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27 November 2018

The Chief General Manager
Investment Management Department
Division of Funds-1
Securities and Exchange Board of India
SEBI Bhavan
Plot No.C4-A,'G' Block
Bandra Kurla Complex, Bandra (East)
Mumbai 400 051

Dear Madam/Sir,

Sub: Request for interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996

This is a request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ('the Scheme').

1. Background

- 1.1 JM Financial Limited ('JMFL') provides investment management services among others, to JM Financial India Fund (referred to as 'Fund'). The Fund is registered with the Securities and Exchange Board of India ('SEBI') under the SEBI (Venture Capital Funds) Regulations, 1996 ('SEBI VCF Regulations').
- 1.2 The Fund has made investments into Venture Capital Undertakings ('VCUs').
- 1.3 JMFL, being the investment manager to the Fund, wishes to seek informal guidance on behalf of the Fund based on the facts and query raised in the application.

2. Facts

- 2.1 The Fund, during the course of its operations, come across situations where it has unutilised funds lying in its bank accounts. Such situation arises, *inter alia* on account of the following reasons.
 - a. Capital contribution received from the investors, pending investment of such funds (uninvested portion of the investible funds);
 - b. Time gap between (i) receipt of proceeds on sale/transfer of investments or (ii) the returns earned from the investments (e.g. dividend, any other type of income, etc.) and distribution of (i) and (ii) to the investors.

In certain cases where the amounts are small, the same are accumulated at the Fund level and were distributed to the investors at a later stage. Till the time the funds are not distributed to the investors, the same remain as idle funds.
- 2.2 The Fund has invested and/or propose to invest such unutilised funds into liquid mutual funds and similar liquid investments as they typically offer better returns than money lying in current account thereby providing a better overall return for the investors.

3. SEBI VCF Regulation

Regulation 2(hh): Investible funds

“investible funds” means corpus of the fund net of expenditure for administration and management of the fund”

Regulation 12: Investment conditions and restrictions:

“All investment made or to be made by a venture capital fund shall be subject to the following conditions, namely:—

- (a) Venture capital fund shall disclose the investment strategy at the time of application for registration;*
- (b) Venture capital fund shall not invest more than 25% corpus of the fund in one venture capital undertaking;*
- (ba) venture capital fund may invest in securities of foreign companies subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.*
- (c) Shall not invest in the associated companies; and*
- (d) Venture capital fund shall make investment as enumerated below:*
 - (i) At least 66.67% of the investible funds shall be invested in unlisted equity shares or equity linked instruments of venture capital undertaking.*
 - (ii) Not more than 33.33% of the investible funds may be invested by way of:*
 - (a) subscription to initial public offer of a venture capital undertaking whose shares are proposed to be listed;*
 - (b) debt or debt instrument of a venture capital undertaking in which the venture capital fund has already made an investment by way of equity.*
 - (c) preferential allotment of equity shares of a listed company subject to lock in period of one year;*
 - (d) the equity shares or equity linked instruments of a financially weak company or a sick industrial company whose shares are listed.*

Explanation 1.—For the purpose of these regulations, a 'financially weak company' means a company, which has at the end of the previous financial year accumulated losses, which has resulted in erosion of more than 50% but less than 100% of its net worth as at the beginning of the previous financial year;

- (e) Special Purpose Vehicles which are created by a venture capital fund for the purpose of facilitating or promoting investment in accordance with these Regulations.*

Explanation.—the investment conditions and restrictions stipulated in clause (d) of regulation 12 shall be achieved by the venture capital fund by the end of its life cycle;

- (e) Venture capital fund shall disclose the duration of life cycle of the fund.”*

4. Request for Guidance

- 4.1 Regulation 12 of the VCF Regulation provides for the investment conditions for the investible portion of the Capital contribution.
- 4.2 However, the VCF Regulations do not specify (a) whether a VCF can temporarily invest the uninvested portion of its investible funds in liquid assets till deployment of funds as per the investment objective; and (b) whether the unutilised funds arising on account of the monies received on sale/ transfer of the investments or returns from investment (e.g. dividend or any other type of income etc) before remitting it back to the investors, can be invested in liquid investments.

5. Query

- 5.1 In light of the above facts, JMFL on behalf of the Fund, requests as per Para 4 of the Scheme an interpretative letter for the following understanding:

"Whether an Venture Capital Fund under the VCF Regulations is in compliance with the provisions of VCF regulations, when it invests its unutilised funds in the units of liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc.?"

Our contention

- 5.2 The provisions of Regulation 12 of the SEBI VCF Regulations dealing with investment conditions is applicable to investible portion of the Capital contribution and not in respect of investment of idle funds in liquid mutual funds. Hence, Regulation 12(d) of the SEBI VCF Regulations which provides the percentage thresholds for various investment should not, in our view, be applicable at the time of investment of unutilised funds.
- 5.3 Further, in case of Alternative Investment Funds, Regulation 15(1)(f) of the SEBI Alternate Investment Fund Regulations, 2012 ('AIF Regulations') permits Alternate Investment Fund to invest uninvested portion of the investible funds in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc.
- 5.4 Also, as mentioned in para 4.2 above, investment of unutilised fund into liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc. will offer better returns in comparison to money kept idle in the Funds' bank account. This will be beneficial for and in the interest of the investors, as it will result into a better overall return for the investors.
- 5.5 It may be noted that liquid mutual fund or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits, etc. can be easily liquidated and hence, these investments are virtually cash like.

6. Fees

As per the requirements prescribed under the Scheme, JMFL has attached the demand draft of INR 25,000/-, for the fees for seeking the interpretive letter.

Further, as per the provisions of Para 11 of the Scheme, we request you to give confidential treatment to the application for a period of 90 days from the date of SEBI's response.

We request you to contact Mr. Rajkumar Agrawal at Rajkumar.Agrawal@jmfl.com / +91 9892377000 if you have any questions or require any clarifications with respect to this application or require any further information/documents/details and we shall provide the same at the earliest.

Thanking you in advance.

Yours sincerely,

For JM Financial Limited

(Investment Managers for JM Financial India Fund)



 Authorised Signatory

Name: Darius Pandole

Designation: Managing Director & CEO –PE & Equity AIFs

Encl: Demand Draft No 584458 dated November 26, 2018 of Rs. 25,000/- drawn in favor of " The Securities and Exchange Board of India"

