Consultation paper on review of eligibility criteria for the key investment team and prescribing qualification for compliance officer of Manager of an Alternative Investment Fund

Objective

1. The objective of this consultation paper is to seek comments / inputs / suggestions from the stakeholders and public on the proposals relating to review of eligibility criteria for the key investment team and prescribing qualification for compliance officer of Manager of Alternative Investment Fund (AIF) under the SEBI (AIF) Regulations, 2012 ("AIF Regulations").

Background

2. Regulation 4 of AIF Regulations provides for eligibility conditions for grant of AIF registration. In terms of Regulation 4(g) of AIF Regulations, the key investment team of the Manager of an AIF is required to have:

    i. Adequate experience, with at least one key personnel having not less than five years of experience in advising or managing pools of capital or in fund or asset or wealth or portfolio management or in the business of buying, selling and dealing of securities or other financial assets; and

    ii. At least one key personnel with professional qualification in finance, accountancy, business management, commerce, economics, capital market or banking from a university or an institution recognized by the Central Government or any State Government or a foreign university, or a CFA charter from the CFA institute or any other qualification as may be specified by SEBI.

    Provided that the requirements of experience and professional qualification may also be fulfilled by the same key personnel.

3. In terms of SEBI Circular No. SEBI/HO/AFD/RAC/CIR/2022/088 dated June 24, 2022 on 'Guidelines for Large Value Fund for Accredited Investors under SEBI (AIF) Regulations, 2012 and Requirement of Compliance Officer for Managers of all AIFs', it is specified that, all AIFs shall ensure that Manager to AIF designates an employee or director as Compliance Officer who shall be a person other than CEO of the Manager (or such equivalent role or position depending on the legal structure of Manager). The compliance officer shall be responsible for monitoring compliance with the provisions of the SEBI Act, AIF Regulations and circulars issued thereunder.

Issues for consideration

4. Eligibility Criteria for Key Investment Team of an AIF:

    4.1. The requirement of having experience in terms of 4(g) of AIF Regulations may act as a barrier for new age/ first generation managers who may not have requisite experience to satisfy the regulatory requirement but have competence and expertise in fund management and generating returns for the investors.

4.2. Further, as the experience criteria prescribed for key investment team is broad, there may be certain level of subjectivity involved while ascertaining whether experience of the key investment team meets the regulatory requirement. While processing applications filed by AIFs for grant of registration and launch of new schemes, it has been observed that there remains ambiguity in the understanding of the applicants as to what experience suffices the eligibility condition specified under the AIF Regulations. In such cases, SEBI communicates observations to the applicant regarding the key investment team not meeting the experience criteria or calls for more information in this regard, which causes delay in processing of the applications. Therefore, a need is felt to replace the existing criteria of experience of the key investment team with a criteria which is specific, aligns with the objective of the AIF Regulations, facilitate in expeditious processing of the applications and encourage first time managers having competence to manage AIFs.

4.3. Incidentally, it is also observed that SEBI (Mutual Funds) Regulations 1996, do not prescribe any specific experience requirement for key personnel of AMCs, even though there is retail investor participation.

4.4. The investors in AIFs are perceived to be sophisticated and capable of conducting independent and adequate due diligence while investing in AIFs, including the assessment of credentials and track record of the manager and its key investment team, provided that true, adequate and appropriate information is disclosed to them.

4.5. In this context, SEBI vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020 provided template for Private Placement Memorandum (PPM) which requires AIF to disclose brief biography of each member of the key investment team in terms of experience in present/past organization, designation, period, work profile etc. It is envisaged that this would enable the prospective investors of an AIF have adequate information regarding experience of the key investment team while making investment in an AIF and, hence, it is felt that SEBI need not consider the experience of the key investment team as an eligibility criteria for the purpose of processing the applications.

4.6. This issue was deliberated in the meeting of the Alternative Investment Policy Advisory Committee ('AIPAC'), wherein AIPAC recommended that while experience as an eligibility criteria for the purpose of grant of registration and processing scheme applications, may be done away with, the key investment team member(s) of the manager of an AIF may obtain relevant certification as may be specified by SEBI, in order to assess the key investment team member(s)' competence in managing investor(s)' capital and awareness regarding AIF regulatory framework.

4.7. Further, the compliance officer of manager of an AIF is responsible for monitoring compliance with the provisions of the SEBI Act, AIF Regulations and circulars issued thereunder. It is desirable that the compliance officer has certain qualification which may ascertain its competence in discharging its responsibility.

Proposal

4.8. Considering the above, it is proposed to replace the experience criteria under Regulation 4(g) of AIF Regulations for the key investment team member(s) of the manager of an AIF with requirement of obtaining a relevant certification from an institution notified by SEBI.

4.9. Further, it is proposed that the compliance officer of the Manager of an AIF may also be required to obtain relevant certification from an institution notified by SEBI.

Public Comments

5. Public comments are invited for the proposals at para 4.8 and 4.9 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, academician etc.)	

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

6. Kindly mention the subject of the communication as, "Comments on Consultation paper on review of eligibility criteria for the key investment team and prescribing qualification for compliance officer of Manager of an Alternative Investment Fund"

7. Comments as per aforesaid format may be sent to the following, latest by February 18, 2023, in any of the following manner:

    (i) Preferably, by email to Shri Sanjay Singh Bhati, Deputy General Manager (ssbhati@sebi.gov.in) and/or Shri Kunwar Abhay Singh, Assistant Manager (kunwars@sebi.gov.in).

    (ii) By post to:
    Shri Sanjay Singh Bhati,
    Deputy General Manager,
    Alternative Investment Fund and Foreign Portfolio Investors Department,
    Securities and Exchange Board of India, SEBI Bhavan, C4-A, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai -400051

Issued on: February 03, 2023

***