

QJA/AA/IMD/FPI & C/30046/2023-24
SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTION 12 (3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

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

BACKGROUND:

1. The present proceeding has emanated from the Enquiry Report dated September 20, 2023 submitted by the Designated Authority (hereinafter referred to as “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**the Intermediaries Regulations**”) wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, after considering the material available on record, concluded that there are no adverse findings against The India Debt Opportunities Fund (hereinafter referred to as “**Noticee/IDOF**”). Consequently, the DA has not made any recommendation for action against the Noticee and has submitted his report with a ‘NIL’ recommendation.
2. The Noticee, IDOF is a Category II Foreign Portfolio Investor (hereinafter referred to as “**FPI**”). The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) received a reference from Department of Economic affairs (hereinafter referred to as “**DEA**”) forwarding a whistle-blower complaint ‘seeking investigation into activity of UTI International Ltd.’s IDOF. An examination was carried out by SEBI wherein it was observed that the Noticee has violated the provisions of Regulation 21 of the SEBI (Foreign Portfolio investors) Regulations, 2014 (hereinafter referred to as ‘**FPI Regulations**’); SEBI Circulars dated April 01, 2013; September 13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1)(a) of the FPI Regulations; SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of the FPI Regulations,

Regulations 5(b), 23(1)(a), 23(1)(b) and 24 of the FPI Regulations. Therefore, SEBI initiated enquiry proceedings in respect of Noticee as prescribed under Regulation 35 of Intermediaries Regulations, 2008 to assess the role of the Noticee.

ENQUIRY BY DESIGNATED AUTHORITY

3. A DA was appointed to inquire into and to submit a report pertaining to the aforesaid observations of SEBI. Accordingly, the DA issued a pre-enquiry Show Cause Notice dated September 13, 2019 (hereinafter referred to as “P-SCN”) to the Noticee in the terms of regulation 25(1) of the Intermediaries Regulations to show cause why the action, as contemplated against Noticee in the SCN should not be taken.
4. The allegations in the SCN and the findings of the DA are tabulated as under:

A. Investment in IDOF Scheme which is not a permitted security for investment by FPIs

(i) Allegation:

- (a) *SEBI vide letter dated September 20, 2004 granted in-principle approval under Regulation 24 (2) of the SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as ‘Mutual Fund Regulations’) {currently read as 24 (b) of SEBI (Mutual Funds) Regulations, 1996} to UTI AMC for management and advisory services in respect of Noticee as Offshore Fund (hereinafter referred to as “OSF”). In the approval letter the following conditions were, inter-alia, imposed:*
 - *UTI Mutual Fund shall launch scheme for investment in India and units issued by said scheme shall be subscribed by the IDOF only.*
 - *The activities of the AMC in respect of the offshore funds are segregated with the activities of UTI Mutual Fund.*
 - *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.*
 - *The offshore funds shall be broad based on an ongoing basis as per the provisions of SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as ‘FII Regulations’) {now SEBI (Foreign Portfolio Investors) Regulations, 2014} and guidelines issued thereunder.*
 - *The offshore fund shall comply with all investment restrictions as specified under SEBI (Foreign Institutional Investors) Regulations, 1995 {now SEBI (Foreign Portfolio Investors) Regulations, 2014} and guidelines issued thereunder.*
- (b) *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.

- (c) 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.”
- (d) Subsequently, SEBI vide its letter dated November 25, 2011 advised that OSFs are required to obtain debt limits as prerequisite for all the debt investments. Accordingly, the Noticee took a registration of sub-account in August 17, 2012 under the erstwhile FII - UTI INTERNATIONAL LTD. (INUKFA096204) and subsequent to notification of FPI Regulations, later it has been converted to a category II FPI - INMUFP201315 on September 29, 2015.
- (e) The Noticee had 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 are as follows:

Table No.: 1

(₹ 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

- (f) During the FY 2018-19 (till September 2018), the Noticee had sold securities worth ₹6,298.63 crores. Details of Noticee’s transactions in IDOF Scheme are as under:

Table No.: 2

(₹ in crores)	
Dates of transactions	Value
April 17, 2018	-3,144
May 11, 2018	-985.19
May 21, 2018	9.41
June 11, 2018	- 594
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

- (g) Regulation 15 of the then FII Regulations 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 wherein, FIIs were allowed, inter-alia, to purchase units of domestic mutual funds. However, SEBI approval letter dated September 20, 2004 states that the offshore schemes/ funds shall not be regulated by SEBI under Mutual Funds Regulations.
- (h) Regulation 21 of FPI Regulations 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 is observed that the Noticee had invested in the IDOF Scheme of UTI AMC by giving a color of a domestic mutual fund. It is further observed that IDOF Scheme was neither launched as per the relevant provisions of Mutual Funds Regulations nor is the said fund governed by the aforesaid regulations. Further, IDOF Scheme has not filed any scheme document with SEBI and therefore is not a mutual fund scheme.
- (i) In view of the above, IDOF scheme cannot be considered as a mutual fund scheme as per the provisions of Mutual Funds Regulations and therefore the investment of IDOF are not covered under the FPI Regulations. Thus, it is alleged that the Noticee had invested in IDOF Scheme which is not a permitted security for investment by FPIs and has thus violated regulation 21 of FPI Regulations.

(ii) Findings:

- (a) Regulation 21 of FPI Regulations 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. A similar provision was there in the erstwhile FII Regulations, 1995 in Regulation 15 of the then FII Regulations which 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 wherein, FIIs were allowed, inter-alia, to purchase units of domestic mutual funds.
- (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). Thus, 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) Also, 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.
- (f) Thus, in view of the aforesaid facts, it is quite evident that Domestic Scheme though not registered under MF Regulations, 1996 was a unique arrangement, which, still qualifies it to be a domestic mutual fund scheme. Therefore, the allegation that the Noticee's investment in the Domestic Scheme was not a permitted investment and violated Regulation 21 of the FPI Regulations of 2014 is not established.

B. Investment by IDOF-scheme on behalf of Noticee was without taking limits for investment in government securities. This had caused notional loss of ₹24.43 crores to central exchequer.

(i) Allegation:

- (a) The issue memorandum of the Noticee (an offshore fund) for the offer of USD 1 billion notes, under the head 'the investment objective', states the following:

"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.”

- (b) 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.”

- (c) The various restrictions imposed on investment by FPIs in debt securities and debt oriented mutual funds schemes are as follows:

- SEBI circular dated April 01, 2013, had, inter-alia, specified that FIIs 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.
- SEBI circular dated September 13, 2013, had, inter-alia, specified that FIIs/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.
- 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.
- 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.

- (d) It is noted 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 ₹2,972.59 crores and in Collateralized Borrowing and Lending Obligation (CBLO) was ₹2.87 crores. Thus, total holding of the Noticee in Government securities was ₹2,975.46 crores. Government debt auction held on April 27, 2015 had weighted average of successful bids at 82.12 bps. It may be mentioned that bidding fees collected on auction is deposited in consolidated fund of India. Thus, the Noticee unduly gained ₹24.43 crores (2975.46×0.008212), approximately, by avoiding payment of bidding fees. The investment by IDOF Scheme on behalf of the Noticee was without taking limits for investments in government securities, through which it had made a undue profit of ₹24.43 crore (thereby causing notional loss for the same amount to the Government of India) by acquiring Government securities without purchasing debt limit. Thus, it is observed that investment by IDOF Scheme on behalf of IDOF was without taking limits for

investment in Government Securities. Therefore, it is alleged that the Noticee had not complied with the provisions of SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of FPI Regulations.

(ii) Findings:

- (a) The SEBI Circular No. CIR/IMD/FIIC/15/2013 dated September 13, 2013, extended the allocation mechanism, applicable for corporate debt securities, to FII/QFI (Foreign Institutional Investor/Qualified Foreign Investor) investment in Government Securities. This allowed FIIs/QFIs to invest in Government Debt without purchasing debt limits until the overall investment reached 90%, after which the auction mechanism would be initiated for allocation of the remaining limits. Regulations 21(5) and 23(1)(a) of the FPI Regulations, 2014, require FPIs to comply with the provisions of these regulations and other terms and conditions specified by SEBI or RBI from time to time.
- (b) The Noticee had argued that SEBI had clarified through circular dated November 29, 2004, that investments in securities other than Government Securities (G-Secs) and Treasury Bills constituted corporate debt. According to the Noticee, G-Secs and corporate debt were considered distinct categories of debt. The Noticee claimed that, their investment in the units of the Domestic Scheme, which was a debt-oriented mutual fund, constituted corporate debt investment. It argued that, it had not directly invested in G-Secs. It has also stated that the corporate debt limits were freely available at the relevant time, and it had not breached any limits. Having perused the debt utilization status as on April 27, 2015 provided by Noticee, the same which shows that only 77.45% of the corporate debt limit was exhausted by it.
- (c) The details of the FII Debt Limits Auction Results held on April 27, 2015 were also perused and the same shows that the available quota of Government Debt on that date was over-subscribed, indicating that the Government had fully realized the maximum possible bidding fees.
- (d) In view of the aforesaid, it was observed that the Noticee's investment in the units of the Domestic Scheme qualified as a corporate debt investment and the Noticee did not breach any limit for investment in Government Debt, as alleged in the SCN. Therefore, it was held that the Noticee has not violated the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of the FPI Regulations.

C. Noticee had invested through IDOF Scheme in liquid and money market instruments

(i) Allegation:

- (a) The Noticee had invested in liquid and money market instruments which are not permissible instruments for FPIs/OSFs. Therefore, it is alleged that the Noticee had not complied with the provisions of SEBI circular dated April 01, 2013; September

13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1) of SEBI (FPI) Regulations, 2014.

(ii) Findings:

- (b) SEBI vide circular CIR/IMD/FIIC/6/2013 dated April 01, 2013, decided that FIIs 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. SEBI vide circular dated September 13, 2013 extended the allocation mechanism, as applicable for corporate debt securities, to FII/QFI investment in Government debt securities also. SEBI vide circular dated July 23, 2014 inter-alia enhanced the investment limit in government securities available to all FPIs. With regard to the instant allegation, it is important to note that, as per SEBI Circular No. CIR/IMD/FIIC/1/2015 dated February 03, 2015, FPIs are not permitted to invest in liquid and money market mutual fund schemes.
- (c) The Noticee argued that the Domestic Scheme did not meet the criteria of a liquid or money market mutual fund scheme. They pointed out that, as per Regulation 2(p) of the MF Regulations of 1996, a "money market mutual fund" refers to a mutual fund scheme set up with the objective of investing exclusively in money market instruments. Additionally, SEBI Circular dated January 19, 2009, specified that liquid fund schemes and plans should invest in debt and money market securities with maturities of up to 182 days, and this was later amended to up to 91 days from May 01, 2009. The Noticee argued that the statements and reports of the Domestic Scheme as of December 31, 2015, and December 31, 2016, showed that the scheme did not exclusively invest in securities with maturities of up to 182 or 91 days, nor did it exclusively invest in money market instruments. Consequently, they contended that the Domestic Scheme could not be categorized as a liquid or money market mutual fund scheme.
- (d) Furthermore, the Noticee highlighted that the Investment Objective of the Domestic Scheme, as stated in the original Issue Memorandum, included various types of securities in which the scheme could invest on behalf of the Noticee. These securities, among other things, encompassed liquid and money market instruments. Moreover, Clause 22 of the Constitution of the Domestic Scheme, as amended by an addendum dated April 23, 2015, explicitly stated that the scheme should ensure it did not fall into the category of a money market mutual fund scheme or a liquid mutual fund scheme, as defined by the MF Regulations. This position was reiterated in Schedule 2 of the Constitution of the Domestic Scheme.
- (e) SEBI Circular dated February 03, 2015, aimed to prohibit investments in liquid and money market mutual fund schemes, not liquid and money market instruments themselves. Having perused the statements and reports of the Domestic Scheme as of December 31, 2015 and December 31, 2016, it was found that the list of securities held by the scheme included those with maturity periods exceeding 182 or 91 days. This indicated that, the Domestic Scheme was not exclusively investing in money market instruments. Therefore, it was concluded that the Domestic Scheme did not

meet the criteria for being categorized as a liquid or money market mutual fund scheme, as defined by Regulation 2(p) of the MF Regulations of 1996. Consequently, it was observed that Noticee has not violated the provisions of SEBI Circular dated April 01, 2013, September 13, 2013, July 23, 2014 and February 03, 2015 read with Regulation 23(1) of the FPI Regulations of 2014.

D. Noticee has made incorrect statements regarding compliance with broad based requirement to DDP for registration as Category II FPI

(i) Allegation:

- (a) The SEBI approval letter dated September 20, 2004, inter-alia, specifies that the offshore funds shall be broad based on an ongoing basis as per the provisions of FII Regulations (now FPI Regulations) and guidelines issued thereunder.
- (b) Explanation 2 to regulation 5 of FPI Regulations 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, 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. This position is the same as in the FII regime.
- (c) It is 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 is proprietary money and thus the Noticee meets broad based criteria. However, from the documents provided by UTI AMC vide e-mail dated October 25, 2018 it is observed that DB, Singapore was holder of notes issued by IDOF. Further, a perusal of due diligence report of AZB & partners, provided by DB, it is observed that DB, Singapore was holder of debenture note issued by the Noticee.
- (d) As debenture notes are neither shares nor units, investment by DB, Singapore branch in notes of IDOF cannot be considered for the purpose of determination of broad based requirement. Further, in its conversion application (Form A) from sub-account to FPI, the Noticee had submitted an undertaking stating that it is a broad based fund (as per FPI Regulations). It has also stated that Deutsche Bank AG, Singapore Branch is the only investor with 100% holding. Accordingly, 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 is alleged that IDOF had failed to ensure broad based requirement and thus become ineligible for Category II FPI status.

(ii) Findings:

- (a) According to Explanation 2 to Regulation 5(b) of the FPI Regulations of 2014, a "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, explanation to FAQ 23, it is stated that if 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. This was consistent with the provisions as in the earlier FII regime. Regulation 23(1)(a) & (b) states 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. Regulation 24 of SEBI (FPI) Regulations, 2014 stipulated the code of conduct to be followed by FPI and with respect to instant allegation, I find that, clause 6 of Regulation 24 of SEBI (FPI) Regulations, 2014 states that, a foreign portfolio investor shall not make any untrue statement or suppress any material fact in any documents, report or information to be furnished to the designated depository participant and /or Board.

- (b) The Noticee has contended that when DB became an investor in the Noticee in April 2015, the Original Issue Memorandum and the Second Addendum to the Constitution of the Domestic Scheme were submitted to SEBI. These documents explicitly outlined the terms and conditions related to the issuance of debenture notes by the Noticee to DB. Additionally, it was pointed out that SEBI had issued an administrative warning in 2016 concerning non-compliance with the broad-based criteria due to the Noticee not having any investors from 2013 to April 2015. According to the Noticee, SEBI did not raise any objections to the arrangement DB had with the Noticee.
- (c) In essence, the Noticee argued that the arrangement with DB and the issuance of debenture notes were known to SEBI, and no objections were raised, implying that the Noticee was compliant with the broad-based criteria.
- (d) The Noticee has argued that SEBI was aware of their intention to extend the maturity of the debenture notes issued in April 2015. Furthermore, they stated that a final copy of the Supplementary Issue Memorandum, which explained the extension of the maturity of the debenture notes, was submitted to SEBI on March 06, 2017 and SEBI did not raise any objections to Deutsche Bank (DB) holding debenture notes of the Noticee.
- (e) In addition to these points, the Noticee has also contended that, regardless of the terminology used ("debenture notes"), the nature of these instruments was fundamentally similar to the participating shares/units that had been issued to all investors of the Noticee before the issuance of debenture notes to DB in April 2015. It argued that the debenture notes, in fact and substance, functioned as "units." According to the Noticee, the intention of the parties was clear and the debenture notes possessed all the substance, properties, terms, conditions, features, and characteristics of "units." For instance, Condition 4 on page 43 of the 2015 Issue Memorandum stated that, "The Notes do not bear a stated rate of interest." Additionally, the redemption amount for these Notes was equivalent to the Net Asset Value as on the Maturity Date.
- (f) In view of the above, it was observed that the terms "shares and units" in the explanation provided in Regulation 5(b) of the FPI Regulations of 2014 should not be interpreted narrowly or purely technically. Instead, it is suggested that a broader interpretation should be applied. Moreover, because the "debenture notes" issued by

the Noticee possess the similar characteristics as of the units issued by a mutual fund, the Noticee's arguments were accepted and it was concluded that violation of Regulation 5(b), 23(1)(a) &(b), 24 of SEBI (FPI) Regulations, 2014 by Noticee does not stands established.

5. In view of the aforesaid observations, the DA has not made any adverse observation/allegation and has submitted his report without recommending any measures/actions against the Noticee.

POST ENQUIRY PROCEEDINGS

Show Cause Notice, Reply and Personal Hearing

45. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated December 27, 2023 (hereinafter referred to as “SCN”) was issued communicating the findings of the DA and calling upon the Noticee to show cause as to why any other action in terms of the Intermediaries Regulations, as deemed fit, by the Competent Authority, should not be taken against the Noticee.
46. In response to the SCN, the Noticee filed a reply dated January 18, 2024. The submissions of the Noticee are summarized as under:
- (a) The proceedings u/ S. 11B read with S. 11 (4) of the SEBI Act, 1992 against the Noticee have been disposed of without any adverse finding, and that the findings and observations made therein are applicable to the facts of the present case and ought to be considered by the Competent Authority.*
 - (b) The Noticee has provided a comparative analysis of the findings of the WTM and that of the DA, with respect to each allegation, to show that the allegations raised against the Noticee have been dealt with parallelly and vide the order of the WTM, the Noticee was discharged from all allegations without any finding against them. The Enquiry Report has also not found any wrongdoings with regard to the allegations contained in the P-SCN.*
 - (c) Therefore, SEBI should take consistent approach, and discharge the Noticee.*
 - (d) The principle of res judicata prevents parties from re-litigating questions/ issues that have attained finality through judicial determination and that these principles are equally applicable to the proceedings before SEBI.*
 - (e) Generally, where the Enquiry Report has not recommended any action, SEBI has relied upon the recommendations and has not proceeded further. The Noticee has also provided details of such orders which are provided as under:*

Table 3

Sr. No.	In the matter of	Date of Order
1	<i>Bijal Securities Pvt. Ltd.</i>	<i>June 14, 2007</i>
2	<i>Ajay Natavarlal Securities Pvt. Ltd.</i>	<i>June 14, 2007</i>
3	<i>M/s Bhavik Rajesh Khandhar Share & Stock Brokers Pvt. Ltd.</i>	<i>July 25, 2007</i>
4	<i>Y G Rajaram in the matter of Fortune Informatics Limited</i>	<i>January 09, 2009</i>

(f) *In view of the above, the proceedings against the Noticee may be disposed of without any adverse finding.*

47. The Noticee was granted an opportunity of hearing on February 15, 2024 wherein the Authorized Representatives of the Noticee made the following submissions:

- (a) *Proceedings before the Whole Time Member of SEBI, arising out of the same cause of action, were disposed of without any adverse finding vide order dated September 12, 2023. Similarly, adjudication proceedings qua the Noticee were also disposed of without any imposition of penalty vide order dated September 18, 2023.*
- (b) *Further, the Enquiry Report has recommendation no action against the Noticee based on the aforesaid order dated September 12, 2023.*
- (c) *The principle of res judicata squarely applies to the facts of the case.*
- (d) *In view of the above, it was urged that no further directions may be issued against the Noticee.*

CONSIDERATION:

48. I have carefully perused the SCN including the Enquiry Report issued to the Noticee, the reply filed by the Noticee and other material and details available on record. I note that the DA was required to inquire into and provide his findings on the following issues:

- (i) Whether the Noticee violated Regulation 21 of the FPI Regulations by investing in the IDOF scheme which is not a permitted security for investment by FPIs.
- (ii) Whether the investment by IDOF scheme on behalf of Noticee without taking limits for investment in government securities was in violation of SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of the FPI Regulations.
- (iii) Whether the Noticee had invested through IDOF Scheme in liquid and money market instruments thereby violating SEBI Circulars dated April 01, 2013; September 13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1)(a) of the FPI Regulations.

- (iv) Whether the Noticee made incorrect statements regarding compliance with broad based requirement to DDP for registration as Category II FPI violated Regulations 5(b), 23(1)(a), 23(1)(b) and 24 of the FPI Regulations.
49. I note that the DA has not found any default/violations on the part of the Noticee as alleged vide P-SCN dated September 13, 2019 *inter alia* for the following reasons:
- (i) As regards violation of Regulation 21 of the FPI Regulations, the DA observed at paragraph 26 of the Enquiry Report that the Domestic Scheme though not registered under MF Regulations, 1996 was a unique arrangement, which, still qualifies it to be a domestic mutual fund scheme. Therefore, it was concluded that the allegation that the Noticee's investment in the Domestic Scheme was not a permitted investment and violated Regulation 21 of the FPI Regulations of 2014, is not established.
- (ii) As regards violation of SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of the FPI Regulations, it was observed that at paragraph 32 of the Enquiry Report that investment in the units of the Domestic Scheme qualified as a corporate debt investment and the Noticee did not breach any limit for investment in Government Debt. Therefore, the DA found that the Noticee has not violated the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of the FPI Regulations.
- (iii) As regards violation of SEBI Circulars dated April 01, 2013, September 13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1)(a) of the FPI Regulations, the DA observed at paragraph 37 of the Enquiry Report that the SEBI Circular dated February 03, 2015, aimed to prohibit investments in liquid and money market mutual fund schemes, not liquid and money market instruments themselves. Having perused the statements and reports of the Domestic Scheme as of December 31, 2015 and December 31, 2016, it was found that the list of securities held by the scheme included those with maturity periods exceeding 182 or 91 days which indicated that the Domestic Scheme was not exclusively investing in money market instruments. Therefore, it was concluded that the Domestic Scheme did not meet the criteria for being categorized as a liquid or money market mutual fund scheme, as defined by Regulation 2(p) of the MF Regulations of 1996.

Consequently, it was observed that the Noticee has not violated the provisions of SEBI Circular dated April 01, 2013, September 13, 2013, July 23, 2014 and February 03, 2015 read with Regulation 23(1) of the FPI Regulations of 2014.

- (iv) As regards violation of Regulations 5(b), 23(1)(a), 23(1)(b) and 24 of the FPI Regulations, it was observed at paragraph no. 44 of the Enquiry Report that the terms “shares and units” in the explanation provided in Regulation 5(b) of the FPI Regulations of 2014 should not be interpreted narrowly or purely technically. Instead, it is suggested that a broader interpretation should be applied. Moreover, because the “debenture notes” issued by the Noticee possess the similar characteristics as that of the units issued by a mutual fund, the DA concluded that violation of Regulation 5(b), 23(1)(a) &(b), 24 of SEBI (FPI) Regulations, 2014 by Noticee does not stand established.

50. On the basis of the observations captured at paragraph no. 49 of this order and in light of the findings in SEBI’s order dated September 12, 2023, I note that the DA has not made any adverse observation/allegation against the Noticee and has submitted his report without recommending any measures/actions as specified in regulation 27 of the Intermediaries Regulations. The DA in his report has observed as under:

“45. Also, in light of findings of order dated September 12, 2023 passed by Hon’ble Whole Time member of SEBI (“WTM”) under Sections 11, 11(4) and 11B (1) read with Section 19 of the SEBI Act, 1992 I note the Hon’ble WTM has disposed of the SCN against the Noticee without any direction in the same matter having similar facts and circumstances.

46. Therefore, in light of analysis of above facts and circumstances, material available on record and previous findings of SEBI, it is felt that the Noticee cannot be roped in for the alleged violations as mentioned in the SCN dated September 13, 2019. In view of the same, no adverse findings are concluded against the Noticee.

RECOMMENDATION

*47. In view of the foregoing and after taking into consideration all the facts and circumstances of the case, **no action is recommended against the Noticee viz. India Debt Opportunities Fund Limited** under instant proceedings in terms of the provisions of regulation 26 of the Intermediaries Regulations, 2008.”*

51. The SCN including the Enquiry Report neither refers to any other additional evidence/ violations committed by the Noticee nor there is any adverse observation by the DA which call for any adjudication before me.
52. I also note that the Hon'ble Whole Time Member of SEBI passed an order dated September 12, 2023 under Sections 11, 11(4), 11B (1) read with Section 19 of the SEBI Act, 1992 disposing of the SCN against the Noticee on the same issues which are the subject matter of the present proceedings, without any direction. The issues framed and findings of the Hon'ble Whole Time Member are as under:

Issue no. 1: *Investment in IDOF Scheme not being a permitted security for investment by FPIs*

Findings:

“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 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.”

Issue no. 2: *Investment in government securities without taking limits*

Findings:

“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.

...

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.”

Issue no. 3: Investment in liquid and money market instruments

Findings:

“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.”

Issue no. 4: Incorrect statement made by Noticee regarding compliance with broad based requirement

Findings:

“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.”

53. The Hon’ble Securities Appellate Tribunal in **Runicha Merchants Pvt. Ltd. v. SEBI**¹ observed that SEBI as a regulator is required to be consistent with action taken by it against an entity.

¹ Appeal No. 772 of 2021 (decided on 06/01/2022) available at <https://sat.gov.in/english/pdf/E2022_JO2021772_64.PDF>.

54. Considering the aforesaid, I note that there is no issue/charge which would warrant any further adjudication in the instant proceedings. Thus, in the absence of any dispute or facts being brought contrary to the recommendation of the DA, I am of the considered view that the SCN including the Enquiry Report needs to be disposed of without issuing any direction and the matter be put to rest in this regard.

ORDER:

55. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 27(5) of the SEBI (Intermediaries) Regulations, 2008, I dispose of the enquiry proceedings initiated against the Noticee i.e., The India Debt Opportunities Fund vide the SCN dated December 27, 2023 without any direction.
56. The Order shall come into force with the immediate effect.
57. A copy of this order shall be served upon the Noticee, all recognized Stock Exchanges, Registrar and Transfer Agent and Depositories for ensuring compliance with the order.

Date: February 26, 2024
Place: Mumbai

Sd/-
DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA