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EXTRAORDINARY

PART -III – SECTION 4

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SECURITIES AND EXCHANGE BOARD OF INDIA

NOTIFICATION

Mumbai, the 30th August, 2011

SECURITIES AND EXCHANGE BOARD OF INDIA

(MUTUAL FUNDS) (AMENDMENT) REGULATIONS, 2011

LAD-NRO/GN/2011-12/27668 - In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely :-

1. These regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2011.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996,-

- (i) regulation 24, along with its marginal note, shall be substituted with the following, namely: -

“Restrictions on business activities of the asset management company

24. The asset management company shall, -

- (a) not act as a trustee of any mutual fund;
- (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, 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,

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- (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 manger 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 manger, within a period of six months from the date of notification of Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2011;
- (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.

Explanation: - For the purpose of this regulation, 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.

- (ii) in regulation 25, after sub-regulation (16), the following sub-regulations shall be inserted, namely: -

“(17) The asset management company shall not invest in any of its scheme, unless full disclosure of its intention to invest has been made in the offer documents, in case of schemes launched after the notification of Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2011:

Provided that an asset management company shall not be entitled to charge any fee on its investment in that scheme.

(18) The asset management company shall not carry out its operations including trading desk, unit holder servicing and investment operations outside the territory of India:

Provided that the asset management company having any of its operations outside India shall wind up and bring them within the territory of India within a period of one year form the date of notification of Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2011:

Provided further that the Board may grant a further period of one year if it is satisfied that there was sufficient cause for not winding up of the operation outside India within that period.”

- (iii) in regulation 36, after sub-regulation (3), the following new sub-regulation shall be inserted, namely: -

“(4) The asset management company shall ensure that consolidated account statement for each calendar month is issued, on or before tenth day of succeeding month, detailing all the transactions and holding at the end of the month including transaction charges paid to the distributor, across all schemes of all mutual funds, to all the investors in whose folios transaction has taken place during that month:

Provided that the asset management company shall ensure that a consolidated account statement every half yearly (September/ March) is issued, on or before tenth day of succeeding month, detailing holding at the end of the six month, across all schemes of all mutual funds, to all such investors in whose folios no transaction has taken place during that period:

Provided further that the asset management company shall identify common investor across fund houses by their permanent account number for the purposes of sending consolidated account statement.

Explanation:- For the purpose of this regulation, the word ‘transaction’ shall include purchase, redemption, switch, dividend payout, dividend reinvestment, systematic investment plan, systematic withdrawal plan, systematic transfer plan and bonus transactions.

- (iv) in regulation 43, in sub-regulation (1) –
(a) in clause (f), for the full stop, the figure and word “ ; or” shall be substituted;

(b) after clause (f), the following new clause shall be inserted, namely:-

“(g) infrastructure debt instrument and assets as specified in clause (1) of regulation 49L.”

- (v) in regulation 44, sub-regulation (3) shall be substituted with the following, namely:-

“(3) Save as otherwise expressly provided under these regulations, the mutual fund shall not advance any loans for any purpose.”

- (vi) after chapter VIA, the following chapter and regulations shall be inserted, namely: -

**“CHAPTER VI -B
INFRASTRUCTURE DEBT FUND SCHEMES**

Definitions

49L. For the purposes of this Chapter, unless the context otherwise requires-

- (1) “Infrastructure debt fund scheme” means a mutual fund scheme that invests primarily (minimum 90% of scheme assets) in the debt securities or securitized debt instrument of infrastructure companies or infrastructure capital companies or infrastructure projects or special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure, and other permissible assets in accordance with these regulations or bank loans in respect of completed and revenue generating projects of infrastructure companies or projects or special purpose vehicles.
- (2) “Infrastructure” includes the sectors as specified by guidelines issued by the Board or as notified by Ministry of Finance, from time to time.
- (3) ‘Strategic Investor’ means;
 - (i) an Infrastructure Finance Company registered with Reserve bank of India as Non Banking Financial Company;
 - (ii) a Scheduled Commercial Bank;
 - (iii) International Multilateral Financial Institution.

49M. Applicability

- (1) The provisions of this chapter shall apply to infrastructure debt fund schemes launched by mutual funds.
- (2) All other provisions of these regulations and the guidelines and circulars issued thereunder, unless the context otherwise require or repugnant to the provisions of this chapter, shall apply to infrastructure debt fund schemes, trustees and asset management companies in relation to such schemes.

49N. Eligibility criteria for launching infrastructure debt fund scheme

- (1) An existing mutual fund may launch an infrastructure debt fund schemes if it has an adequate number of key personnel having adequate experience in infrastructure sector.
- (2) A certificate of registration may be granted under regulation 9 to an applicant proposing to launch only infrastructure debt fund schemes if the sponsor or the parent company of the sponsor: -
 - (a) has been carrying on activities or business in infrastructure financing sector for a period of not less than five years;
 - (b) fulfills eligibility criteria provided in Regulation 7.

Explanation- For the purpose of this clause, ‘parent company of the sponsor’ shall mean a company which holds at least 75% of paid up equity share capital of the sponsor.

49O. Conditions for infrastructure debt fund schemes

- (1) An infrastructure debt fund scheme shall be launched either as close-ended scheme maturing after more than five years or interval scheme with lock-in of five years and interval period not longer than one month as may be specified in the scheme information document.
- (2) Units of infrastructure debt fund schemes shall be listed on a recognized stock exchange, provided that such units shall be listed only after being fully paid up.
- (3) Mutual Funds may disclose indicative portfolio of infrastructure debt fund scheme to its potential investors disclosing the type of assets the mutual fund will be investing.
- (4) An infrastructure debt fund scheme shall have minimum five investors and no single investor shall hold more than fifty percent of net assets of the scheme.
- (5) No infrastructure debt fund scheme shall accept any investment from any investor which is less than Rupees one crore.
- (6) The minimum size of the unit shall be Rupees ten lakhs.
- (7) Each scheme launched as infrastructure debt fund scheme shall have firm commitment from the strategic investors for contribution of an amount of at least Rupees twenty five crores before the allotment of units of the scheme are marketed to other potential investors.
- (8) Mutual Funds launching infrastructure debt fund scheme may issue partly paid units to the investors, subject to following conditions:
 - (a) The asset management company shall call for the unpaid portions depending upon the deployment opportunities;
 - (b) The offer document of the scheme shall disclose the interest or penalty which may be deducted in case of non payment of call money by the investors within stipulated time; and
 - (c) The amount of interest or penalty shall be retained in the scheme.

49P. Permissible investments

- (1) Every infrastructure debt fund scheme shall invest at least ninety percent of the net assets of the scheme in the debt securities or securitized debt instruments of infrastructure companies or projects or special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure or bank loans in respect of completed and revenue generating projects of infrastructure companies or special purpose vehicle.
- (2) Subject to sub-regulation (1), every infrastructure debt fund scheme may invest the balance amount in equity shares, convertibles including mezzanine financing instruments of companies engaged in infrastructure, infrastructure development projects, whether listed on a recognized stock exchange in India or not; or money market instruments and bank deposits.

- (3) The investment restrictions shall be applicable on the life-cycle of the infrastructure debt fund scheme and shall be reckoned with reference to the total amount raised by the infrastructure debt fund scheme.
- (4) No mutual fund shall, under all its infrastructure debt fund schemes, invest more than thirty per cent of its net assets in the debt securities or assets of any single infrastructure company or project or special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure or bank loans in respect of completed and revenue generating projects of any single infrastructure company or project or special purpose vehicle.
- (5) An infrastructure debt scheme shall not invest more than 30% of the net assets of the scheme in debt instruments or assets of any single infrastructure company or project or special purpose vehicles which are created for the purpose of facilitating or promoting investment in infrastructure or bank loans in respect of completed and revenue generating projects of any single infrastructure company or project or special purpose vehicle, which are rated below investment grade or unrated:
Provided that such investment limit may be extended upto 50% of the net assets of the scheme with the prior approval of the board of trustees and the board of asset management company.
- (6) No infrastructure debt fund scheme shall invest in –
 - (i) Any unlisted security of the sponsor or its associate or group company;
 - (ii) Any listed security issued by way of preferential allotment by the sponsor or its associate or group company;
 - (iii) Any listed security of the sponsor or its associate or group company or bank loan in respect of completed and revenue generating projects of infrastructure companies or special purpose vehicles of the sponsor or its associate or group companies, in excess of twenty five per cent of the net assets of the scheme, subject to approval of trustees and full disclosures to investors for investments made within the aforesaid limits; or
 - (iv) Any asset or securities owned by the sponsor or asset management company or its associates, in excess of 20% of the net assets of the scheme not below investment grade, subject to approval of trustees and full disclosures to investors for investments made within the aforesaid limits.

49Q. Valuation of assets and declaration of net asset value

- (1) The assets held by an infrastructure debt fund scheme shall be valued “in good faith” by the asset management company on the basis of appropriate valuation methods based on principles approved by the trustees.

- (2) The valuation shall be documented and the supporting data in respect of each security so valued shall be preserved at least for a period of five years after the expiry of the scheme.
- (3) The methods used to arrive at values 'in good faith' shall be periodically reviewed by the Trustees and by the statutory auditor of the mutual fund.
- (4) The valuation policy approved by the board of asset management company shall be disclosed in the scheme information document.
- (5) The net asset value of every infrastructure debt fund scheme shall be calculated and declared atleast once in each quarter.

49R. Duties of asset management company

- (1) The asset management company shall lay down an adequate system of internal controls and risk management.
- (2) The asset management company shall exercise due diligence in maintenance of the assets of an infrastructure debt fund scheme and shall ensure that there is no avoidable deterioration in their value.
- (3) The asset management company shall record in writing, the details of its decision making process in buying or selling infrastructure companies' assets together with the justifications for such decisions and forward the same periodically to trustees.
- (4) The asset management company shall ensure that investment of funds of the Infrastructure Debt Fund schemes is not made contrary to provisions of this chapter and the trust deed.
- (5) The asset management company shall obtain, wherever required under these regulations, prior in-principle approval from the recognized stock exchange(s) where units are proposed to be listed.
- (6) The asset management company shall institute such mechanisms as to ensure that proper care is taken for collection, monitoring and supervision of the debt assets by appointing a service provider having extensive experience thereof, if required.

49S. Disclosures in offer document and other disclosures

- (1) The offer documents of infrastructure debt fund schemes shall contain disclosures which are adequate for investors to make informed investment decisions and such further disclosures as may be specified by the Board.
- (2) The portfolio disclosures and financial results in respect of an infrastructure debt fund schemes shall contain such further disclosures as may be specified by the Board.
- (3) Advertisements in respect of infrastructure debt fund schemes shall conform to such guidelines as may be specified by the Board.

49T. Transactions by employees etc.

- (1) All transactions done by the trustees or the employees or directors of the asset management company or the trustee company in the investee companies shall be disclosed by them to the compliance officer within one month of the transaction.
- (2) The compliance officer shall make a report thereon from the view point of possible conflict of interest and shall submit it to the trustees with his recommendations, if any.
- (3) The persons covered in sub-regulation (1) may obtain the views of the trustees before entering into the transaction in investee companies, by making a suitable request to them.”

(vii) in regulation 56, -

a. in sub-regulation (1), the sign of full stop “.” shall be substituted with the sign of colon “:”;

b. after sub-regulation (1), the following proviso shall be inserted, namely: -

“Provided that the scheme wise annual report or abridged summary thereof may be sent to investors in electronic form on their registered e-mail address in the manner specified by the Board.”;

c. after sub-regulation (3), the following new sub-regulation shall be inserted, namely: -

“(4) The asset management company shall display the link of the full scheme wise annual reports prominently on their website.”

U. K. SINHA

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Footnotes:-

1. The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, the Principal Regulations, were published in the Gazette of India on December 9, 1996 vide S.O.No. 856(E).

2. The Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 were subsequently amended –

- (a) on April 15, 1997 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 1997 vide S.O. No.327(E).
- (b) on January 12, 1998 by the Securities and Exchange Board of India (Mutual Funds)(Amendment) Regulations, 1998 vide S.O. No.32(E).
- (c) on December 08, 1999 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 1999 vide S.O. No.1223(E).
- (d) on March 14, 2000 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2000 vide S.O. No.235 (E).
- (e) on March 28, 2000 by the Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000 vide S.O. No.278(E).
- (f) on May 22, 2000 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2000 vide S.O. No.484 (E).
- (g) on January 23, 2001 by the Securities and Exchange Board of India (Mutual Funds)(Amendment) Regulations, 2001 vide S.O. No.69 (E).
- (h) on May 29, 2001 by the Securities and Exchange Board of India (Investment Advice by Intermediaries) (Amendment) Regulations, 2001 vide S.O. No.476(E).
- (i) on July 23, 2001 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2001 vide S.O. No.698(E).
- (j) on February 20, 2002 by the Securities and Exchange Board of India (Mutual Funds)(Amendment) Regulations, 2002 vide S.O. No.219 (E).
- (k) on June 11, 2002 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2002 vide S.O. No.625 (E).
- (l) on July 30, 2002 by the Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2002 vide S.O. No.809(E).
- (m) on September 9, 2002 by the Securities and Exchange Board of India (Mutual Funds)(Fourth Amendment) Regulations, 2002 vide S.O. No.956(E).
- (n) on September 27, 2002 by the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 vide S.O. No.1045(E).
- (o) on May 29, 2003 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2003 vide S.O.No. 632(E).
- (p) on January 12, 2004 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2004 vide F.No. SEBI/LAD/DOP/4/2004.
- (q) on March 10, 2004 by the Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004 vide S.O. No. 398(E).
- (r) on January 12, 2006 by the Securities and Exchange Board of India (Mutual Funds)(Amendment) Regulations, 2006 vide S.O.No. 38(E).
- (s) on May 22, 2006 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2006 vide S.O.No. 783(E).
- (t) on August 3, 2006 by the Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2006 vide S.O.No. 1254(E).
- (u) on December 27, 2006 by the Securities and Exchange Board of India (Mutual Funds) (Fourth Amendment) Regulations, 2006 vide F. No. SEBI/LAD/DOP/82534/2006.

- (v) on December 27, 2006 by the Securities and Exchange Board of India (Mutual Funds) (Fifth Amendment) Regulations, 2006 vide F. No. SEBI/LAD/DOP/83065/2006.
- (w) on May 28, 2007 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2007 vide F. No. 11/LC/GN/2007/2518.
- (x) on October 31, 2007 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2007 vide F. No. 11/LC/GN/2007/4646.
- (y) on March 31, 2008 by the Securities and Exchange Board of India (Payment of Fees) (Amendment) Regulations, 2008 vide F. No. 11/LC/GN/2008/21669.
- (z) on April 16, 2008 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2008 vide F. No. LADNRO/ GN/2008/03/123042.
- (za) on May 22, 2008 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2008 vide No. LADNRO/GN/2008/09/126202.
- (zb) on September 29, 2008 by the Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2008 vide No. LADNRO/ GN/2008/24/139426.
- (zc) on April 8, 2009 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2009 vide No. LAD-NRO/GN/2009-10/01/159601.
- (zd) on June 5, 2009 by the Securities and Exchange Board of India (Mutual Funds) (Second Amendment) Regulations, 2009 vide No. LAD- NRO/GN/2009-10/07/165404.
- (ze) on July 29, 2010 by the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2010 vide No. No. LAD-NRO/GN/2010-11/13/13945.
