

SECURITIES AND EXCHANGE BOARD OF INDIA

Memorandum to the Board

Proposed Amendments to SEBI (Mutual Funds) Regulations, 1996 to provide Framework for Infrastructure Debt Fund

1. Objective

1.1. This memorandum proposes to amend SEBI (Mutual Funds) Regulations, 1996 (MF Regulations) to provide regulatory framework for setting up of Infrastructure Debt Funds (IDFs) by **inserting Chapter VI-B to the MF Regulations.**

2. Rationale for Amendments

2.1. Finance Minister, in his Budget Speech for 2011-2012, announced setting up of Infrastructure Debt Funds (IDFs) in order to accelerate and enhance the flow of long term debt in infrastructure projects for funding Government's programme of infrastructure development.

2.2. In 2007 SEBI had set up a Committee to suggest the broad guidelines for launch and operations of Dedicated Infrastructure Funds. In its report dated July 23, 2007, the report detailed the rationale and modalities of setting up of Dedicated Infrastructure Funds under the MF Regulations. The Committee recommended that the Infrastructure Funds will need to be structured differently from the current Mutual Fund Schemes, as these will largely invest in unlisted companies, with longer gestation periods.

2.3. Pursuant to the Budget Announcements, consultations were held with representatives of Ministry of Finance, RBI, and industry participants on draft regulatory framework for IDFs under the extant MF Regulations. Taking into consideration views from the Government, RBI, Infrastructure Companies and potential investors as also the recommendations of the aforesaid Committee Report, it was agreed that Infrastructure Debt Funds may be set up under the

existing Mutual Fund Regulations by providing for a separate Chapter for the same.

2.4. A letter dated **(the date has been excised for reasons of confidentiality)** has also been received from Secretary, Ministry of Finance enclosing broad structure of IDFs as approved by the Finance Minister. **(Annexure B)**

2.5. Accordingly, Draft Chapter VI-B to the MF Regulations has been prepared for providing a regulatory framework for IDFs. **(Annexure A)**

3. Salient features of Regulatory Framework for IDF Scheme

3.1. The IDFs could be set up by any existing mutual fund. Applications from companies which have been carrying on activities or business in infrastructure financing sector for a period of not less than five years and fulfill the eligibility criteria provided in Regulation 7 of Mutual Fund Regulations will also be considered for setting up Mutual Funds exclusively for the purpose of launching IDF Scheme.

3.2. The IDF would invest 90 per cent of its assets in the debt securities of infrastructure companies or SPVs across all infrastructure sectors. Minimum investment by IDF would be Rs 1 crore with Rs 10 lakh as minimum size of the unit. The credit risks associated with underlying securities will be borne by the investors.

3.3. 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.

3.4. Units of infrastructure debt fund schemes shall be listed on a recognized stock exchange.

3.5. An Infrastructure debt fund shall have minimum 5 investors and no single investor shall hold more than 50% of net assets of the scheme

4. Proposal

4.1. The Board Memorandum proposes to amend SEBI (Mutual Funds) Regulations, 1996 by inserting **Chapter VI-B, on Infrastructure Debt Fund Schemes**. The proposed draft Mutual Fund Amendment Regulation 2011 is enclosed as **Annexure A** for consideration and approval.

4.2. The Board is requested to consider and approve the above and authorize the Chairman to make and notify such consequential and incidental changes and amendments to the SEBI (Mutual Funds) Regulations, 1996 as may be necessary and appropriate to implement the decision of the Board.

ANNEXURE-A

Draft

SECURITIES AND EXCHANGE BOARD OF INDIA (MUTUAL FUNDS) (AMENDMENT) REGULATIONS, 2011

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, the following chapter VI – B shall be inserted after VIA.

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 SEBI Guidelines or as notified by Ministry of Finance from time to time
- (3) 'Strategic Investor' means;
- (i) an Infrastructure Finance Company registered with RBI as NBFC.
 - (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) Unless the context otherwise requires, all other provisions of Mutual Fund Regulations and the guidelines and circulars issued thereunder shall apply to infrastructure debt fund schemes, and trustees and asset management companies in relation to such schemes, unless repugnant to the provisions of this Chapter.

49N. Eligibility criteria for launching IDFS

- (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 1 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 shall have minimum 5 investors and no single investor shall hold more than 50% of net assets of the scheme.
- (5) No infrastructure debt fund schemes shall accept any investment, from any investor which is less than Rupees one crore.
- (6) The minimum size of the unit shall be Rupees 10 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. In case partly paid units are issued:
 - (a) AMCs 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. 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. 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 AMC Board.
- (6) No Infrastructure Debt Fund schemes 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 SPVs, 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.
- (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 AMC on the basis of appropriate valuation methods based on principles approved by the Trustees. Such 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. 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.
- (2) The valuation policy approved by the board of AMC shall be disclosed in the scheme information document.
- (3) 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 AMC 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 are 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.

ANNEXURE-B

This has been excised for reasons of confidentiality