BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/DD/NK/2023-24/29278-29280]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

1	**UTI Mutual Fund (Noticee No. 1)** (PAN No. AAATU1088L)	2	**UTI Asset Management Company Limited (Noticee No. 2)** **(**PAN No.: AAACU6260F)
3	**India Debt Opportunities Fund Ltd. (Noticee No. 3)** (PAN No.: AABCI7850G)		

(Noticee No. 1, 2 and 3 are collectively referred to as "Noticees")

In the matter of India Debt Opportunities Fund Ltd. of UTI International Ltd.

BACKGROUND:

1. UTI Mutual Fund ("**Noticee1/UTI Mutual Fund**") is a SEBI registered Mutual Fund with registration no. MF/048/03/01 and UTI Asset Management Company Limited ("**Noticee 2/ UTI AMC"**) is a SEBI registered portfolio managers with registration no. INP 000000860. Noticee 2 had filed documents with SEBI seeking permission for providing management and advisory services to the India Debt Opportunities Fund (hereinafter referred to as '**IDOF**') as Offshore Fund (herein after referred to as "**OSF Structure**").

2. SEBI carried out an examination into activity of UTI International Ltd.'s (**UTIIL**) IDOF, a category II Foreign Portfolio Investor (hereinafter referred to as '**FPI**') with respect to the operations of IDOF and India Debt Opportunities Fund Scheme

(hereinafter referred to as “**IDOF Scheme**”) of Noticee 1 to ascertain any violations of, *inter-alia,* of Securities and Exchange Board of India Act,1992(herein after referred to as “**SEBI Act,1992**”) Securities and Exchange Board of India (Mutual Funds Regulations), 1996 (herein after referred to as “**Mutual Fund Regulations/ SEBI Mutual Fund Regulations, 1996”**), Securities and Exchange Board Of India (Foreign Portfolio Investors) Regulations, 2014(herein after referred to as **FPI Regulations, 2014/ SEBI FPI Regulations 2014**) by Noticees.

3. Pursuant to Examination, SEBI has observed that:
   a. Noticees 1 and 2 facilitated IDOF by giving a color of domestic mutual fund to IDOF Scheme.
   b. Noticees 1 and 2 violated the conditions stated in the SEBI’s letter dated September 20, 2004.
   c. Noticees 1 and 2 did not segregate activities as management and advisory services and fund manager for IDOF/IDOF scheme and that of the domestic mutual fund.
   d. Noticee 3 invested in IDOF –scheme which is not a permitted security for investment by FPIs.
   e. Investment by IDOF scheme on behalf of Noticee 3 was without taking limits for investment in government securities. This had caused notional loss of ₹24.43 crores to central exchequer.
   f. Noticee 3 had invested through IDOF Scheme in liquid and money market instruments.
   g. Noticee 3 has made incorrect statements regarding compliance with broad based requirement to DDP for registration as Category II FPI.

4. Noticee No. 1 and 2 have violated the provisions of regulation 24(b), regulation 25(1) and 25(16) of SEBI (Mutual Funds) Regulations, 1996 (herein after referred to as ‘MF regulations, 1996’) and Noticee no. 3 has violated the provisions of regulation 21 of the SEBI (Foreign Portfolio Investors) Regulations, 2014 (hereinafter referred to as ‘FPI regulation, 2014’); SEBI circular dated April 01,

2013; September 13, 2013, July 23, 2014 and February 03, 2015 read with regulation 23(1)(a) of the FPI Regulations, 2014; SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of the FPI Regulations, 2014, regulations 5(b), 23(1)(a), 23(1)(b) and 24 of the FPI Regulations, 2014.

5. In view of the same, SEBI initiated adjudication proceedings against Noticees under Section 15HB of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

6. Initially, Shri Santosh Shukla was appointed as adjudicating officer ("erstwhile AO") vide order dated June 26, 2019 to inter alia enquire and adjudge under Section 15HB of SEBI Act as applicable for the alleged violation specified above. Subsequently, the matter was transferred to Shri Amit Pradhan vide order dated January 07, 2020. Thereafter, it was reassigned to the undersigned **('AO")** which was communicated vide communique dated June 21, 2021 to carry out adjudication proceedings. These proceedings are therefore being carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING IN THE MATTER OF NOTICEE 1 & 2

7. Show cause notices EAD-2/AP/VS/2683/1/2020 and EAD-2/AP/VS/2683/2/2020 dated January 21, 2020 (hereinafter referred to as **SCNs**) were issued to the Noticee no. 1 and 2 respectively under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 read with Section 15I of SEBI Act to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudicating Rules and penalty be not imposed under section 15 HB of SEBI Act for the violations alleged to have been committed by them, as applicable. The

SCNs were sent through the speed post acknowledgment due. The said SCNs were duly delivered to Noticees' address.

8. The allegations levelled against the Noticee 1 & 2 in the abovementioned SCNs *inter alia* states as under:

Noticees. 1 and 2

"

1. *UTI Mutual Fund ("the Noticee No. 1") is a SEBI registered Mutual Fund with registration no. MF/048/03/01 and UTI Asset Management Company Limited ("the Noticee No. 2) is a SEBI registered portfolio managers with registration no. INP 000000860 (hereinafter the Noticee No. 1 and 2 jointly referred to as 'the Noticees'). The Noticee No. 2 had filed documents with SEBI seeking permission for providing management and advisory services to the India Debt Opportunities Fund (hereinafter referred to as 'IDOF') as offshore fund.*
2. *During examination into activity of UTI International Ltd.'s (UTI IL) IDOF, a category II Foreign Portfolio Investor (hereinafter referred to as 'FPI') with respect to the operations of IDOF and India Debt Opportunities Fund Scheme (hereinafter referred to as "IDOF Scheme") of the Noticee No. 1, SEBI observed the following: -*

A. Facilitation to IDOF by giving a color of domestic mutual fund to IDOF Scheme:

*i. SEBI vide letter dated September 20, 2004 (**Annexure-A)** granted in-principle approval under regulation 24 (2) of the SEBI (Mutual Funds) Regulations, 1996 {currently read as 24 (b) of (SEBI Mutual Funds) Regulations, 1996} (hereinafter referred to as 'Mutual Fund Regulations') to the Noticee No. 2 for management and advisory services in respect of IDOF as Offshore Fund (hereinafter referred to as "**OSF**"). The said approval was granted subject, inter-alia, to the following conditions:*

ii. The Noticee No. 1 shall launch scheme for investment in India and units issued by said scheme shall be subscribed by the IDOF only.

iii. *The activities of the Asset Management Company (AMC) in respect of the offshore funds are segregated with the activities of the Noticee No. 1.*

iv. *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.*

v. *The offshore funds shall be broad based on an ongoing basis as per the provisions of SEBI (Foreign Institutional Investors) Regulations, 1995 {now SEBI (Foreign Portfolio Investors) Regulations, 2014} and guidelines issued thereunder (hereinafter referred to as 'FII Regulations' and 'FPI Regulations' respectively).*

vi. *The offshore fund shall comply with all investment restrictions as specified under the FII Regulations, (now FPI Regulations) and guidelines issued thereunder.*

vii. *The offshore schemes/ funds shall not be regulated by SEBI under Mutual Funds Regulations and this fact shall be clearly brought out in the offer document/prospectus of these offshore funds.*

b. *The Noticee No. 2, vide letter dated March 01, 2005 (**Annexure-B**) had, inter-alia, submitted to SEBI that the IDOF (an OSF) shall invest substantially all its assets in an underlying domestic mutual fund scheme i.e. IDOF Scheme to be launched by the Noticee No. 2 with the approval of UTI Trustee Company Pvt. Ltd. The Noticee No. 2, vide letter dated November 24, 2011 (**Annexure-C**), had, inter-alia, further 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.".*

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

d. *IDOF had invested in 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 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***

e. *During the FY 2018-19 (till September 2018), the IDOF had sold securities worth ₹6,298.63 crores. Details of IDOF's transactions in IDOF Scheme are as following:*

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***

f. *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 (reference source https://www.rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=174) 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 (refer Annexure-A) states that the offshore schemes/ funds shall not be regulated by SEBI under Mutual Funds Regulations.*

g. *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 IDOF had invested in the IDOF Scheme of the Noticee No. 2 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 mutual fund governed by the Mutual Funds Regulations. Further, IDOF Scheme has not filed any scheme document with SEBI and therefore is not a mutual fund scheme.*

h. *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 as investments in mutual funds. Therefore, it is alleged that the Noticees No. 1 and 2 by giving a color of a domestic mutual fund to IDOF schemes have facilitated IDOF, an FPI to invest in securities which otherwise is not a permissible for investment by FPIs and has, thus, violated regulation 24(b), regulation 25(1) and 25(16) of the Mutual Fund Regulations.*

B. Non-compliance with the conditions stated in the SEBI's letter dated September 20, 2004

i. *The Noticee No. 2 had vide its letter dated March 01, 2005 (refer Annexure-B) had, inter-alia, informed to SEBI that IDOF (OSF) shall invest substantially all its assets in an underlying domestic mutual fund schemes i.e., IDOF schemes to be launched by the Noticee No. 2 with the approval of UTI Trustee Company Pvt. Ltd. The Noticee No. 2 had also submitted a legal opinion dated October 12, 2004 provided by Shri Y.V. Chandrachud, former chief Justice of India wherein IDOF scheme was treated as mutual fund scheme. It was noted that, though, the Noticees took approval from SEBI for management of IDOF as offshore fund, the management was actually with UTI International Ltd. It was noted that no such approval was given to UTI International Ltd. Therefore, it is alleged that the Noticees No. 1 and 2 failed to ensure the compliance as specified under FII Regulations and thus violated regulation 25(16) of the Mutual Fund Regulations.*

C. Segregation of activities as management and advisory services and fund manager for IDOF/IDOF scheme and that of the domestic mutual fund

j. *The legal opinion dated October 12, 2004 provided by Shri Y. V. Chandrachud, mention that UTI International Ltd. being 100% subsidiary of the Noticee No. 2 can undertake management and advisory services of OSFs.*

k. *In this regard, it was noted from an article (**Annexure-E**) in https://www.ipe.com under the heading "UTI's overseas offices: Turning a liability into an assets" in September 2012. The article refers how Mr. Praveen Jagwani, MD of UTI international Ltd. raised USD 1 billion in 2011 through IDOF route. Subsequently, IDOF got registered as a sub-account of UTI International Ltd. i.e., a FII. From the legal due diligence report of AZB & Partners (appointed by Deutsche Bank for their investment in IDOF), it is observed that UTI International Ltd. is the investment manager of IDOF and hold all (i.e., 100%) management shares of IDOF.*

l. *Accordingly, it is concluded that management of IDOF as OSF s not with the Noticee No. 2 but with its subsidiary UTI International Ltd. It is noted that no approval for the same was ever taken from SEBI. Further, it cannot be assumed that approval granted to the Noticee No. 2 shall automatically be applicable to its subsidiary UTI International Ltd.*

m. *Further, the Noticee No. 2 informed that IDOF scheme is managed by their Fund manager Mr. V. Srivatsa from February 2012 till date. However, it is noted from UTI's website at https://www.utimf.com/about/key-people/fund-managers which indicates that Mr. V. Srivatsa is an Executive Vice President & Fund Manager – Equity at the Noticee No. 2 Ltd. In view of the above, it is noted that the Noticee No. 2 does not have separate fund manager for IDOF scheme from their domestic schemes and therefore not in compliance with the provision of regulation 24(b)(vi) of Mutual Fund Regulations. (List of UTI's Fund Managers available on UTI's website is enclosed as **Annexure-F**).*

3. *In view of aforesaid observations and findings, it is alleged that the Noticees No. 1 and 2:*

a. *Facilitated to IDOF by giving a color of domestic mutual fund to IDOF Scheme.*
b. *Violated the conditions stated in the SEBI's letter dated September 20, 2004.*
c. *Did not segregate activities as management and advisory services and fund manager for IDOF/IDOF scheme and that of the domestic mutual fund.*

4. *It is alleged that the Noticees have violated the provisions of regulation 24(b), regulation 25(1) and 25(16) of the Mutual Fund Regulations."*

Inspection of Documents by Noticees 1 & 2

9. Noticee no. 1 and 2 vide letter dated January 30, 2020 and February 05, 2020 inter-alia sought inspection of documents, which was granted to them on February 14, 2020 by erstwhile AO, Shri Amit Pradhan. The Authorised representatives of Noticee no. 1 and 2 ("AR") duly inspected the documents on February 14, 2020. Noticee no. 2 vide letter dated February 18, 2020 inter-alia stated that they will submit a response by March 03, 2020.Noticee no. 2 vide letter dated March 03, 2020 submitted its response to SCN.

Hearing

10. Pursuant to my appointment as Adjudicating officer, Noticees were provided with an opportunity of personal hearing through WEBEX and another opportunity for submitting replies in the interest of natural justice and in order to conduct inquiry as per Rule 4 (4) of Adjudicating Rules as applicable. In this regard, Hearing Notices dated April 22, 2022 were sent to Noticee 1 and 2 through SPAD for hearing to be held on May 04, 2022. Hearing notice sent to Noticee no. 1 and 2 were served vide SPAD. Noticee no. 1 and 2 requested for adjournment of hearing vide email dated April 26, 2022. Thus, hearing was adjourned to May 17, 2022 for Noticee no. 1 and 2 and they were also granted time to file reply if any to SCN by May 15, 2022. Vide email dated May 06 and 10, 2022, Noticee no.1 and 2 requested eight weeks' time to file reply and another opportunity of personal

hearing post that. Undersigned adjourned the hearing to June 13, 2022 and it was further adjourned to June 27, 2022. Thus, On the scheduled date of hearing i.e. June 27, 2022, Authorised Representative (AR) of Noticee no. 1 and 2 attended the hearing and reiterated the submissions made by Noticee no. 1 and 2 in its reply to SCN and also undertook to make additional written submissions by July 11, 2022. Noticee no. 1 and 2 vide email dated July 15, 2022 submitted its reply to SCN. Noticee no. 1 and 2 were also provided redacted copy of investigation report in the captioned matter on September 13, 2022. In this regard, Noticee no. 1 and 2 vide letter dated September 27, 2022 stated that, *the contents of the Report are similar to those of the SCN. As such, for the same of brevity, the Noticees repeat and reiterate the submissions made vide its Reply and Additional Submissions in response to the SCN, as if the same have been set out herein in extenso*. Due to considerable elapse of time from the date of hearing, vide email dated September 01, 2023, Noticee 1 and 2 was provided an opportunity to file additional submissions, in the matter, if any. in this regard, Noticee 1 and 2 vide email dated September 04, 2023 has stated that, they do not have any further additional submissions to make and requested the Undersigned to consider its reply dated March 03, 2020 and additional Written Submissions dated July 15, 2022.

<u>Replies submitted by Noticees 1 to 2:</u>

11. From the replies submitted by Noticees 1 and 2, I note that they had submitted similar replies. The replies submitted by Noticees 1 and 2 are given below:

A. Common Replies of Noticee 1 and 2

i. The chronology of events leading to the receipt of the Notice as well as the relevant facts pertaining thereto, is briefly set out below, for ease of reference:

Date	Event
January 14,2003	Certificate of registration as a mutual.

May 5, 2004	A letter by UTI Asset Management Company Limited ("UTI AMC"), previously known as UTI Asset Management Company Pvt. Ltd., was submitted to SEBI proposing the launch of an offshore open-ended India Debt Opportunities Fund ("IDOF Offshore"), inter alia, also annexing the preliminary term ("Preliminary Term Sheet"). It, inter alia, explained the structure of IDOF Offshore and stated that UTI International Ltd. ("UTI International") would be receiving the 'investor relation fee'.
September 20, 2004	SEBI granted an in-principle Approval ("2004 In-principle approval"). The said approval categorically stated that the Noticee shall launch the scheme for investment in India and the units issued by this scheme shall be subscribed by IDOF Offshore only.
March I, 2005	UTI AMC addressed a letter to SEBI ("March Letter"), inter alia, setting out the proposed structure of IDOF Offshore and the India Debt Opportunities Fund Unit Scheme ("Domestic Scheme"/ "IDOF Scheme"). The March Letter, amongst other points, categorically stated as under: (i) IDOF Offshore shall invest all its assets in an underlying Domestic Scheme. (ii) IDOF Offshore will be governed by investment restrictions contained in the FII Regulations. It shall not be required to comply with the MF Regulations. (iii) The Domestic Scheme will invest in debt securities. (iv) IDOF Offshore will be the only investor in the Domestic Scheme. The final term sheet was also attached to March Letter ("Final Term Sheet"), inter alia, stating that UTI International shall be the manager of IDOF Offshore.

May 17,2005	SEBI sent a letter ("SEBI May Approval") to the Noticee, inter alia, approving the request in the March Letter and advising the Noticee to proceed with the launch of the scheme.
September 12, 2011	The proposed induction of new investors in IDOF Offshore was informed to SEBI. An opinion from M/s Dave & Girish was also sought in this respect confirming the proposed structure.
September 12, 2011	The Private Placement Memorandum of IDOF Offshore dated September 01, 2011 along with the term sheet was submitted to SEBI, which inter alia; specified that UTI International will be the manager of IDOF Offshore.
September 19, 2011	SEBI was informed of the exit of DEPFA Bank PLC from IDOF Offshore. At the time of meeting, it was confirmed to officials UTI AMC by SEBI that, the induction of new foreign investors will not require any further SEBI approval as the same has already been granted vide the 2004 In-principle Approval. A letter dated September 20, 2011 was also submitted to SEBI.
October 19, 2011	An email was sent by SEBI to UTI AMC, seeking a confirmation of compliance with all investment restrictions as specified in the FII Regulations. UTI AMC thereby submitted the relevant confirmation.
November 22, 2011	A letter was sent by SEBI to UTI AMC, seeking a confirmation in relation to availing of debt limits for the amount invested in IDOF Offshore. UTI AMC submitted that, since neither IDOF Offshore nor the Domestic Scheme is a Foreign Institutional Investor ("FII"), they are not required to avail the debt limits required for FIIs for investment in debt securities in India.
November 25, 2011	SEBI clarified that all offshore funds (IDOF Offshore in present case) are required to acquire debt limits as a pre-requisite for all their debt

	investments, and they cannot invest in debt without acquiring such limits. UTI AMC submitted that the debt limits will be acquired if any further funds are raised in IDOF Offshore and investments are made in debt securities.
November 30, 2011	A copy of the Unit Purchase Agreement was filed with SEBI ("UPA 2011"), inter alia, explaining the investment structure of IDOF Offshore and the Domestic Scheme, and clearly indicating that UTI International is the manager of IDOF Offshore.
August 16, 2012	An application was submitted UTI International to register IDOF Offshore as a sub-account. It was further mentioned in the application that the sub-account registration is being sought to enable it to participate in the debt limit allocation/auction process.
August 17, 2012	Registration of sub-account was granted to IDOF Offshore by SEBI.
November 27, 2012	Letter was sent to SEBI stating that IDOF Offshore will participate in the debt limit allocation / auction process.
December 12, 2014	A meeting was held with the SEBI officials, which was attended by officials from Deutsche Bank AG ("DB") and UTI AMC, wherein the following points were discussed: (i) The investment by IDOF Offshore in the Domestic Scheme would be considered as an investment in 'corporate debt' for the purpose of compliance with limits on FII investments in debt securities. (ii) It was further mentioned that, the SEBI circular dated January 31, 2008 would be complied with by IDOF Offshore in regards to investment in corporate debt. Vide letter dated January 15, 2015, the minutes of the meeting held on December 12, 2014 were forwarded to SEBI.

<table>
<tr><td>April 22, 2015</td><td>Issue memorandum of IDOF Offshore for offer of USD 1,000,000,000 Notes linked to India Debt Opportunities Fund Units Scheme due 2017, together with any further notes ("Original Issue Memorandum"), was sent to SEBI pursuant to the induction of new investor in IDOF Offshore</td></tr>
<tr><td>April 24, 2015</td><td>SEBI was provided with the Unit Purchase Agreement dated April23, 2015 ("UPA 2015") made between:
(i) IDOF Offshore·
(ii) UTI International
(iii) UTI AMC, and
(iv) UTI Trustee Company.
UPA 2015 categorically specified that UTI International shall be the manager of IDOF offshore.</td></tr>
<tr><td>April 24, 2015</td><td>Second Addendum to the Constitution of the Domestic Scheme dated April 23, 2015,.</td></tr>
<tr><td>July 7, 2015</td><td>Pursuant to SEBI's email dated June 29, 2015, details were provided to SEBI in relation to IDOF Offshore meeting the broad-based criteria, as follows:
<table>
<tr><td>Investor</td><td>Investment</td><td>Redemption / Exit</td></tr>
<tr><td>DEPFA Investment Bank Ltd. And DEPFA Bank PLC</td><td>January 2006</td><td>September, 2010</td></tr>
<tr><td rowspan="2">Foreign Investors (more than 20)</td><td>September 2011</td><td>September 2012</td></tr>
<tr><td>October 2012</td><td>October 2013</td></tr>
<tr><td>DB (proprietary money)</td><td>April, 2015</td><td>April 2017</td></tr>
</table></td></tr>
<tr><td>September 21, 2015</td><td>An application was submitted to SEBI for conversion from a sub-account to an FPI</td></tr>
</table>

September 29, 2015	Registration as an FPI was granted to IDOF Offshore.
March 6, 2017	Supplemental Issue Memorandum dated March 6, 2017.
September 12, 2018	Application was made for continuance of registration as FPI for IDOF Offshore.
March 11, 2019	Pursuant to the meeting held between UTI AMC and SEBI Officials on March 11, 2019, the following was submitted to SEBI vide letter dated March 12, 2019: (i) Corporate bonds limits were freely available during DB's investment in IDOF Offshore in April, 2015; and (ii) Investment by IDOF Scheme are made as per the Original Issue Memorandum. Thus, the restrictions as applicable to FIIs/FPIs are not applicable to the IDOF Scheme. In this regard, please note that the units so issued were fully redeemed March 14; 2019.
January 24, 2020	Noticee received the Notice

ii. Noticees 1 and 2 have not violated Regulation 24(b), Regulation 25(1) and Regulation 25(16) of the MF Regulations, since the Noticees 1 and 2 did not, at any point in time, give the colour of domestic mutual fund to the IDOF Scheme or facilitate IDOF Offshore to invest in non-permissible securities.

iii. During the FII regime, SEBI had granted the 2004 In-principle Approval. The 2004 In-principle Approval unequivocally allowed the launch of Domestic Scheme, whose units were proposed to be subscribed by IDOF Offshore.

iv. Vide March Letter sent to SEBI by UTI AMC, it was clearly stated that IDOF Offshore shall invest in the units of the Domestic Scheme. In the month of May 2005 SEBI explicitly approved the launch of the scheme by the Noticee. Therefore, it is abundantly clear that IDOF Offshore was permitted to invest in the IDOF Scheme, pursuant to the 2004 In-principle Approval and the SEBI May

Approval. As set out in the factual background, SEBI was aware of this arrangement since issuance of the 2004 In-principle Approval as well as SEBI May Approval.

v. In the present case, since the SEBI May Approval did not provide for fulfilment of any such requirement, the said documents were not submitted to SEBI while seeking approval for IDOF Scheme I Domestic Scheme; although, it was otherwise a standard practice in cases where a mutual fund scheme was being issued approval under Chapter V of the MF Regulations. Accordingly, the Noticee's legitimate expectation further strengthened that it was not in breach of any applicable regulations and thus, proceeded on the understanding that the Domestic Scheme had been accorded a special and unambiguous approval by SEBI.

vi. UTI AMC was always in continuous and consistent communication with SEBI since 2004, in relation to the approved structure and the investments proposed to be undertaken by IDOF Offshore and IDOF Scheme. In fact, at no time did SEBI raise any objection in relation to, (i) the IDOF Scheme or otherwise allege that it was not duly set up; or (ii) that the investments by IDOF Offshore in the units of the Domestic Scheme were not permissible.

vii. There were open, transparent and continuous discussions were undertaken with SEBI officials over the years, relating to the structure of IDOF Offshore, the Domestic Scheme and the investments made therein.

viii. Applying the principles of legitimate expectation, it is a settled position in law that a party is legitimately expected to being accorded certain treatment based on previous approval from governmental authority. The Noticee had no reason to believe, exercising any standard of reasonable and professional judgement, that there was any violative conduct involved in setting up the IDOF Scheme, pursuant to the 2004 In-principle Approval and the SEBI May Approval. Noticees 1 and 2 in their replies replied on the judgement of Hon'ble Supreme Court in the matter of National Buildings Construction Corporation v. S. Raghunathan & Ors.

ix. The Preliminary Term Sheet submitted to SEBI vide letter dated May 5, 2004, which explained the structure of IDOF Offshore, categorically stated that UTI International would be receiving the 'investor relation fee'. Pursuant to the said letter, SEBI granted the 2004 In-principle Approval.

x. Vide the March Letter, UTI AMC inter- alia, once again set-out the proposed structure of IDOF Offshore and the IDOF Scheme thereby attaching the Final Term Sheet in this regard. The Final Term Sheet, amongst other points, specifically provided that UTI International shall be the manager of IDOF Offshore. Following the submission of the said Final Term Sheet, SEBI vide the SEBI May Approval advised the Noticee to proceed with the launch of the scheme (Annexure 5). In its capacity as the manager of IDOF Offshore, UTI International was responsible for the marketing of IDOF Offshore to overseas clients and performing related administrative activities, including managing relations in terms of communication of performance and issuing periodical reports.

xi. In addition to the Preliminary Term Sheet and the Final Term Sheet, SEBI was informed of the fact that UTI International was the manager of IDOF Offshore on various other occasions.

xii. The various submissions and declarations made in this behalf that, UTI International was always proposed as the manager of IDOF Offshore since the inception of the proposal in early May, 2004, and that this fact had been duly intimated to SEBI since May 2004. As a result, the Noticee was legitimately expected to be under the bona-fide belief that SEBI was fully aware that UTI International was the manager of IDOF Offshore, since SEBI had itself granted relevant approvals as mentioned hereinabove.

xiii. Additionally, it is relevant to note that UTI AMC was exclusively acting as investment manager of the IDOF Scheme and was responsible for constructing investment portfolios, effecting investment decisions, monitoring corporate actions, and the overall performance of the IDOF Scheme, in addition to back office functions such as maintenance books of accounts and computation of the NAV. UTI AMC never intended to act as or hold itself out as the manager of

IDOF Offshore. This is clearly borne out by a perusal of the documents which were submitted to SEBI.

xiv. Regulation 24(b) of the MF Regulations, permits an AMC to undertake certain activities, either by itself or through its subsidiaries. UTI AMC was acting solely as the investment manager of IDOF Scheme and was not acting as a manager of IDOF Offshore. Further, it had been categorically clarified in the information provided to SEBI (including the March Letter and the Final Term Sheet) that UTI International would act as the manager of IDOF Offshore. Therefore, given that: (a) SEBI had specifically provided the SEBI May Approval pursuant to the submission of these details, and (b) Regulation 24(b) permits the subsidiary of an AMC to unde11ake activities in the nature of management and advisory services provided to offshore funds, UTI International was permitted to undertake the management of IDOF Offshore, without seeking a separate approval from SEBI in this regard.

xv. W.r.t. violation of code of conduct the SCN is silent about the exact provision or clause of the Code of Conduct of the MF Regulations which has been violated by the Noticee.

xvi. Regulation 24(b)(vi) of the MF Regulations was included vide the SEBI (Mutual Funds) (Amendment) Regulations, 2011, pursuant to the agenda of the SEBI board meeting dated July 28, 2011. The said agenda undertook the 'Review of certain policies relating to mutual funds- Amendment to SEBI (Mutual Funds) Regulations, 1996'. It, inter alia, also indicated that the primary legislative intent behind recommending the requirement of having separate fund managers for separate portfolios, was to avoid the possibility of any favourable treatment being given to one set of investors vis-a-vis another set of investors. Consequently, it sought to minimize the inherent conflict of interest in case of different products/businesses being dealt with the same investment management team.

xvii. Accordingly, it is humbly submitted that in order to address the aforementioned issue of conflict of interest, UTI AMC ensured clear segregation in terms of the books of accounts, bank accounts, securities/investments accounts as well as back- office function between schemes formed for investment by offshore funds, such as, the IDOF Scheme and other schemes of the Noticee.

xviii. Moreover, it is submitted that although UTI AMC had the same fund manager viz., Mr. V. Srivatsa, for IDOF Scheme viz., a debt oriented scheme; and other equity oriented mutual fund schemes of the Noticee, there was a clear distinction in the, (i) type of schemes; (ii) asset allocation; (iii) investment objectives; (iv) characteristics; and (v) investment strategies, vis-a-vis IDOF Scheme and other equity oriented mutual fund schemes of the Noticee. Thus, the difference in the primary nature of the schemes, suitably addressed the potential risk of conflict of interests and ensured that investment decisions for the IDOF Scheme were not being undertaken at the expense of or in preference to the other equity oriented mutual fund schemes of the Noticee.

xix. Considering the above distinction, the stipulation as to replication of portfolio is not applicable in the present instance. Hence the Noticee cannot be said to be in violation of Regulation 24(b)(vi) of the MF Regulations.

B. **Additional reply of Noticee 1**:

i. Regulations 24(b) and Regulations 25(1) do not refer to a mutual fund in any manner whatsoever. In fact, the said provisions relate entirely to an asset management company ("AMC"), and accordingly set out the restrictions and obligations as applicable to AMCs.

ii. Regulation 2(q) of the MF Regulations, defines mutual fund to mean, "a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities including money market instruments or gold or gold related instruments or real estate assets". Therefore, the MF Regulations, clearly recognize a 'mutual fund' as a separate legal entity, distinct in form, nature and substance from an AMC. In this relation, Regulation I 0 and Chapter III of the MF Regulations, specifically seek to provide the requirements for registration as a mutual fund, along with the terms and conditions for undertaking the *constitution and management of the mutual fund so registered. Therefore, in registration with SEBI as a mutual fund, and was granted the Certificate of Registration on January 14, 2003, by SEBI. Moreover, the Noticee also executed and registered a trust deed dated December 9, 2002, thereby setting out its roles and responsibilities as a mutual fund trust.*

iii. *The scope of provisions applicable to an AMC, cannot be so expanded to include mutual funds within their ambit, especially when the regulations prescribe a completely separate framework for mutual funds. Accordingly, none of the provisions relating to AMCs, as have been referred in the Notice, can be applied to establish any allegation against a mutual fund. Thus, in the present matter, since none of the allegations under the Notice purport to a mutual fund, the Noticee, cannot be said to have violated the provisions so specified in the Notice and on this ground alone, the Notice is liable to be set aside*

iv. *the scope of provisions applicable to an AMC, cannot be so expanded to include mutual funds within their ambit, especially when the regulations prescribe a completely separate framework for mutual funds. Accordingly, none of the provisions relating to AMCs, as have been referred in the Notice, can be applied to establish any allegation against a mutual fund. Thus, in the present matter, since none of the allegations under the Notice purport to a mutual fund, the Noticee, cannot be said to have violated the provisions so specified in the Notice and on this ground alone, the Notice is liable to be set aside.*

v. *Paragraph 3(c) of the SCN does not mention any provision of the Mutual Fund Regulations violated by Noticee 1.*

<u>Consideration of Issues, Evidence and Findings Against Noticees 1 & 2</u>

12. In the instant matter, the following issues arise for consideration and determination in respect of Noticee 1 & 2:

I. Whether Noticees 1 and 2 have violated the provisions of regulation 24(b), regulation 25(1) and 25(16) of the Mutual Fund Regulations?

II. Does the violation, if any, attract monetary penalty under Section 15 HB of SEBI Act (as applicable)?

III. If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

13. Before moving forward, it is pertinent to refer to the relevant provisions of Mutual Fund Regulations, 1996 as alleged to be violated by Noticees 1 and 2:

Mutual Fund Regulations:

Regulations 24: *The asset management company shall*

(a)…

(b) not undertake any business activities other than in the nature of management and advisory services provided to pooled assets including offshore funds, insurance funds, pension funds, provident funds, or 85[such categories of foreign portfolio investor subject to such conditions, as maybe specified by the Board from time to time], if any of such activities are not in conflict with the activities of the mutual fund: Provided that the asset management company may itself or through its subsidiaries undertake such activities, as permitted under clause (b), if, -

(i) it satisfies the Board that bank and securities accounts are segregated activity wise;

(ii) it meets with the capital adequacy requirements, if any, separately for each such activity and obtain separate approval, if necessary under the relevant regulations;

(iii)it ensures that there is no material conflict of interest across different activities;

(iv)the absence of conflict of interest shall be disclosed to the trustees and unit holders in scheme information document and statement of additional information;

(v)there are unavoidable conflict of interest situations, it shall satisfy itself that disclosures are made of source of conflict, potential 'material risk or damage' to investor interests and detailed parameters for the same;

(vi) it appoints separate fund manager for each separate fund managed by it unless the investment objectives and asset allocation are same and the portfolio is replicated across all the funds managed by the fund manager within a period of six months from the date of notification of Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2011

Provided that the requirements of this clause shall not apply if the funds managed are of such categories of foreign portfolio investor subject to such conditions, as maybe specified by the Board from time to time."

(vii)it ensures fair treatment of investors across different products that shall include, but not limited to, simultaneous buy and sell in the same equity security only through market mechanism and a written trade order management system; and

(viii)it ensures independence to key personnel handling the relevant conflict of interest is provided through removal of direct link between remuneration to relevant asset management company personnel and revenues generated by that activity:

Provided further that the asset management company may, itself or through its subsidiaries, undertake portfolio management services and advisory services for other than broad based fund till further directions, as may be specified by the Board, subject to compliance with the following additional conditions: -

(I) it satisfies the Board that key personnel of the asset management company, the system, back office, bank and securities accounts are segregated activity wise and there exist system to prohibit access to inside information of various activities.

(ii)it meets with the capital adequacy requirements, if any, separately for each of such activities and obtain separate approval, if necessary under the relevant regulations

"Provided further that the asset management company may become a proprietary trading member for carrying out trades in the debt segment of a recognised stock exchange, on behalf of a mutual fund

Explanation: ─For the purpose of this regulation, with the exception of proviso to clause (vi) of first proviso to clause (b)], the term 'broad based fund' shall mean the fund which has at least twenty investors and no single investor account for more than twenty-five percent of corpus of the fund.

Regulations 25 (1) *The asset management company shall take all reasonable steps and exercise due diligence to ensure that the investment of funds pertaining to any scheme is not contrary to the provisions of these regulations and the trust deed.*

Regulations 25(16): *The asset management company shall abide by the Code of Conduct as specified in PART-A of the Fifth Schedule.*

FIFTH SCHEDULE

Securities and Exchange Board of India (Mutual Funds) Regulations, 1996[Regulations 18(22), 25(16), 68(h)]

CODE OF CONDUCT

1. *Mutual funds schemes should not be organised, operated, managed or the portfolio of securities selected, in the interest of sponsors, directors of asset management companies, members of Board of trustees or directors of trustee company, associated persons [as][1] in the interest of special class of unitholders other than in the interest of all classes of unitholders of the scheme.*

[1] Substituted for 'or' by the SEBI (Mutual Funds) (Amendment) Regulations, 1998 w.e.f. 12-1-1998

2. *Trustees and asset management companies must ensure the dissemination to all unitholders of adequate, accurate, explicit and timely information fairly presented in a simple language about the investment policies, investment objectives, financial position and general affairs of the scheme.*
3. *Trustees and asset management companies should avoid excessive concentration of business with broking firms, [2][associates]and also excessive holding of units in a scheme among a few investors.*
4. *Trustees and asset management companies must avoid conflicts of interest in managing the affairs of the schemes and keep the interest of all unitholders paramount in all matters.*
5. *[3]Trustees and asset management companies shall ensure that the assets and liabilities of each scheme are segregated and ring-fenced from other schemes of the mutual fund; and bank accounts and securities accounts of each scheme are segregated and ring-fenced.*
6. *Trustees and asset management companies shall carry out the business and invest in accordance with the investment objectives stated in the offer documents and take investment decision solely in the interest of unitholders.*
7. *Trustees and asset management companies must not use any unethical means to sell, market or induce any investor to buy their schemes.*
8. *[4]Trustees and the asset management company shall maintain high standards of integrity and fairness in all their dealings and in the conduct of their business.*

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[2] Substituted for "affiliates" by the SEBI (Mutual Funds) (Amendment) Regulations, 2021, w.e.f. 5-3-2021

[3] Substituted by the SEBI (Mutual Funds) (Amendment) Regulations, 2021, w.e.f. 5-3-2021. Prior to substitution, clause 5 read as under;" Trustees and asset management companies must ensure scheme wise segregation of *[bank accounts] and securities accounts."[*Substituted for 'cash' by the SEBI (Mutual Funds) (Amendment) Regulations, 1998 w.e.f. 12-1-1998.]

[4] Inserted by the SEBI (Mutual Funds) (Amendment) Regulations, 1999 w.e.f. 8-12-1999

9. *Trustees and the asset management company shall render at all times high standards of service, exercise due diligence, ensure proper care and exercise independent professional judgment.*
10. *The asset management company shall not make any exaggerated statement, whether oral or written, either about their qualifications or capability to render investment management services or their achievements.*
11. *(a) The sponsor of the mutual fund, the trustees or the asset management company or any of their employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice*[5]
12. *(b) In case an employee of the sponsor, the trustees or the asset management company is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.]*

14. Before proceeding into the issues, I note that Noticee1 & 2 has raised the issue of not providing a copy of the investigation report as sought by them in their reply. In this regard, pursuant to my appointment as AO, AR of Noticees was provided the redacted copy of investigation report. Upon receipt of the redacted investigation report, AR of Noticees vide letter dated September 27, 2022 *inter-alia* stated that, *the contents of the Report are similar to those of the SCN. As such, for the same of brevity, the Noticees repeat and reiterate the submissions made vide its Reply and Additional Submissions in response to the SCN, as if the same have been set out herein in extenso*.

[5] Inserted by the SEBI (Investment Advice by Intermediaries) (Amendment) Regulations, 2001, w.e.f. 29-5-2001

15. After having addressed the objection as mentioned above being raised by the Noticee 1 & 2 in its submissions, I, now proceed to deal with the issue and findings against them on facts and merit basis.

16. Now before dealing with the Issues and the findings with respect to Noticee no. 1 and 2, I note that Noticee no. 1 in its reply to SCN has stated that the SCN fails to establish any allegation against it in its capacity as a Mutual Fund, as the provisions of the Mutual Fund Regulations, referred in the SCN do not pertain to Mutual Fund in any manner whatsoever. Further, it has been contended by Noticee 1 that the scope of provisions applicable to AMC, cannot be so expanded to include mutual fund within their ambit, especially when the regulations prescribe a complete separate framework for mutual fund. In this regard, I note that, as per Regulation 2 (1) (q) of SEBI MF Regulations, 1996, Mutual Fund is a fund registered in the form of trust in which the money of unit holders is managed. SEBI MF Regulations, 1996 envisage Mutual Fund as a three-tier structure for mutual funds in the form of the sponsor, the board of trustees or the trustee company, and the asset management company (the AMC). I note that Regulation 18 of Mutual Fund Regulations, 1996 elaborate rights and obligations of the trustees. The trustees and the AMC, as per Regulation 18(1), can enter into an investment management agreement with the prior approval of SEBI. Such an agreement must contain clauses mentioned in the Fourth Schedule and other clauses as are necessary for the purpose of making investments. The sub-regulations enumerate the requirements to be satisfied before a scheme is launched by the AMC and the obligations cast upon trustees and AMCs. Thus, I note that, it is the responsibilities of the trustees and the AMC to ensure that the interest of units' holders is protected and that any deficiency of Mutual Fund per se is the deficiency of Trustees/Trustee company and/or that of AMC.

17. Further, I note that as per Regulation 52 of SEBI MF Regulation 1996, asset management company may charge the schemes as under Sub-Regulation (2) and (4) of Regulation 52 and Sub Regulation 52(5) requires that any expense other

than those specified in sub-regulations (2) and (4) shall be borne by the AMC. Further, as stipulated under SEBI circular No. MFD/CIR/ 9 /120 /2000 dated November 24, 2000, penalties and fines for infraction of laws cannot be charged to schemes.

18. In view of the above, I find that allegation levelled against Noticee 1 that, "UTI Mutual Fund" has violated Regulations 24(b), Regulation 25(1) and 25(16) of the Mutual Fund Regulations, does not sustain.

ISSUE-I:

I. **Whether Noticee 2 has violated the provisions of regulation 24(b), regulation 25(1) and 25(16) of the Mutual Fund Regulations?**

Facilitated IDOF by giving a color of domestic mutual fund to IDOF Scheme

19. It has been alleged in the SCN that Noticee 2 gave the colour of domestic mutual fund to the IDOF Scheme by facilitating IDOF Offshore to invest in non-permissible securities, and thus violated Regulations 24(b), 25(1) and 25(16) of the MF Regulations. In this regard, I note that SEBI vide its letter dated September 20, 2004 granted in-principle approval to Noticee 2 for management and advisory services in respect of IDOF, for investment in India, subject to the condition, *inter-alia,* that Noticee 1 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. Later on, Noticee 2, vide its letter dated March 01, 2005 to SEBI *inter-alia* submitted that IDOF (Noticee 3) 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 "**Domestic**

Scheme”), to be launched by Notice 2 with the approval of UTI Trustee Company Pvt. Ltd

20. Noticee 2 has contended that during the 2004, In-principle approval granted by SEBI unequivocally allowed launch of Domestic Scheme, whose units were proposed to be subscribed by Noticee 3 viz. IDOF. Noticee 2 has also reproduced the In-principle approval granted by SEBI vide letter dated September 20, 2004 with respect o its two proposed offshore funds:

    " ...2. UTI Mutual Fund shall launch two schemes for investment in India and the units issued by these schemes shall be subscribed by the respective offshore funds only.

    ... 9. The offshore schemes/ funds shall not be regulated by SEBI under SEBI (Mutual Funds) Regulations, 1996 and this fact shall be brought out clearly in offer documents I prospectuses· of these offshore funds"

21. In this regard, I note that Noticee 2 in its replies have admitted that the Domestic Scheme was not launched as per the provisions of the Mutual Funds Regulations, 1996. However, it has been contended by Noticee 2 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. Noticee 2 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 Mutual Fund Regulations, 1996. Noticee 2 has further contended that SEBI had been aware of this arrangement since issuance of the In-principle approval in 2004.

22. Noticee 2 has further submitted that in the said matter, SEBI had not sought any documents, which were 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 tailored made 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 Offshore Fund structure, which will only have 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.

23. According to Noticee 2, it was clear that the Domestic Scheme, IDOF, 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 3.

24. I note that before going into the question of whether the various communication between Noticee 2 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 note that 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 Noticee 2

exclusively for Noticee 3 and accordingly, had only one investor, which was Noticee 3. 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.

25. Further, one of the purposes of regulating mutual fund schemes under Mutual Fund 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.

26. 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 3, 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.

27. Noticee 2 in its reply further argued that, they were 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.

28. In view of the above and considering the information presented, I am of the opinion that just because the Domestic Scheme was not launched under the provisions of the SEBI (Mutual Funds) Regulations, 1996, scheme should not be disqualified from being considered a domestic Mutual Fund scheme. Thus, I concur with the Noticee 2's argument that the Domestic Scheme, while not registered under MF Regulations, 1996, still qualified to be a domestic mutual fund scheme. In this regard, I also place reliance on the order passed by Hon'ble WTM of SEBI in the matter of Indian Debt Opportunities Fund Limited, dated September 12, 2023, wherein it was held that, "*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."*

29. In view of the above, I find that allegation levelled against Noticee 2 that it has violated Regulations 24(b), Regulation 25(1) and 25(16) of the Mutual Fund Regulations by giving the colour of domestic mutual fund to IDOF Scheme, does not stands established.

Violated the conditions stated in the SEBI's letter dated September 20, 2004

30. It has been alleged in the SCN that, although the Noticee 2 took approval for management of IDOF scheme, however, the management was actually with UTI International Limited and accordingly, Noticee 2 failed to ensure compliance with the FPI Regulations and violated Regulation 25(16) of the MF Regulations. In this regard, Noticee 2 has contended that UTI International was always proposed as the manager of IDOF Offshore since the inception of the proposal in early May, 2004, and that, this fact had been duly intimated to SEBI since May 2004. As a result, the Noticee was legitimately expected to be under the bona-fide belief that

SEBI was fully aware that UTI International was the manager of IDOF Offshore, since SEBI had itself granted relevant approvals as mentioned hereinabove. Noticees 2 has further contended that Noticee 2 was exclusively acting as investment manager of the IDOF Scheme and was responsible for constructing investment portfolios, effecting investment decisions, monitoring corporate actions, and the overall performance of the IDOF Scheme, in addition to back office functions such as maintenance of books of accounts and computation of the NAV. Noticee 2 never intended to act as or hold itself out as the manager of IDOF Offshore. In addition to this it has been contended by Noticees 2 that Regulation 24(b) of the MF Regulations, permits an AMC to undertake certain activities, either by itself or through its subsidiaries and UTI international was its subsidiary.

31. In this regard, I note from the Preliminary Term Sheet submitted to SEBI vide letter dated May 5, 2004, wherein it has been mentioned that UTI International would be receiving the 'investor relation fee'. I have also perused the Final Term sheet provided by Noticees 1 and 2, wherein it was specified that UTI International shall be the manager of IDOF Offshore. Accordingly, I note that UTI International was responsible for the marketing of IDOF Offshore to overseas clients and performing related administrative activities, including managing relations in terms of communication of performance and issuing periodical reports. I also note that Noticee 2 had continuously informed SEBI, that UTI International was the manager of IDOF Offshore. Thus, I note that SEBI was aware about that UTI International was the manager of Noticee 3 viz. IDOF. I have also perused the Regulation 24(b) of Mutual Fund Regulations, as referred by Noticee 2. I note that as per Regulation 24(b) Asset Management Company with itself or through its subsidiaries can/may (check) undertake such activities as permitted under Clause (b). In view of the above, I find that allegation levelled against Noticee 2 that, they had violated Regulation 25(16) of Mutual Fund Regulations, does not stand established.

Noticee 2 did not segregate activities as management and advisory services and fund manager for IDOF/IDOF scheme and that of the domestic mutual fund

32. It has been alleged in the SCN that, Noticee 2 did not segregate activities as management and advisory services and fund managers for IDOF Scheme from its other domestic schemes. Noticee 2 in its replies denied the allegation levelled against it. Noticee 1 and 2 have contended that Regulation 24(b)(vi) of the MF Regulations was included vide the SEBI (Mutual Funds) (Amendment) Regulations, 2011, pursuant to the agenda of the SEBI board meeting dated July 28, 2011. The said agenda undertook the 'Review of certain policies relating to mutual funds- Amendment to SEBI (Mutual Funds) Regulations, 1996'. It, inter alia, also indicated that the primary legislative intent behind recommending the requirement of having separate fund managers for separate portfolios was to avoid the possibility of any favourable treatment being given to one set of investors vis-a-vis another set of investors. Consequently, it sought to minimize the inherent conflict of interest in case of different products/businesses being dealt with the same investment management team. Accordingly, to avoid any conflict of interest, Noticee 2 has ensured clear segregation in terms of the books of accounts, bank accounts, securities/investments accounts as well as back- office function between schemes formed for investment by offshore funds, such as, the IDOF Scheme and other schemes of the Noticees 1 and 2. Noticee 2 had the same fund manager viz., Mr. V. Srivatsa, for IDOF Scheme viz., a debt oriented scheme; and other equity oriented mutual fund schemes of the UTI Mutual Fund there was a clear distinction in the (i) type of schemes; (ii) asset allocation; (iii) investment objectives; (iv) characteristics; and (v) investment strategies, vis-a-vis IDOF Scheme and other equity oriented mutual fund schemes of the Noticee 1 and 2. Thus, the difference in the primary nature of the schemes suitably addressed the potential risk of conflict of interests and ensured that investment decisions for the IDOF Scheme were not being undertaken at the expense of or in preference to the other equity oriented mutual fund schemes of the Noticees 1 and 2.

33. I note that Noticee 2 in its replies have admitted that there was same fund manager viz. Mr. V. Srivatsa for IDOF Scheme viz. a debt oriented scheme and for its Equity related scheme. In this regard, it is pertinent to refer Regulation 24(b)(vi) of Mutual Fund Regulations, which states as under: -

"*24(b)(vi): It appoints separate fund manager for each separate fund managed by it unless the investment objectives and asset allocation are same and the portfolio is replicated across all the funds managed by the fund manager,*

Provided that the requirements of this clause <u>shall not apply if the funds managed are of such categories of foreign portfolio investor subject to such conditions, as maybe specified by the Board from time to time." (emphasis supplied).</u>

34. From the perusal of abovementioned regulation and reply of Noticee, and as already mentioned in pre paras of this order, that there was a unique arrangement, which, still qualifies IDOF scheme to be a domestic mutual fund scheme and there was a special arrangement which only permits investment by offshore fund viz. IDOF only. Thus, the fund manager of the domestic scheme was managing funds in the domestic scheme for the Offshore fund viz. IDOF only which falls into the category II Foreign Portfolio investors as per SCN.

35. Thus, in view of the same and considering the reply of the Noticee, I note that the allegation that, Noticee 2 has violated Regulation 24(b)(vi) of the MF Regulations by not segregating activities as management and advisory services and having same fund manager for IDOF/IDOF scheme and that of the other schemes of UTI AMC does not stands established.

36. Since the alleged violation against Noticees 1 and 2 are not established, I find that the Issues No. II and III require no further consideration.

<u>SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING IN THE MATTER OF NOTICEE 3</u>

37. Show cause notice EAD-2/SS/VS/23934/2019 dated September 13, 2019 (hereinafter referred to as **SCNs**) was issued to the Noticee no. 3 under Rule 4(1) of SEBI (Procedure for Holding Inquiry and imposing penalties) Rules, 1995 read with Section 15I of SEBI Act to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudicating Rules and penalty be not imposed under Section 15 HB of SEBI Act for the violations alleged to have been committed by them as applicable. The SCN was sent through the speed post acknowledgment due. The said SCN was duly delivered to Noticees' address.

38. The allegations levelled against the Noticees in the abovementioned SCN *inter alia* states as under:

<u>Noticee No. 3</u>

"

1. *.....*
2. *SEBI examined into the affairs with regard to the operations of Noticee and India Debt Opportunities Fund Scheme (hereinafter referred to as "IDOF Scheme") of the UTI Mutual Fund. During the examination following were observed: -*
    A. Investment in IDOF Scheme which is not a permitted security for investment by FPIs
        *a. 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 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**"). Copy of SEBI letter is enclosed as **Annexure-B**. In the approval letter the following conditions were, inter-alia, imposed:*
            i. UTI Mutual Fund shall launch scheme for investment in India and units issued by said scheme shall be subscribed by the 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 {now SEBI (Foreign Portfolio Investors) Regulations, 2014} and guidelines issued thereunder.

v. 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." (Copy UTI AMC's letter dated November 24, 2011 is enclosed as ***Annexure-C****).*

d. Subsequently, SEBI vide 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 SEBI (Foreign Portfolio investors) Regulations, 2014 (hereinafter referred to as 'FPI Regulations'), later it has been converted to a category II FPI - INMUFP201315 on September 29, 2015. Copy of SEBI's letter dated November 25, 2011 is enclosed as* ***Annexure-D****.*

e. *The Noticee had invested in 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 SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as '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 SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as 'Mutual Fund 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.*

B. Investment in government securities without taking limits

j. 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 is 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."

k. *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."

Copy of extract of issue memorandum and private placement memorandum are enclosed as ***Annexure-E****.*

l. *The various restrictions imposed on investment 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 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.*

   ii. *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.*

   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.*

m. *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. Copy of FII debt limits auction result held on April 27, 2015 (as available on NSE website) is placed at* ***Annexure-F***. *The investment by IDOF Scheme on behalf of the Noticee was without taking limits for investments in government securities, through which it had made an 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.*

C. Investment in liquid and money market Instruments

n. *Further, 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.*

D. Incorrect statement made by Noticee regarding compliance with broad based requirement

o. 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.

p. 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.

q. 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. Copy of letter of UTI International Ltd. and e-mail of UTI AMC are enclosed as ***Annexure-G****. 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. Copy of legal opinion enclosed as* ***Annexure-H****.*

r. 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. Copy of Form A is enclosed as at* ***Annexure-I****.*

s. In view of the above, the Noticee has submitted the wrong information confirming that it meets the broad-based criteria which is more grievous than non-submission of information. Accordingly, IDOF is not in compliance with regulations 5(b), 23(1)(a), 23(1)(b) and 24 of FPI Regulations.

3. *Thus, in nutshell, it is alleged that: -*
   a) Noticee invested in IDOF –scheme which is not a permitted security for investment by FPIs.
   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.
   c) Noticee had invested through IDOF Scheme in liquid and money market instruments.
   d) Noticee has made incorrect statements regarding compliance with broad based requirement to DDP for registration as Category II FPI.

4. *It is alleged that the Noticee has violated the provisions of regulation 21 of the FPI Regulations; SEBI circular 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."*

HEARING

39. Pursuant to my appointment as Adjudicating officer, Noticees were provided with an opportunity of personal hearing through WEBEX and another opportunity for submitting replies in the interest of natural justice and in order to conduct inquiry as per Rule 4 (4) of Adjudicating Rules as applicable. In this regard, Hearing Notices dated April 22, 2022 were sent to Noticee 3 through SPAD for hearing to be held on May 04, 2022. Hearing notice sent returned undelivered for Noticee no. 3 and was served through email on April 25, 2022. Noticee no. 3 was granted another opportunity of hearing on July 19, 2022 vide hearing notice dated June 28, 2022.vide email dated July 13, Noticee no. 3 requested for adjournment of hearing which was adjourned to July 26, 2022. On the scheduled date of hearing i.e. July 26, 2022, Authorised Representative (**AR**) of Noticee no. 3 attended the hearing and reiterated the submissions made by Noticee no. 3 in its reply to SCN and undertook to make additional written submissions, which were made vide email dated August 10, 2022. Due to considerable elapse of time from the date of hearing, vide email dated September 01, 2023, Noticee 3 was provided an opportunity to file additional submissions, in the matter, if any. in this regard, Noticee 3 vide email dated September 04, 2023 has stated that, it does not have any further additional submissions to make and requested the Undersigned to consider its reply dated February 28, 2020 and additional Written Submissions dated August 10, 2022.

Replies submitted by Noticee 3:

40. The summary of the replies submitted by Noticee 3 is given below:
    i. *Noticee 3 denied the charges levelled against it.*
    ii. *In 2004, UTI found that there was potential to bring in huge investment into India from foreign investors. It therefore conceived the said IDOFL structure which technically was not within any specific regulations at the relevant time and therefore, it sought specific permission from SEBI. The structure as*

transparently proposed to SEBI and as approved by SEBI, was inter alia as follows: -

a. *Foreign investors who were willing to invest, would invest in the IDOFL, being an offshore fund incorporated in Mauritius, of which the manager would be UTI International Limited, a foreign 100% subsidiary of the UTI - AMC, which was set up in the Channel Islands.*
b. *IDOFL would in turn invest only in the units of the Indian Debt Opportunities Fund Unit Scheme ("IDOF Scheme"), in India. IDOF Scheme would invest the funds in debt instruments in India, including Government Securities, debentures, etc.*
c. *Upon expiry / redemption, the IDOF Scheme would liquidate the investments and the NAV would be paid over to the IDOFL, which in turn would refund the money to the investors with the accretions.*

iii. *Noticee 3 submitted the chronology of events from making of the applications in May 2004, till the date of issuance of SCN, which also include, approval received from SEBI in September 2004, permission given by SEBI in May 2005, filing of Private Placement Memorandum was filed with SEBI, intimation to SEBI by Noticee 2 that neither the Domestic scheme nor the Noticee are required to obtain debt limits, SEBI letter to Noticee 2 that they should comply with Regulation 6 of FII Regulations, application by IDOFL for registration as a sub account and granting of registration by SEBI, Issue Memorandum filed with SEBI qua the Deutsche Bank investment, application made by Noticee 3 for a license to be registered as a Foreign Portfolio Investor, filing of Supplementary Issue Memorandum, redemption of investment by Deutsche Singapore etc.*

iv. *SEBI was fully aware of the structure and never raised any objection even SEBI final approval letter dated May 17, 2005 permitted launch of the dedicated scheme subject to the compliance with SEBI guidelines on offshore schemes.*

v. *Noticee 2 also filed monthly/quarterly reports showing that AUM amount and details, yet no objection was ever raised by SEBI.*

vi. This was a bespoke and unique structure approved by SEBI where the Scheme was not a usual standalone scheme floated for investment by the public but was merely part of an OFS structure which would have only one single investor.

vii. The structure that Noticee 3 would invest only in the units of the Domestic Scheme was clear to SEBI and its approval was also given on the same terms.

viii. With respect to the investment restrictions as per the FII Regulations, the understanding that the limits would not be applicable was conveyed to SEBI vide letter dated March 01, 2005.

ix. Noticee 3 never took any G Sec or Corporate Debt and only invested in units of domestic scheme as per SEBI's own condition in the in principle approval was granted by SEBI on 17.8.2012. The intention was to bid for debt limits if and when required.

x. SEBI Circular of 31.1.2008 states that FII investment in mutual fund units would be treated as "corporate debt". At the relevant time, when the Domestic Scheme had invested in the concerned debt securities, the corporate debt had reached only 77.45%, and therefore there was no requirement to acquire limits – which is required only after 90% is crossed.

xi. SEBI was fully aware of the structure and the investments, given that regular reports were filed and SEBI never raised any objections about bidding for limits, as SEBI also had contemporaneously categorized the investments as "corporate debt" and even the custodian had considered it as "corporate debt".

xii. Further, there can be no case made out for loss to the Exchequer since at the 27.4.2015 auction, the entire 10% remaining Govt. Debt limit was fully sold off. Thus the Govt. received full auction profits. And there could be no question of any loss.

xiii. There was no unlawful gain made by Noticee 3 and all the investments of the Domestic Scheme have been liquidated and the proceeds have been paid over to Deutsche Bank Singapore through Noticee 3.

xiv. Noticee invested only in the units of the Domestic Scheme and the Domestic Scheme invested in securities as it deemed fit. Admittedly, the Domestic Scheme is not Liquid MF Scheme or a Money Market MF Scheme.

xv. Domestic Scheme does not qualify as a liquid or a money market mutual fund scheme. Regulation 2(p) of the MF Regulations, 1996 defines money market mutual fund as a scheme of a mutual fund which has been set up with the objective of investing exclusively in money market investments.

xvi. The statements/ reports of the Domestic Scheme as at December 31, 2015 and December 31, 2016, indicate that the Domestic Scheme did not exclusively invest (a) only in securities with maturity of upto 91 days or (b) only in money market instruments. Thus, the Domestic Scheme was not exclusively investing (a) only in securities with maturity of upto 91 days or (b) only in money market instruments, therefore the Domestic Scheme cannot be considered as a liquid or a money market mutual fund scheme. Any investment by the Noticee in the Domestic Scheme shall thus be a permitted investment and not violative of any of the Relevant Circulars.

xvii. Additionally, the 'Investment Objective' in the Original Issue Memorandum published by the Noticee lists down the various securities instruments in which the investment shall be undertaken by the Domestic Scheme, on behalf of the Noticee. The securities instruments so specified, inter alia, include liquid and money market securities.

xviii. It is expressly stated in the fund related documentation (which was seen by and approved by SEBI) that the Domestic Scheme shall not be a Liquid MF Scheme or Money Market MF Scheme.

xix. The fact that a bank was the investor does satisfy the "broad based" criteria. The only allegation is that what was issued by the Noticee to Deutsche Bank were called "debenture notes" and not "shares" or "units".

xx. The following were the investors during the lifetime of the fund:

a. July 2007 to September 2010 – Defpa Bank Dublin (Investment of USD 383 million)

b. September 2010 to August 2011 – No investor *c. September 2011 – Sept. 2012 – 21 investors (Investment of USD 966 million)*

d. Oct. 2012 – Oct 2013 - 3 investors, of which one was a bank

e. November 2013 – March 2015 – No investor

f. 23.04.2015 – 20.3.2019 – Deutsche Bank, Singapore Brach (Investment of UDS 1 billion)

xxi. The "Debenture Notes" were in fact and substance actually units / participating shares.

xxii. SCN does not identify what terms or conditions of the "debenture notes" shows that they are effectively not units. There was no interest rate or guaranteed return. The investor would get the net sale value of the investments made by the Domestic scheme corresponding to the Net Asset Value of the units of the domestic scheme. Therefore, save for the semantics, the product was the same viz. a participatory right. Further, SEBI was always kept informed that Deutsche Bank would "investing" in the IDOF Scheme.

xxiii. The Original Issue Memorandum was also submitted to SEBI and no issues was ever raised, even after seeing the terms therein including and especially the definitions of company/fund/issuer notes, Scheme NAV, UTI Scheme and the substantive provisions of the T&C of Notes, units/UTI Scheme and redemption.

xxiv. *Further, the SCN itself relies upon the legal opinion of a law firm, however, the same clearly states that the Noticee has complied with the broad-based fund criteria.*

<u>Consideration of Issues, Evidences and Findings:</u>

41. In the instant matter, the following issues arise for consideration and determination in respect of Noticee 3:

I. Whether Noticee no. 3 has violated the provisions of regulation 21 of the SEBI (Foreign Portfolio Investors) Regulations, 2014 (hereinafter referred to as 'FPI regulation, 2014'); SEBI circular dated April 01, 2013; September 13, 2013, July

23, 2014 and February 03, 2015 read with regulation 23(1)(a) of the FPI Regulations, 2014; SEBI circular dated September 13, 2013 read with regulation 23(1)(a) and 21(5) of the FPI Regulations, 2014, regulations 5(b), 23(1)(a), 23(1)(b) and 24 of the FPI Regulations, 2014?

II. Does the violation, if any, attract monetary penalty under Section 15 HB of SEBI Act (as applicable)?

III. If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

42. Before moving forward, it is pertinent to refer to the relevant provisions of FPI Regulations, 2014 alleged to have been violated by Noticee 3:

FPI Regulations, 2014 (Previously FII Regulations, 1995)

Regulations 5(b): *Category II foreign portfolio investor "which shall include:*

(i)appropriately regulated broad based funds such as mutual funds, investment trusts, insurance/reinsurance companies;

(ii)appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers;

(iii) broad based funds that are not appropriately regulated but whose investment manager is appropriately regulated:

Provided that the investment manager of such broad based fund is itself registered as Category II foreign portfolio investor:

Provided further that the investment manager undertakes that it shall be responsible and liable for all acts of commission and omission of all its underlying broad based funds and other deeds and things done by such broad based funds under these regulations.

(iv) university funds and pension funds; and

(v)university related endowments already registered with the Board as foreign institutional investors or sub-accounts.

Explanation 1.-For the purposes of this clause, an applicant seeking registration as a foreign portfolio investor shall be considered to be "appropriately regulated" if it is regulated or supervised by the securities market regulator or the banking regulator of the concerned foreign jurisdiction, in the same capacity in which it proposes to make investments in India.

Explanation 2.-

A) For the purposes of this clause, "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:

Provided that if the broad based fund has an institutional investor who holds more than forty-nine per cent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.

B) For the purpose of clause A of this Explanation, for ascertaining the number of investors in a fund, direct investors as well as underlying investors shall be considered.

C) For the purpose of clause B of this Explanation, only investors of entities which have been set up for the sole purpose of pooling funds and making investments, shall be considered for the purpose of determining underlying investors.

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

(a)[Shares[6]], debentures and warrants of companies, listed or to be listed on a recognized stock exchange in India3[, through primary and secondary markets];

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

(c)Units of schemes floated by a collective investment scheme;

(d)Derivatives traded on a recognized stock exchange;

(e)Treasury bills and dated government securities;

[6] Substituted for ―Securities in the primary and secondary markets including shares‖ by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2017, w.e.f. 12-1-2017

(f)Commercial papers issued by an Indian company;

(g)Rupee denominated credit enhanced bonds;

(h)Security receipts issued by asset reconstruction companies;

(i)Perpetual debt instruments and debt capital instruments, as specified by the Reserve Bank of India from time to time;

(j)Listed and unlisted non-convertible debentures/bonds issued by an Indian company in the infrastructure sector, where ‗infrastructure ‗is defined in terms of the extant External Commercial Borrowings (ECB) guidelines;

(k)Non-convertible debentures or bonds issued by Non-Banking Financial Companies categorized as ‗Infrastructure Finance Companies‘(IFCs) by the Reserve Bank of India; (l)Rupee denominated bonds or units issued by infrastructure debt funds;(m)Indian depository receipts; [***][7]

[8][(n)Unlisted non-convertible debentures/bonds issued by an Indian company subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time;

(o) Securitized debt instruments, including, -

> *(i) any certificate or instrument issued by a special purpose vehicle set up for securitization of asset/s with banks, financial institutions or non-banking financial institutions as originators; and*
>
> *(ii) any certificate or instrument issued and listed in terms of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008; and]*

[(p)] Such [9]other instruments specified by the Board from time to time.

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[7] The word —and‖ omitted by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017

[8]Inserted by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017

[9] Sub-clause (n) re-named as sub-clause (p) by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017

(2) Where a foreign institutional investor or a sub account, prior to commencement of these regulations, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to 4The word —and‖ omitted by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017.5Inserted by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017.6Sub-clause (n) re-named as sub-clause (p) by the Securities and Exchange Board of India (Foreign Portfolio Investors) (Second Amendment) Regulations, 2017, w.e.f. 27-2-2017.

(3) Nothing contained in sub-regulation (2) shall be deemed to prejudice the applicability of any other law, regulation or guideline.

(4) In respect of investments in the secondary market, the following additional conditions shall apply:

(a)A foreign portfolio investor shall transact in the securities in India only on the basis of taking and giving delivery of securities purchased or sold;

(b)Nothing contained in clause (a) shall apply to:

(i)any transactions in derivatives on a recognized stock exchange;

(ii)short selling transactions in accordance with the framework specified by the Board;

(iii)any transaction in securities pursuant to an agreement entered into with the merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(iv)any other transaction specified by the Board.

(c)No transaction on the stock exchange shall be carried forward;

(d)The transaction of business in securities by a foreign portfolio investor shall be only through stock brokers registered by the Board;

(e)Nothing contained in clause (d) of this sub-regulation shall apply to:

(i)transactions in Government securities and such other securities falling under the purview of the Reserve Bank of India which shall be carried out in the manner specified by the Reserve Bank of India;

(ii)sale of securities in response to a letter of offer sent by an acquirer in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(iii)sale of securities in response to an offer made by any promoter or acquirer in accordance with the Securities and Exchange Board of India (Delisting of Equity shares) Regulations, 2009;

(iv)sale of securities, in accordance with the Securities and Exchange Board of India (Buy-back of securities) Regulations, 1998;

(v)divestment of securities in response to an offer by Indian Companies in accordance with Operative Guidelines for Disinvestment of Shares by Indian Companies in the overseas market through issue of American Depository Receipts or Global Depository Receipts as notified by the Government of India and directions issued by Reserve Bank of India from time to time;

(vi)any bid for, or acquisition of, securities in response to an offer for disinvestment of shares made by the Central Government or any State Government;

(vii)any transaction in securities pursuant to an agreement entered into with merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

[(viii) transactions by Category I and II foreign portfolio investors, in corporate bonds, as may be specified by the Board;

(ix) transactions on the electronic book provider platform of recognized stock exchanges;]

8[(x)] any other transaction specified by the Board.

(f)A foreign portfolio investor shall hold, deliver or cause to be delivered securities only in dematerialized form:

Provided that any shares held in non-dematerialized form, before the commencement of these regulations, can be held in non-dematerialized form, if such shares cannot be dematerialized

(5) In respect of investments in the debt securities, the foreign portfolio investors shall also comply with terms, conditions or directions, specified or issued by the Board Reserve Bank of India, from time to time, in addition to other conditions specified in these regulations.

Explanation. -For the purposes of this sub-regulation, the expression —debt securities‖ shall include dated Government securities, commercial paper, treasury bills, listed or to be listed corporate debt, units of debt oriented mutual funds, unlisted non-convertible debentures / bonds in the infrastructure sector, security receipts issued by asset reconstruction companies or any other security, as specified by the Board from time to time.

(6) Unless otherwise approved by the Board, securities shall be registered in the name of the foreign portfolio investor as a beneficial owner for the purposes of the Depositories Act, 1996.

(7) The purchase of equity shares of each company by a single foreign portfolio investor or an investor group shall be below ten percent of the total issued capital of the company.

(8) The investment by the foreign portfolio investor shall also be subject to such other conditions and restrictions as may be specified by the Government of India from time to time.

(9) In cases where the Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, the Board may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.

(10) A foreign portfolio investor may lend or borrow securities in accordance with the framework specified by the Board in this regard.

Explanation. -For the purposes of this regulation, the words ‗security receipts ‘, ‗asset reconstruction ‘, ‗securitisation company‘ and ‗reconstruction company‘

shall have the meanings respectively assigned to them under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Regulation 23(1)(a): *The foreign portfolio investor shall-(a)comply with the provisions of these regulations, as far as they may apply, circulars issued thereunder and any other terms and conditions specified by the Board from time to time.*

Regulation ***23(1)(b):*** f*orthwith inform the Board and designated depository participant in writing, if any information or particulars previously submitted to the Board or designated depository participant are found to be false or misleading, in any material respect)*

Regulation 24: - *A foreign portfolio investor shall, at all times, abide by the code of conduct as specified in Third Schedule.*

1.*A foreign portfolio investor and its key personnel shall observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities.*

2.A foreign portfolio investor shall, at all times, render high standards of service, exercise due diligence and independent professional judgment.

3.A foreign portfolio investor shall ensure and maintain confidentiality in respect of trades done on its own behalf and/or on behalf of its clients.

4.A foreign portfolio investor shall ensure the following:

(a)Clear segregation of its own money/securities and its client's money/securities. (

b) Arm's length relationship between its business of fund management/investment and its other business.

5 A foreign portfolio investor shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made thereunder *and the circulars and guidelines, which may be applicable and relevant to the activities carried on by it. Every foreign portfolio investor shall also comply with award of the Ombudsman and decision of the Board under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.*

6.A foreign portfolio investor shall not make any untrue statement or suppress any material fact in any documents, reports or information to be furnished to the designated depository participant and/or Board.

7.A foreign portfolio investor shall ensure that good corporate policies and corporate governance are observed by it

. 8.A foreign portfolio investor shall ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India.

9.A foreign portfolio investor or any of its directors or managers shall not, either through its/his own account or through any associate or family members, relatives or friends indulge in any insider trading.

10.A foreign portfolio investor shall not be a party to or instrumental for –a) creation of false market in securities listed or proposed to be listed in any stock exchange in India; b) price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India; c) passing of price sensitive information to any person or intermediary in the securities market.

Findings:

Before proceeding into the issues, I note that Noticee 3 has raised the issue of not providing a copy of the investigation report as sought by it. In this regard, pursuant to my appointment as AO, AR of Noticees was provided the redacted copy of investigation report. Upon receipt of the redacted investigation report, AR of Noticees vide letter dated September 27, 2022 *inter-alia* stated that, *the contents of the Report are similar to those of the SCN. As such, for the same of brevity, the Noticees repeat and reiterate the submissions made vide its Reply and Additional*

Submissions in response to the SCN, as if the same have been set out herein in extenso.

43. After having addressed the objection as mentioned above being raised by the Noticee in its submissions, I, now proceed to deal with the issue and findings against Noticee 3 on facts and merit basis.

44. I note from the material available on record that, Noticee 2 vide letter dated May 05, 2004 to SEBI, proposed to launch an Off-Shore Fund (IDOF) i.e., Noticee 3 with a principal objective to generate income and capital appreciation from investments in Public Sector Debt securities in India.

45. 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 Noticee as offshore Fund, for investment in India, subject to the condition *inter alia* that:
    a. 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.
    b. the offshore schemes/ funds shall not be regulated by SEBI under SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as 'Mutual Fund Regulations').
    c. Off-Shore Fund shall be broad based on an ongoing basis as per the provisions of FII Regulations, 1995 and guidelines issued thereunder and that the offshore funds shall comply with all investment restrictions as specified under SEBI (FII) Regulations, 1995 and guidelines issued thereunder.

46. Following that, through a letter dated March 01, 2005, UTI AMC submitted to SEBI, among other things, that IDOF (referred to as "the Noticee") would primarily invest a significant portion of its assets in an underlying domestic mutual fund scheme

known as the "India Debt Opportunities Fund Unit Scheme" (referred to as "the Domestic Scheme/IDOF Scheme"). This scheme was intended to be launched by UTI AMC with the approval of UTI Trustee Company Pvt. Ltd. (referred to as "the Trustee Company").

47. Subsequently, UTI AMC introduced the Domestic Scheme and Noticee 3 had subscribed to the units of this Domestic Scheme. However, the Domestic Scheme was neither launched as per the relevant provisions of SEBI (Mutual Funds) Regulations, 1996 (hereinafter referred to as 'Mutual Fund Regulations') nor was Noticee 3 viz. IDOF governed by the Mutual Funds Regulations. Further, IDOF Scheme had also not filed any scheme document with SEBI. in view of the same, the Show Cause Notice (SCN) alleged that IDOF's scheme could not be considered a mutual fund scheme as per the provisions of the Mutual Funds Regulations, and therefore, the investments made by IDOF were not covered under the FPI Regulations. Consequently, it is alleged that the Noticee had invested in the IDOF Scheme, which was not a permitted security for investment by FPIs and has thus violated Regulation 21 of FPI Regulations.

48. In this context, it is crucial to determine whether the Domestic Scheme, launched by UTI AMC without adhering to the provisions of the MF Regulations of 1996, can be recognized as a domestic mutual fund scheme, as referred to in Regulation 21(1)(b) of the FPI Regulations of 2014 and similar provisions under the FII Regulations of 1995. It is worth noting that the other issues and allegations raised in the SCN are subsidiary to this central question.

49. I note that 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 SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as '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.

50. The Noticee has argued that FPIs are allowed to invest in schemes floated by domestic mutual funds, without any requirement that these schemes must adhere to the MF Regulations. They have pointed out that various communications between UTI AMC and SEBI, up until the issuance of the SCN, did not raise any objections to the Noticee's investment in the Domestic Scheme (IDOF Scheme). SEBI allowed the launch of the Domestic Scheme without insisting on compliance with the MF Regulations, and this arrangement had been known to SEBI since the issuance of the in-principle approval in 2004.

51. Furthermore, the Noticee has stated that even though all mutual fund schemes should be monitored and regulated by SEBI under the MF Regulations, SEBI did not request the documents typically required for regulatory oversight since 2006 when the Domestic Scheme was launched. SEBI apparently recognized that this was a unique structure approved by them, where the Domestic Scheme was not a standard standalone scheme intended for public investment but was part of an Overseas Special Fund (OSF) structure with only a single investor. Therefore, SEBI considered that the standard provisions of the MF Regulations, such as requiring a minimum of 20 unit holders and an offer document to the public, would not be applicable to such a scheme. Instead, only the provisions related to offshore schemes and FIIs would apply.

52. Based on these arguments, it is clear that the Noticee believed that the Domestic Scheme, even though not registered under the MF Regulations of 1996, still qualified as a domestic mutual fund scheme.

53. Further, I note that, 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 3 and accordingly, had only one investor, which was the Noticee 3. 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.

54. 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.

55. 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 3, 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.

56. As per the Noticee 3, 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.

57. 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 3's investment in the Domestic Scheme was not a permitted investment and violated Regulation 21 of the FPI Regulations of 2014 is not established.

58. Regarding the next allegation, it is alleged that investment by IDOF scheme on behalf of the Noticee 3 was without taking limits for investment in government securities through which it had made an undue profit of 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. Thus, it is alleged in the SCN that, the Noticee 3 had not complied with the provisions of SEBI Circular dated September 13, 2013 read with Regulation 23(1)(a) and 21(5) of the FPI Regulations, 2014.

59. 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 (Foreign Portfolio Investors) to comply with the provisions of these regulations and other terms and conditions specified by SEBI (Securities and Exchange Board of India) or RBI (Reserve Bank of India) from time to time.

60. In this regard, I note that, Noticee 3 has 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 3, G-Secs and corporate debt were considered distinct categories of debt.

61. The Noticee 3 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. In this regard, I have perused the debt utilization status as on April 27, 2015 provided by Noticee 3, which shows that only 77.45% of the corporate debt limit was exhausted by it.

62. I have also perused the details of the FII Debt Limits Auction Results held on April 27, 2015, which 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.

63. Thus, in view of the aforesaid, I agree with the Noticee 3's contention that its investment in the units of the Domestic Scheme qualified as a corporate debt investment and the Noticee 3 did not breach any limit for investment in Government Debt, as alleged in the SCN. Therefore, I conclude that Noticee 3 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.

64. The next allegation against the Noticee 3 is that it had invested in liquid and money market instruments that were not permissible instruments for FPIs/OSFs thereby violating 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.

65. 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, Foreign Portfolio Investors (FPIs) are not permitted to invest in liquid and money market mutual fund schemes.

66. 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.

67. Furthermore, the Noticee 3 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 3. 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.

68. It is important to note 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. I have perused the statements and reports of the Domestic Scheme as of December 31, 2015 and December 31, 2016 and 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, I do not find that, Noticee has 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.

69. Moving on to the next allegation, it is alleged in the SCN that, fund investment by Deutsche Bank (DB), Singapore, which was an investor in IDOF, held debenture notes issued by it and as debenture notes are neither shares no units, investment by DB, Singapore branch in notes of Noticee 3 cannot be considered for the purpose of determination of broad based requirement. Further, in its conversion

application for conversion from sub-account to FPI, the Noticee 3 had submitted an undertaking stating that, it was a broad based fund (as per FPI Regulations). It also stated that DB was the only investor with 100% holding. Thus, it is alleged 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 is alleged in the SCN that, Noticee 3 had failed to ensure broad based requirement and thus became ineligible for Category II FPI status. Furthermore, it has submitted inaccurate information regarding its compliance with the broad-based requirement when applying for Category II FPI status, which constituted a violation of Regulation 5(b), 23(1)(a) &(b), 24 of SEBI (FPI) Regulations, 2014.

70. 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.

71. 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.

72. 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.

73. 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 3.

74. 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 3 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 3, 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.

75. Considering these submissions, I believe 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 3 possess the similar characteristics as of the units issued by a mutual fund, I am inclined to accept the Noticee 3's arguments in this regard and thus, I conclude that, violation of Regulation 5(b), 23(1)(a) &(b), 24 of SEBI (FPI) Regulations, 2014 by Noticee 3 does not stands established.

76. 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 3 without any direction in the same matter having similar facts and circumstances.

77. 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 3 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 3.

78. Since the alleged violations against Noticee 3 are not established, I find that the Issues No. II and III require no further consideration.

<u>ORDER</u>

79. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the

Adjudication Rules, the Adjudication proceedings against Noticees i.e. UTI Mutual Fund, UTI Asset Management Company Limited and India Debt Opportunities Fund Ltd. vide Show Cause Notices EAD-2/AP/VS/2683/1/2020 dated January 21, 2020, EAD-2/AP/VS/2683/2/2020 dated January 21, 2020 and EAD-2/SS/VS/23934/2019 dated September 13, 2019 respectively, stands disposed of without imposition of any penalty.

80. Copy of this Adjudication Order is being sent to Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: September 18, 2023	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**