



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
INVESTMENT MANAGEMENT DEPARTMENT
DIVISION OF FUNDS-1

SEBI/HO/IMD/DF1/OW/P/2019/0000001154/1

January 10, 2019

Mr. Rakesh Parikh
KellyGamma Advisors LLP
1007/1008, 10th Floor, Shapath V, Opp. Karnavati Club
Nr. Chimanbhai Patel Institute, S.G. Highway
Ahmedabad-380 051

Dear Sir,

Sub: Request for interpretive letter by KellyGamma Advisors LLP under Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in connection with Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012

1. This has reference to your letter dated August 03, 2018 and subsequent information dated November 11, 2018 submitted by you seeking an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your communication under reference you have *inter alia* represented as follows:
 - 2.1. KellyGamma Advisors LLP (applicant) provides investment management services to KellyGamma Fund One- the first scheme of KellyGamma Fund a Category III Alternative Investment Fund registered with SEBI under Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.
 - 2.2. Corpus of KellyGamma Fund One is INR 20 crore. KellyGamma Fund One invested INR 2 crore in Company A in Year 1 and INR 6 crore in other companies. No individual investment is larger than INR 2 crore. Balance INR 12 crore is lying in the Bank account of KellyGamma Fund One.
 - 2.3. KellyGamma Fund One sold 75% stake in Company A (purchase cost being INR 1.5 crore) over a period of 2 years i.e. in Year 2 and in Year 3, for INR 4 crore. As a result of this, at the end of Year 3:

सेबी भवन, प्लॉट सं. सी 4-ए, "जी" ब्लॉक, बांद्रा कुर्ला कॉम्प्लेक्स, बांद्रा (पूर्व), मुंबई - 400 051.
दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

Balance in the Bank account of a KellyGamma Fund One (including sale proceeds of INR 4 crore).	INR 16 crore
Invested portfolio:	
Investment in Company A	INR 0.5 crore (market value INR 1 crore)
Investment in other companies	INR 6 crore (market value INR 9 crore)
Total portfolio of investments	INR 6.5 crore (market value INR 10 crore)
Total assets under management (Balance lying in Bank account plus market value of total investment)	INR 26 crore

2.4. Vide information submitted on November 11,2018 you have provided the updated information as under:

Corpus of KellyGamma Fund One : Rs 22 crore

Investible funds: Rs 21.75 crore

Estimated expenditure on administration and management of KellyGamma Fund One: Management fee of 2% as per Private Placement Memorandum of approximately Rs 40 lakhs and other expenses of approximately Rs 2 to 5 lakhs.

3. In view of the above, you have sought an interpretive letter under SEBI (Informal Guidance) Scheme, 2003 from SEBI on the following:

3.1. What is the maximum amount of investment that KellyGamma Fund One can make in Year 4 in any portfolio companies (including existing portfolio companies)?

And submitted the following w.r.t. 3.1

3.2. Regulations:

- As per Regulation 15(l) (d) of the AIF Regulations, Category III AIF shall invest not more than ten percent of the investible funds in one investee company.
- As per Regulation 2(l) (p) of the AIF Regulations, 'investible funds' means corpus of the AIF net of estimated expenditure for administration and management of the fund.



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

- As per Regulation 2(l)(h) of the AIF Regulations, 'Corpus' means the total amount of funds committed by investors to the AIF by way of written contract or any such document as on a particular date.

3.3. Whether KellyGamma Fund One can invest in any portfolio companies (including existing portfolio companies), in Year 4, up to ten percent of INR 26 crore (being balance lying in the Bank account of INR 16 crore plus total market value of invested portfolio of INR 10 crore) INR 22.5 crore (being balance lying in the Bank account of INR 16 crore plus total cost of invested portfolio of INR 6.5 crore) or INR 20 crore (being total amount of funds committed by the investors by way of a contribution agreement), in light of Regulation 15(l)(d) of the AIF Regulations?

3.4. KellyGamma Fund One requests the SEBI to provide guidance on the interpretation of the term 'investible funds' i.e. whether 'investible funds' referred into Regulation 15(l)(d) of the AIF regulations shall be construed strictly to mean total amount of funds committed by the investors by way of a contribution agreement or shall be construed to mean total amount of funds committed by the investors by way of a contribution agreement plus realized and unrealized gains from investments made?

3.5. Where the term 'investible funds' is construed strictly to mean total amount of funds committed by the investors by way of a contribution agreement, KellyGamma Fund One cannot invest more than ten percent of INR 20 crore in any portfolio companies. This restricts KellyGamma Fund One from generating better returns for its investors, in the given facts, by making further investment in Company A [i.e. an investment up to INR 2.6 crore (being ten percent of INR 26 crore)/ INR 2.25 crore (being ten percent of INR 22.5 crore)], in Year 4, when liquidation of 75% stake by the end of Year 3 has yielded, a gain of INR 2.5 crore, resulting in increase in corpus as mentioned above.

4. Our Comments

The submissions made in your letter have been considered and without necessarily agreeing with your analysis, our view on the issues raised in your letter are as under:

4.1. Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 specifies Investment Conditions and Restrictions for compliance by the registered AIFs.

4.2. Regulations 2(1)(h) defines corpus as



अनुवर्ती :
Continuation :

भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

“corpus” means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date;

- 4.3. Regulations 2(1)(p) defines investable funds as
“Investable funds” means corpus of the Alternative Investment Fund net of estimated expenditure for administration and management of the fund;
- 4.4. Regulation 15(1) (d) provides that Category III Alternative Investment Funds shall invest not more than ten percent of the investable funds in one Investee Company.
- 4.5. The provisions under Regulation 15(1) (d) provides that Category III Alternative Investment Funds shall invest not more than ten percent of the investable funds in one Investee Company.

As per latest information submitted by you in November 2018

Corpus of KellyGamma Fund One on date of final close: Rs 22 crore

Estimated expenditure on administration and management of KellyGamma Fund One: Management fee of 2% as per Private Placement Memorandum of approximately Rs 40 lakhs and other expenses of approximately Rs 2 to 5 lakhs.

Investable Funds : Rs 22 crore- Rs 45 lakhs= Rs 21.55 crores

4.6. The maximum amount of investment that KellyGamma Fund One can make in any portfolio companies (including existing portfolio companies) is 10% of Rs 21.55 crores = Rs 2.155 crores.

5. The above position is based on the representation made to the Division in your communication under reference. Different facts or conditions might require a different result. This letter does not express decision of the Board on the questions referred.
6. You may note that the above views are expressed only with respect to the clarification sought on Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 and do not affect the applicability of any other law and other SEBI Regulations, guidelines and circulars administered by SEBI or of the laws administered by any other authority.

Yours faithfully,

Naveen Sharma