



JSA Prism Securities Law

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Investment in listed debt securities (rated A or below) by Category II Alternative Investment Funds will be considered as investments in unlisted securities

At its board meeting on March 24, 2025, the Securities and Exchange Board of India (“SEBI”) has resolved to amend Regulation 17(a) of the SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”). The notification implementing this amendment is expected to be issued shortly.

Background

Regulation 17(a) under ‘Conditions for Category II Alternative Investment Funds’, of the AIF Regulations, states that “Category II Alternative Investment Funds shall invest in investee companies or in the units of Category I or other Category II Alternative Investment Funds as may be disclosed in the placement memorandum;

Explanation – Category II Alternative Investment Fund shall invest primarily in unlisted companies directly or through investment in units of other Alternative Investment Funds”

The SEBI master circular for AIFs dated May 7, 2024, clarified that “with respect to Regulation 17(a) of the AIF Regulations, the term 'primarily' is indicative of where the main thrust of Category II AIFs ought to be. The investment portfolio of a Category II AIF ought to be more in unlisted securities as against the aggregate of other investments.” Accordingly, Category II AIFs are required to invest more than 50% of the investible fund in unlisted securities.

At this juncture, it may be noted that amendments made to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in September 2023 introduced Regulation 62A which inter-alia required all listed entities that already have outstanding listed non-convertible debt securities (“NCDs”) or proposes to list NCDs on or after January 1, 2024, to necessarily list all other non-convertible debt securities on the stock exchange(s) issued on or after January 1, 2024.

Given this, the availability of investment opportunities in unlisted securities may possibly reduce in the future for AIFs for making fresh investments. In order to address this issue, SEBI floated a consultation paper on February 7, 2025, to review Regulation 17(a) of AIF Regulations, with the objective of ease of doing business. Subsequently, SEBI at its board meeting held on March 24, 2025, clarified that investments made by Category II AIFs in listed debt securities rated ‘A’ or below will be treated as akin to investments in unlisted securities for the purpose of their compliance with minimum investment conditions in unlisted securities.

Conclusion

SEBI's proposed amendment to Regulation 17(a) of the AIF Regulations aims to provide flexibility for Category II AIFs in meeting their investment requirements by allowing investments in listed debt securities rated 'A' or below to count as unlisted securities i.e. be construed to be in compliance with the explanation to Regulation 17(a) of the AIF Regulations. This change is part of SEBI's ongoing efforts to streamline processes and promote ease of doing business in the investment sector.

Securities Law Practice

JSA has a robust securities litigation & advisory practice. The firm is adept at handling proceedings before the Securities Appellate Tribunal (SAT), Securities and Exchange Board of India (SEBI), stock exchanges, High Courts of different states and the Supreme Court. The firm has handled a wide variety of matters dealing with violations of provisions of SEBI (Prevention of Insider Trading) Regulations, SEBI (Prevention of Unfair Trade Practices) Regulations, SEBI (Stock Exchanges and Clearing Corporations) Regulations, SEBI (Intermediaries) Regulations, SEBI (Listing Obligations and Disclosure Requirements) Regulations, etc. The firm regularly advises high net worth individuals, listed entities, brokers and other intermediaries, private equity firms, mutual funds, key managerial personnel of intermediaries, etc.

The firm provides complete support to its clients - from the stage of being summoned/ providing information to the investigating authority, up to the stage of final appeal before the Supreme Court. The team assists in strategy and advises clients keeping in mind the operational/ practical aspects of the clients' business and regulatory requirements. Having previously represented SEBI and stock exchange before different fora, members of the securities litigation team bring a unique perspective to the mandates given by the clients.

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