a debt-oriented mutual fund. Considering the above observations and the provisions of SEBI Circular dated January 31, 2008, as mentioned above, it is clear that the requirement of bidding for quota of Government Debt was not applicable to the instant case, since the investment of Rs.2975.46 Crore in the Government Debt, as referred to in the SCN, was not done by the Noticee directly.
45. I agree with the Noticee's contention that its investment in the units of Domestic Scheme, which was a debt oriented mutual fund scheme, was a corporate debt investment. Accordingly, I find that such investment only had to comply with the limits prescribed for corporate debt investments. I also note from the copy of Debt Utilization Status Report (as on April 27, 2015) of NSDL, submitted by the Noticee, that only 77.45% of the limit for corporate debt was exhausted as on the said date. In view of the above, I find that the Noticee did not breach any limit for investment in Government Debt, as alleged in the SCN.
46. Apart from the above, I note from the details of FII Debt Limits Auction Results held on April 27, 2015, which is enclosed as Annexure 5 to the SCN, that on the said date, the total available limit of Government Debt was Rs.507 Crore whereas the total bid received was for Rs.1303 Crore and the total amount finally allocated was Rs.507 Crore. From the same, it is observed that the available quota of the Government Debt on the said date was over-subscribed, which means that the Government had fully realized the maximum possible bidding fees.
47. Accordingly, the allegation of violation of the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of the FPI Regulations, 2014 against the Noticee does not sustain.

48. The next allegation against the Noticee, as mentioned in the SCN, is that the Noticee had invested in liquid and money market instruments, which were not permissible instruments for FPIs/ OFSSs, and the same was in violation of the provisions of SEBI Circular dated February 03, 2015 read with Regulation 23(1) of the FPI Regulations, 2014.
49. I note that vide SEBI Circular No. CIR/IMD/FIIC/1/2015 dated February 03, 2015, it was provided that *“FPIs shall not be permitted to invest in liquid and money market mutual fund schemes.”*
50. The Noticee, in respect of the abovementioned allegation, has contended that the Domestic Scheme did not qualify as a liquid or a money market mutual fund scheme. The Noticee has submitted that as per Regulation 2(p) of the MF Regulations, 1996, *“money market mutual fund” means a scheme of a mutual fund which has been set up with the objective of investing exclusively in money market instruments.* Further, SEBI Circular dated January 19, 2009 provides that the liquid fund schemes and plans shall, with effect from February 01, 2009 make investments in / purchase debt and money market securities with maturity of upto 182 only; and with effect from May 01, 2009 make investments in / purchase debt and money market securities with maturity of upto 91 days only. The Noticee has contended that the Domestic Scheme’s statements / reports as at December 31, 2015 and December 31, 2016 indicate that the Domestic Scheme did not exclusively invested (a) only in securities of maturity up to 182/91 days or (b) only in money market instruments. Therefore, the Domestic Scheme cannot be considered as a liquid or money market mutual fund scheme.
51. The Noticee has additionally contended that the Investment Objective of the Domestic Scheme in the original Issue Memorandum published by the Noticee listed various securities instruments in which the investment was to be undertaken by the Domestic Scheme, on behalf of the Noticee. The securities so specified, inter alia, included liquid and money market securities. Further, Clause 22 of the Constitution of the Domestic Scheme, as amended by addendum dated April 23, 2015, specifically provided that it shall be ensured that the Domestic Scheme does not fall within the category of a money market mutual fund scheme or a liquid mutual fund scheme under the MF Regulations. The said position has been reiterated in Schedule 2 of the Constitution of the Domestic Scheme.

52. I note that vide SEBI Circular dated February 03, 2015, what is sought to be prohibited is investment in liquid and money market mutual fund scheme and not liquid and money market instruments per se. I note from the statements / reports of the Domestic Scheme as at December 31, 2015 and December 31, 2016 that the list of securities mentioned therein included securities having maturity period of more than 182/91 days, which means that the Domestic Scheme was not investing exclusively in money market instruments. Accordingly, the Domestic Scheme cannot be categorized as a liquid and money market mutual fund scheme, in terms of Regulation 2(p) of the MF Regulations, 1996. I therefore find that the allegation of violation of provisions of SEBI Circular dated February 03, 2015 read with Regulation 23(1) of the FPI Regulations, 2014 against the Noticee is not established.
53. The next allegation against the Noticee is that it had failed to comply with the condition of being a broad-based fund on an ongoing basis, as per the provisions of FII Regulations, 1995 (now FPI Regulations, 2014) and guidelines issued thereunder. Explanation 2 to Regulation 5(b) of FPI Regulations, 2014 states that *"broad based fund" shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor holding more than forty-nine per cent of the shares or units of the fund.* Further, in explanation to FAQ 23, it is stated that in case an FPI applicant has a bank as an investor, then such FPI shall be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations, 2014. This position is the same as it was in the FII regime. It was observed that UTI International Ltd. vide letter dated July 07, 2015 had mentioned that fund investment by Deutsche Bank (DB), Singapore, in IDOF was proprietary money and thus the Noticee met broad based criteria. However, from the documents provided by UTI AMC vide e-mail dated October 25, 2018 and the due diligence report of AZB & Partners, provided by DB, it was observed that DB, Singapore was holder of debenture notes issued by the Noticee.
54. The SCN has alleged that debenture notes are neither shares nor units and that investment by DB, Singapore, in notes of IDOF did not make the Noticee a broad-based fund. Further, in its application for conversion from subaccount to FPI, the Noticee had submitted an undertaking that it was a broad based fund (as per FPI Regulations, 2014). It also stated that Deutsche Bank AG, Singapore Branch was the only investor with 100% holding. It was also observed that the Noticee made

incorrect statements regarding compliance with broad based requirement to Designated Depository Participant, Citibank, for Category II FPI status in the application form. Accordingly, it was alleged that IDOF had failed to ensure broad based requirement and thus became ineligible for Category II FPI status and that it submitted wrong information confirming that it met the broad-based criteria. IDOF was therefore alleged to have violated the provisions of Regulations 5(b), 23(1)(a), 23(1)(b) and 24 of FPI Regulations, 2014.

55. I note that Regulation 23(1)(a) & (b) provide that an FPI shall comply with the provisions prescribed by SEBI and shall inform SEBI and designated depository participant if any information or particulars previously submitted are found to be false and misleading in any material respect.
56. In respect of the abovementioned allegations, the Noticee has submitted that when DB was inducted as an investor in the Noticee in April 2015, the Original Issue Memorandum along with Second Addendum to the Constitution of the Domestic Scheme was submitted to SEBI. The terms and conditions were explicitly provided in relation to the issuance of debenture notes by the Noticee to DB. In fact, SEBI issued administrative warning in 2016 for non-compliance with the broad-based criteria in the context of the Noticee not having any investors during the period 2013 to April 2015. According to the Noticee, SEBI did not object to the arrangement DB had with the Noticee.
57. The Noticee has further contended that SEBI was apprised of the Noticee's intention to extend the maturity of the debenture notes which were issued in April 2015. Moreover, the final copy of the Supplementary Issue Memorandum explaining extension of the maturity of the debenture notes was also submitted to SEBI on March 06, 2017. SEBI had not objected to DB holding debenture notes of the Noticee.
58. Apart from the above, the Noticee has also contended that in any event, the nature of the debenture notes issued to DB was fundamentally similar to the participating shares / units issued to all the investors of the Noticee prior to the issuance of debenture notes to DB in April 2015. The debenture notes were in fact and in substance – "units". That was the intention of the parties and consequently, the debenture notes had all the substance, properties, terms, conditions, features and characteristics of 'units', though they were referred to as

debenture notes. For instance, Condition 4, on page 43 of the 2015 Issue Memorandum provided that “*The Notes do not bear a stated rate of interest*”. Further, the redemption amount in respect of such Notes was equal to the Net Asset Value as on the Maturity Date.

59. I have considered the submissions of the Noticee. In my opinion, the words “*shares and units*” used in the explanation 2 in the Regulation 5(b) of the FPI Regulations, 2014 should not be interpreted narrowly, in a purely technical manner, to constrict their meaning. Further, since the “debenture notes” issued by the Noticee appear to have the characteristics of a unit issued by a mutual fund, I am inclined to accept the submissions of the Noticee in this regard. Accordingly, I deem it fit to drop the allegations against the Noticee.

Directions:

60. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B (1) read with Section 19 of the SEBI Act, 1992 hereby dispose of the SCN against the Noticee without any direction.

DATE: SEPTEMBER 12, 2023

PLACE: MUMBAI

ASHWANI BHATIA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA