

Consultation Paper on providing option to Alternative Investment Funds and their investors to carry forward unliquidated investments of a scheme upon completion of its tenure

Objective

1. The objective of this consultation paper is to seek comments / views / suggestions from the public on a proposal to provide an option to Alternative Investment Funds (AIFs) and their investors to carry forward unliquidated investments of a scheme upon expiry of its tenure under the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), while ensuring proper recognition of asset value and fund performance.

Background

2. Presently, AIFs/Managers have the following options upon expiry of the tenure of a scheme of AIF:
 - i. In terms of Regulation 13(5) of AIF Regulations, AIFs can extend the tenure of a scheme up to two years, subject to approval of two-thirds of the investors by value of their investment in the AIF.
 - ii. Further, in terms of Regulation 29(8) of AIF Regulations, AIFs/ Managers have the option to distribute the assets of the AIF in-specie, after obtaining approval of at least 75% of the investors by value of their investment in the AIF.
 - iii. In case neither of the aforementioned investors' consent is received, or if the two-year extension of the AIF is complete without investor approval for in-specie distribution of residual assets, the AIF shall fully liquidate the scheme within one year following expiration of the fund tenure.
 - iv. Large Value Funds for Accredited Investors ('LVF') are permitted to extend the tenure beyond two years, subject to terms of the contribution agreement, other fund documents and such conditions as may be specified by SEBI from time to time. In case the requisite conditions specified in the placement memorandum, contribution agreement or other fund documents of LVF for extension of tenure beyond two years are not fulfilled, the LVF shall fully liquidate in accordance with AIF Regulations.
3. SEBI has, in the recent past, received requests/ intimation from a few AIFs regarding extension of the tenure of their schemes citing reasons such as lack of liquidity, legal / regulatory impediments, etc.
4. In this context, sample data collected by SEBI for expiry of the tenure of schemes of AIFs suggests that the two-year extension period for 24 schemes of AIFs with a valuation of INR 3,037 crores will expire in FY 2023-24. Further, the tenure of another 43 schemes with a valuation of Rs 13,450 crores will expire in FY 2024-25.
5. In light of this, SEBI is now considering whether an additional option may be provided to AIFs and their investors to carry forward unliquidated investments of a scheme beyond the currently allowed extended tenure.

6. At the same time, there is a clear regulatory and financial stability objective of ensuring proper recognition and disclosure of true asset quality, liquidity, and fund performance by AIFs/ Managers. Repeated extensions should not become a means to delay such recognition.
7. A full closure of the scheme, recognition of the true asset value, and re-opening of a fresh fund at that value would satisfy both objectives of providing additional flexibility to investors/ funds, while ensuring disclosure and tracking of true asset value and fund performance.
8. An agenda in this regard was placed before Alternative Investment Policy Advisory Committee (AIPAC) of SEBI, wherein AIPAC deliberated and recommended the following proposal.

Proposal

9. At the end of tenure of a scheme beyond two years and at the end of extended tenure of LVFs, the AIF/ manager may close the existing scheme and transfer the unliquidated investments to a new scheme, subject to obtaining consent of 75% of investors by value, provided that:
 - (i) With a view to establish a reliable market price and closing valuation, the AIF/ manager must arrange bids for a minimum of 25% of the unliquidated investments to provide exits to the investors who do not wish to continue in the new scheme. The AIF/ manager shall offer pro-rata exit to all participating investors who choose to redeem their units through this option.
 - (ii) The value at which the aforementioned exit is proposed to be provided to such investors, along with the valuation carried out by two independent valuation agencies, shall be disclosed to all investors.
 - (iii) If the minimum 25% bid is obtained from related parties of the AIF/manager/ sponsor or from other existing investors, the same should be transparently disclosed to all investors. Such bids can only be used to provide pro-rata exit to other remaining investors.
 - (iv) In case such fresh bids for a minimum of 25% of unliquidated investments cannot be arranged, the closing valuation of the scheme will be based on the liquidation value as determined under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, or other applicable IBC norms.
 - (v) In either case, the unliquidated investments will be transferred to a new scheme at the closing price (either established by evidencing minimum 25% bids, or at liquidation value) of the original scheme.
 - (vi) Performance of the fund managers shall be computed in accordance with the value at which investors are provided exit or liquidation value, as the case may be. Such performance data shall also be included in the track record of the manager in the PPMs of subsequent schemes.

- (vii) In setting up the new fund, fresh investors will be explicitly informed that the new scheme holds unliquidated investments from a previously closed scheme and the reasons thereof.
- (viii) If such new scheme has been launched with the objective to only transfer unliquidated investments from old scheme, and not to make any new investment, then such scheme shall be exempted from the following provisions of AIF Regulations:
- Minimum scheme corpus requirement [Regulation 10(b) and Regulation 19L(1)]
 - Minimum investment requirement from investor in scheme of AIF [Regulation 10(c) and Regulation 19L(2)]
 - Requirement of fixed tenure [Regulation 13(1)]
 - Investment concentration norms [Regulation 15(1)(c)]
10. In case the consent of 75% of investors by value is not received either for in-specie distribution or for transfer to a new scheme per the terms proposed above, the AIF / manager shall mandatorily liquidate the investments at liquidation value within a year of expiry.
11. The manager and trustee shall be responsible for compliance with the aforesaid procedure.

Public Comments

12. Public comments are invited for the proposals at para 9, 10 and 11 above. The comments / suggestions may be provided as MS Excel file as per the format given below:

Name of the person/ entity proposing comments:	
Name of the organization (if applicable):	
Contact details:	
Category: whether market intermediary/ participant (mention type/ category) or public (investor, investee company, academican etc.)	

Sr. No.	Para. no. of the consultation paper	Extract from the consultation paper	Comments / Suggestions	Rationale

13. Kindly mention the subject of the communication as, “Comments on Consultation Paper on providing option to Alternative Investment Funds and their investors to carry forward unliquidated investments of a scheme upon completion of its tenure”.
14. Comments as per aforesaid format may be sent by email to Shri. Sanjay Singh Bhati, Deputy General Manager (ssbhati@sebi.gov.in) and Shri. Sachin Kisan Jadhav, Assistant Manager (sachinj@sebi.gov.in) latest by February 18, 2023.
