



Consultation Paper on the proposal to review Qualified Institutional Buyer status of Alternative Investment Funds, Venture Capital Funds and Foreign Venture Capital Investors

Objective

1. The objective of the consultation paper is to seek comments / views / suggestions from the public on the proposal to review Qualified Institutional Buyer (QIB) status of Alternative Investment Funds (AIFs) registered under SEBI (Alternative Investment Funds) Regulations, 2012, Venture Capital Funds (VCFs) registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 and Foreign Venture Capital Investors (FVCIs) registered under SEBI (Foreign Venture Capital Investors) Regulations, 2000.

Background

2. Regulation 2(1)(ss)(ix) of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 ("ICDR Regulations"), defines QIBs as under:

"qualified institutional buyer means:

- (i) *a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with the Board;*
- (ii) *foreign portfolio investor other than individuals, corporate bodies and family offices;*
- (iii) *a public financial institution;*
- (iv) *a scheduled commercial bank;*
- (v) *a multilateral and bilateral development financial institution;*
- (vi) *a state industrial development corporation;*
- (vii) *an insurance company registered with the Insurance Regulatory and Development Authority of India;*
- (viii) *a provident fund with minimum corpus of twenty-five crore rupees;*
- (ix) *a pension fund with minimum corpus of twenty-five crore rupees;*
- (x) *National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;*
- (xi) *insurance funds set up and managed by army, navy or air force of the Union of India; and*
- (xii) *insurance funds set up and managed by the Department of Posts, India; and*
- (xiii) *systemically important non-banking financial companies."*

3. QIBs, in general, are large, sophisticated and informed institutional investors, who are perceived to possess the expertise and financial ability to evaluate, invest and manage risks in the capital markets. They are expected to contribute in an expert manner, to price discovery for IPOs/FPOs, etc. It is also observed that many entities designated as QIBs are professional, expert money managers undertaking investment on behalf of a large body of stakeholders.
4. In terms of ICDR Regulations, *inter alia*, the following flexibility has been provided to QIBs –
 - 4.1. In an issue made through the book building process under Regulation 6(1) of ICDR Regulations (i.e. meeting eligibility requirement), up to 50% is allocated to QIBs.

- 4.2. In an issue made through the book building process under Regulation 6(2) of Regulations (i.e. not meeting eligibility requirement), at least 75% is allocated to QIBs.
- 4.3. QIBs are not counted for the purpose of the numerical restriction (viz. 200) stipulated in the Companies Act, 2013, for private placement of securities.
5. In terms of erstwhile SEBI (Venture Capital Funds) Regulations, 1996 (VCF Regulations), VCFs are dedicated pool of capital, which raise capital and invest in a manner as specified in the VCF Regulations. VCF Regulations were repealed upon notification of SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"). VCFs registered under VCF Regulations continue to be regulated under the said regulations till the existing fund or scheme managed by the VCF is wound up, provided that such funds shall not increase their targeted corpus after notification of AIF Regulations. Thus, VCFs registered under VCF Regulations can make investments out of their corpus till they are wound up.
6. In terms of AIF Regulations, AIFs are pooled investment vehicles which collect funds from investors, for investing it in accordance with a defined investment policy for the benefit of its investors. While AIF Regulations specify that no scheme of AIF shall have more than 1000 investors, there is no specification for minimum number of investors in a scheme of an AIF.
7. Since AIF Regulations do not specify the minimum number of investors in a scheme of an AIF, there are AIFs/schemes having a single or a few (often connected) investors, not including sponsor and manager of the AIF.
8. It is observed that certain AIFs, which have very few investors and belonging to same family / investor group, have invested in IPOs under QIBs quota, thereby circumventing norms pertaining to QIBs under ICDR Regulations.
9. It is observed that as on March 31, 2023, a total of 318 schemes of AIFs had five or less investors (other than Sponsor / Manager / their directors / partners / employee benefit trust) out of which 210 schemes have either one or two investor(s). Further, it is also possible that these investors belong to the same group (e.g. same family or group or holding / subsidiary company, etc.)
10. Thus, entities which may not be otherwise eligible to qualify as QIBs on their own, may avail the flexibility provided to QIBs by setting up an AIF for the said purpose. Given the above regulatory arbitrage, it was felt necessary to address the same.
11. It is to be noted that although Category I and Category II AIFs were envisaged to encourage investment primarily in unlisted securities, flexibility has been provided to Category I and Category II AIFs to invest the remaining portion of their investible funds in listed securities. Whereas, Category III AIFs have been provided flexibility to invest their entire corpus in listed securities.

12. In terms of AIF Regulations, corpus of scheme of an AIF means the total amount of funds committed by investors to the scheme by way of a written contract or any such document (usually the Contribution Agreement entered between the AIF and its investors) as on a particular date. As and when the investment opportunities are identified as per the defined investment objective of the scheme, funds are drawn down by AIFs for investment out of the capital commitments provided by the investors. However, no outer timeline has been specified in AIF Regulations for AIFs to drawdown the funds out of commitments for investments.
13. As far as Category I & II AIFs are concerned, one of the ways deliberated to address the aforesaid concern, was to further reduce the limit for investment in listed securities or specify a timeline for drawdown of funds out of the commitments, to ensure compliance w.r.t. investment in listed *vis-à-vis* unlisted securities, at all times. However, after evaluation, it was felt that the same may not be appropriate since it would take away the flexibility of all the Category I & II AIFs, on account of certain instances of misuse.
14. Alternatively, to address the concern across different categories of AIFs, it was viewed to mandate that AIFs having 50% or more contribution from a single investor or investors belonging to the same group should not be entitled to avail benefits designated for QIBs.
15. This proposal was deliberated in the meeting of Alternative Investment Policy Advisory Committee (AIPAC) of SEBI. The committee did not present any disagreement with respect to aforesaid proposal of SEBI.
16. Similar concerns are also present in case of designation of FVCIs as QIBs. It is noted that FPIs who are individuals, corporate bodies and family offices are not designated as QIBs, so that the flexibility available to QIBs are not available to such entities. However, similar exclusion has not been provided in case of FVCIs. It is important to note that individuals are not eligible to register as FVCIs.
17. To align the conditions for FVCIs with that given for FPIs and to address the concerns related to designation of FVCIs as QIBs, it is necessary that only those FVCIs who are other than corporate bodies and family offices are designated as QIBs.

Proposal

18. With regard to AIFs, VCFs and FVCIs, the following shall be considered as QIBs –

- 18.1. AIFs and VCFs, other than those having 50% or more contribution from a single investor or investors belonging to the same group.

(Explanation – ‘same group’ shall include relatives and related parties as defined in Companies Act 2013)



18.2. FVCIs, other than those FVCIs who are corporate bodies and family offices.

Public Comments

19. Public comments are invited for the proposal 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, law firm/consultant, academician etc.)	

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

20. Kindly mention the subject of the communication as, “Comments on Consultation Paper on review of Qualified Institutional Buyer status to Alternative Investment Funds, Venture Capital Funds and Foreign Venture Capital Investors”.

21. Comments as per aforesaid format may be sent to the following, latest by June 01, 2023, in any of the following manner:

(i) Preferably by email to afdconsultation@sebi.gov.in, with a copy to Shri Sachin Kisan Jadhav, Manager (sachinj@sebi.gov.in) and Ms Padma Bharathi S, Manager (padmab@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

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