**SEBI/WTM/GM/IMD/49/2019-20**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTION 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 7B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) REGULATIONS, 1996.**

**IN THE MATTER OF LIFE INSURANCE CORPORATION OF INDIA, STATE BANK OF INDIA AND BANK OF BARODA.**

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**Background –**

**1.** UTI Mutual Fund (UTIMF) (SEBI Registration No. MF/048/03/01) is promoted by four Public Sector Financial Institutions as sponsors, viz., State Bank of India (SBI), Life Insurance Corporation of India (LIC), Bank of Baroda (BoB) and Punjab National Bank (PNB) with each of them presently holding 18.24% stake in the paid up capital of UTI Asset Management Company Limited (UTI AMC) and 18.50% each in the UTI Trustee Company Pvt. Ltd. (UTI Trustee). T Rowe Price International Ltd. (TRP) holds 26% stake each in UTI AMC and UTI Trustee. Three of the sponsors of UTI MF, viz. SBI, LIC and BoB (**'Noticees'**) have also sponsored other Mutual Funds as detailed below:

a. SBI is the sponsor of SBI Mutual Fund and holds 63% in its Asset Management Company (AMC) (SBI Funds Management Pvt. Ltd.) and 100% in the Trustee Company (SBI Mutual Fund Trustee Pvt. Ltd.)
b. LIC is the sponsor of LIC Mutual Fund and holds 45% in its AMC (LIC Mutual Fund Asset Management Ltd.) and 49% in tis Trustee Company (LIC Mutual Fund Trustee Pvt. Ltd.)
c. BoB is the sponsor of Baroda Mutual Fund and holds 100% shares in its AMC (Baroda Asset Management Company Limited) and Trustee Company (Baroda Trustee India Pvt. Ltd.).

**2.** SEBI (Mutual Funds) (Amendment) Regulations, 2018, notified on March 13, 2018, inserted Regulation 7B in the SEBI (Mutual Funds) Regulations, 1996 **('MF Regulations')**, which reads as follows:

***"Norms for Shareholding and Governance in Mutual Funds7B.***

*(1) No sponsor of a mutual fund, its associate or group company including the asset management company of the fund, through the schemes of the mutual fund or otherwise, individually or collectively, directly or indirectly, have –*

*(a)10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or*

*(b)representation on the board of the asset management company or the trustee company of any other mutual fund.*

*(2)Any shareholder holding 10% or more of the share-holding or voting rights in the asset management company or the trustee company of a mutual fund, shall not have, directly or indirectly, -*

*(a)10% or more of the share-holding or voting rights in the asset management company or the trustee company of any other mutual fund; or*

*(b)representation on the board of the asset management company or the trustee company of any other mutual fund.*

*(3) Any person not in conformity with the sub-regulations (1) and (2) of this regulation, as on the date of the coming into force of this regulation shall comply with sub-regulations (1) and (2) within a period of one year from the date of the coming into force of this regulation:"*

**3.** Subsequently, LIC, SBI and BoB, vide letters dated May 29, 2018, June 27, 2018 and March 07, 2019 respectively, intimated SEBI regarding their shareholding in excess of 10% in AMCs of other Mutual Funds sponsored by them apart from UTIMF and sought extension of time to comply with the requirements of the amended regulations as referred above. The requests for extension of time to comply with the requirements of Regulation 7B of MF Regulations could not be acceded to and the Noticees were advised to comply with the requirements within the specified timeline of March 12, 2019.

**4.** On examination of the shareholding pattern of UTI AMC and UTI Trustee as on March 13, 2019, SEBI observed that LIC, SBI and BoB continued to hold 18.24% each in UTI AMC and 18.50% each in UTI Trustee. Since LIC, SBI and BoB also held significant stakes in AMCs and Trustee companies of LIC Mutual Fund, SBI Mutual Fund and Baroda Mutual Fund respectively, status of compliance with Regulation 7B was sought from the Noticees vide letters dated March 13, 2019.

**5.** The Noticees, vide separate letters dated March 20, 2019, *inter-alia*, submitted the following:

a. Concurrence of Government of India (GoI) is a pre-requisite for selling stake by any sponsor of UTIMF.
b. It was proposed that the stake sale would be undertaken through an IPO in two step process.
c. On receipt of approval from GoI for the disinvestment plan, UTI AMC would be advised to initiate the process of IPO.

**6.** Not satisfied with the replies received from the Noticees, SEBI issued Show Cause Notices (SCNs) dated July 19, 2019, *inter-alia*, calling upon the Noticees to show cause as to why appropriate directions under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 including freezing of their voting rights, shareholding and corporate benefits in either UTIAMC and UTI Trustee or their holding in other AMCs and Trustee companies should not be taken against them. SBI and LIC were also advised to show cause as to why any other action including removal of directors should not be taken against them for the alleged violation of Regulation 7B of the MF Regulations.

**7.** The Noticees, vide letters dated August 06, 2019, August 09, 2019 and August 14, 2019, submitted replies to the SCNs. An opportunity for personal hearing was also granted to the Noticees on September 24, 2019 which was attended by Mr. Dinesh Khara, MD (G&AS), SBI, Mr. P.S. Jayakumar, MD&CEO, BoB and Mr. A. K. Anand, ED-Investments, LIC. The Noticees made oral submissions during the hearing and also made written submissions thereafter vide letters dated September 25, 2019 and September 27, 2019. The gist of the

major submissions made vide the aforesaid correspondences and oral submissions is given below:

a. UTIAMC commenced its operations from February 01, 2003 and SEBI, vide letter dated June 02, 2003, had issued guidelines for avoiding conflict of interest between UTI AMC and the sponsors which had floated Mutual Funds of their own.
b. Department of Economic Affairs, GoI, vide letter dated September 30, 2005 advised that the sponsors of UTI AMC are required to obtain prior concurrence of GoI before transferring their shares. In January 2010, TRP acquired 26% stake in UTI AMC.
c. The Noticees had been making continuous efforts to ensure compliance with Regulation 7B of MF Regulations.
d. The Noticees had requested SEBI for extension of time limit for gradual disinvestment to realize the value of shareholding and requested Department of Investment and Public Asset management (DIPAM) vide various letters to seek additional time from SEBI in this regard.
e. Concurrence of DIPAM for the divestment of holding in UTI AMC through IPO was sought by the Noticees vide letters dated January 07, 2019, January 10, 2019 and January 11, 2019.
f. A meeting of sponsors of UTI AMC was held on February 12, 2019 to formalize a roadmap for divestment to ensure compliance with Regulation 7B and a two stage divestment plan was approved which was also communicated to SEBI vide letter dated March 08, 2019, seeking extension of timeline.
g. DIPAM, vide letter dated April 09, 2019 accorded approval for the divestment of stake in UTI AMC by sponsors / shareholders in two phases – 25% divestment of stake by all the institutional shareholders on pro-rata basis and 10.92% divestment in the second phase by way of FPO.
h. TRP was not in agreement with the aforesaid plan and hence, multiple meetings were held with them on July 16, 2019 and July 25, 2019 and a revised divestment plan providing for stake reduction of 8.25% stake each by LIC, SBI and BoB and 3% of stake each by TRP and PNB at one go by way of IPO and DIPAM's approval thereon was sought by SBI,

BoB and LIC vide letters dated August 09, 2019, August 09, 2019, August 14, 2019 respectively.

i. A shareholders' meeting of UTI AMC was held on August 21, 2019 to formalize the modalities of IPO.

j. The divestment of stake in UTI AMC was delayed for want of approvals / clarifications from DIPAM. DIPAM, vide letter dated September 12, 2019, has approved the proposed divestment plan through IPO.

k. IPO committee has been constituted for the proposed IPO through which the dilution of stake is proposed to be implemented.

l. The noticees had been recommending, mostly their ex-employees, for the post of directors. These directors did not have any reporting relationship with the sponsors and are deemed to be independent directors. Hence the requirement in this regard in Regulation 7B with respect to avoidance of conflict of interest through Board positions, has been complied with in spirit.

**8.** In view of the foregoing, the Noticees requested that the proceedings sought to be initiated against them be dropped and extension in time line for compliance with Regulation 7B of MF Regulations may be granted.

**Issues for consideration**

**9.** Following issues require consideration in the matter:

a. Whether there is non-compliance by the Noticees with Regulation 7B of MF Regulations?

b. If yes, whether the said non-compliance warrants remedial action by SEBI in the form of directions considering the facts and circumstances of the case.

c. If yes, what kind of directions are warranted in the matter.

**10.** Regulation 7B was inserted in MF Regulation w.e.f. March 13, 2018. The Regulation, the text of which is reproduced at Para 2 above, inter-alia, requires that a sponsor or a shareholder holding 10% or more shareholding or voting rights in the AMC or trustee company of a mutual fund shall not have, directly

or indirectly, 10% or more shareholding or voting rights or board representation in the AMCs or trustee company of another mutual fund. Entities not in compliance with the aforesaid requirement was given time up to March 12, 2019 to comply with the said requirement.

**11.** In the extant case, from the records available before me, it is observed that LIC, SBI and BoB are the sponsors of LIC Mutual Fund, SBI Mutual Fund and Baroda Mutual Fund respectively. LIC, SBI and BoB are also sponsors of UTIMF and hold more than 10% shareholding individually in the AMC and trustee company of UTIMF. Further, the Noticees also hold more than 10% shareholding in the Mutual Funds individually promoted by them, i.e., LIC Mutual Fund, SBI Mutual Fund and Baroda Mutual Fund. In view of the above, I find that the Noticees are sponsors of more than one Mutual Fund and hold more than 10% shareholding in more than one AMC and Trustee company and hence, are not in compliance with the requirements of Regulation 7B of the MF Regulations.

**12.** The SCN also alleged that two of the Noticees viz. LIC and SBI had nominated directors on the Board of UTI AMC and / or UTI Trustee. In this regard, it was, inter-alia, replied that they had nominated directors on the Board of UTI AMC and UTI Trustee in accordance with the provisions in the shareholder agreement and further clarified that such nominees were also not their directors. It was also submitted that none of the working employees of LIC or SBI were on the Board of UTI AMC or UTI Trustee and the nominated directors did not have any reporting relationship with the Noticees.

**13.** In this regard, I note that the noticees required prior concurrence of GoI to transfer their shares in UTI AMC, as provided in Ministry of Finance D.O. No. 7/3/2003-ECB&UTI dated September 30, 2005, which they ultimately got in two stages – initial approval vide letter dated April 09, 2019 and the revised approval vide letter dated September 12, 2019.

**14.** Perusal of various correspondence that the Noticees had with UTI AMC, SEBI and DIPAM indicates that the Noticees have taken some steps to comply with the requirement of Regulation 7B of MF Regulations. I observe that the Noticees

could get the approval from DIPAM for the proposed divestment only after the lapse of the one–year period granted in the Regulations for such compliance. However, I also note that there has been considerable delay on the part of the Noticees in putting forth a concrete plan for divestment to DIPAM and seeking its approval thereon. While Regulation 7B was inserted in MF Regulations on March 13, 2018 providing one year time-limit for its compliance, concurrence for divesting stakes in UTI AMC was sought by the Noticees from DIPAM only in January 2019. Even after the receipt of the initial approval, I note that the compliance got further delayed for various reasons including lack of consensus amongst the major shareholders for the divestment plan. On a perusal of the correspondence available on records, I feel that a more proactive approach from the Noticees would have certainly expedited the compliance.

**15.** With respect to the dilution of their stakes in UTI Trustee, the Noticees have submitted that they would be separately taking it up with UTI Trustee. However, I note that the Noticees have not indicated any specific roadmap or timeline for such compliance.

**16.** Further, the Noticees have not taken any steps to address the potential conflict of interest arising out of appointment of directors in UTI AMC and UTI Trustee based on their nomination. In this connection, Clause 1.2 of the Shareholders' Agreement dated November 07, 2009 entered into between the UTI AMC and its shareholders, *inter-alia*, provided that shareholders holding more than 10 percent of the paid up share capital shall be entitled to nominate, appoint or recommend Directors in proportion to its shareholding in the company. The contemplated reduction in shareholding by the Noticees below 10%, would necessarily entail a consequential change in the Boards of UTI AMC and UTI Trustee.

**17.** Regulation 7B of MF Regulations has been introduced with the intent to address the conflict of interest arising where the sponsor of one AMC / Trustee is also a substantial shareholder (holding more than 10% shareholding) in another AMC / Trustee. This conflict of interest could affect the functioning and performance of the mutual fund industry as a whole. Thus, implementation of Regulation 7B

is critical to the removal of such potential conflict of interest for improving the overall functioning of the mutual fund industry and to foster the interest of investors.

**18.** It is noted that despite the expiry of over 20 months from the date of amendment of the Regulations, the Noticees are yet to achieve compliance with these requirements. While the Noticees have shown that they have initiated some steps to dilute their stake in UTI AMC, the substantial compliance with Regulation 7B still remains pending. Considering the facts and circumstances, I am of the view that a direction granting a reasonable time limit for compliance would be in the interest of all stakeholders.

**Directions**

**19.** In view of the foregoing, in exercise of the powers conferred upon me under Section 19 read with Section 11 and Section 11B of the SEBI Act, 1992, in the interest of investors and the securities market, I hereby direct the Noticees, viz. LIC, SBI and BoB, to ensure strict compliance with the requirements of Regulation 7B of the MF Regulations, as detailed below:

a. The shareholding and voting rights of the Noticees in UTI AMC and UTI Trustee shall be brought down below 10% on or before December 31, 2020;

b. The Noticees shall take suitable steps to ensure compliance with Regulation 7B of MF Regulations as regards board composition, on or before December 31, 2020;

c. In the event of non-compliance with the aforesaid directions, the shareholding and voting rights of the Noticees in UTI AMC and UTI Trustee in excess of 9.99% and corporate benefits thereon shall stand frozen till such time the Noticees comply with the aforesaid directions;

d. The Noticees shall submit a compliance report to SEBI, with respect to compliance with the aforesaid directions, within a period of one month from such compliance.

e. This order shall be without prejudice to any other action including adjudication proceedings that SEBI may initiate against the Noticees for the non-compliance with the provisions of Regulation 7B of the MF Regulations.

**DATE: December 06, 2019** **G. MAHALINGAM**

**PLACE: Mumbai** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**