CIRCULAR

SEBI/HO/AFD/AFD-POD-1/P/CIR/2024/112 August 19, 2024

To,

All Alternative Investment Funds (AIFs)

Sir/Madam,

Sub: Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs

1. Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations") have been amended and notified on August 06, 2024, with respect to (i) norms for borrowing by Category I and Category II AIFs, and (ii) maximum permissible limit for extension of tenure by Large Value Fund for Accredited Investors (LVFs). Copy of the aforesaid notification is available at *link*.

A. Guidelines for borrowing by Category I and Category II AIFs

2. In terms of Regulation 16(1)(c) and Regulation 17(c) of AIF Regulations, Category I and Category II AIFs shall not borrow funds directly or indirectly or engage in any leverage for the purpose of making investments or otherwise, except for borrowing funds to meet temporary funding requirements and day-to-day operational requirements for not more than thirty days, on not more than four occasions in a year and not more than ten percent of the investable funds and subject to such conditions as may be specified by SEBI from time to time.

3. In this regard, in order to facilitate ease of doing business and provide operational flexibility, it has been decided to allow Category I and Category II AIFs to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies (*'drawdown amount'*).

4. Category I and Category II AIFs may borrow for the purpose of meeting shortfall in drawdown amount, subject to the following additional conditions:

    4.1. If AIF intends to borrow funds for meeting shortfall in drawdown amount, the same shall be disclosed in the PPM of the scheme.

    4.2. Such borrowing shall be done only in case of emergency and as a last recourse, when the investment opportunity is imminent to be closed and the drawdown amount from investor(s) has not been received by the AIF before the date of investment, in spite of best efforts by manager to obtain the drawdown amount from the delaying investor(s).

4.3. The amount borrowed shall not exceed twenty per cent of the investment proposed to be made in the investee company, or ten per cent of the investable funds of the scheme of AIF, or the commitment pending to be drawn down from investors other than the investor(s) who has failed to provide the drawdown amount, whichever is lower.

4.4. The cost of such borrowing shall be charged only to investor(s) who failed to provide the drawdown amount for making investments.

4.5. The flexibility of borrowing to meet shortfall in drawdown amount shall not be used as a means to provide different drawdown timelines to investors.

4.6. The manager shall disclose the details with respect to amount borrowed, terms of borrowing and repayment to all the investors of the AIF/scheme, on a periodic basis as per the terms of agreement with the investors of the AIF.

5. Further, all Category I and Category II AIFs shall maintain thirty days cooling off period between two periods of borrowing as permissible under AIF Regulations. The cooling off period of thirty days shall be calculated from the date of repayment of previous borrowing.

B. Maximum permissible limit for extension of tenure by LVFs

6. In terms of proviso to Regulation 13(5) of AIF Regulations, a LVF may extend its tenure up to five years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and the extension in tenure of any existing LVF scheme shall be subject to such conditions as may be specified by SEBI from time to time.

7. In this regard, the following is specified -

7.1. Existing LVF schemes who have not disclosed definite period of extension in their tenure in the PPM or whose period of extension in tenure is beyond the permissible five years, shall align the period of extension in tenure with the requirement as given at para 6 above, within three months from the date of this circular, i.e., on or before November 18, 2024.

Such LVF schemes shall update their revised period of extension in tenure in the quarterly report submitted on the SEBI Intermediary Portal (SI Portal) for the quarter ending December 31, 2024.

7.2. While realigning the period of extension in tenure, LVF schemes shall have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Such LVF schemes shall submit an undertaking to SEBI on or before November 18, 2024, stating that consent of all the investors of the scheme has been obtained for revising the original tenure.

8. Accordingly, the conditions for extension of tenure for LVFs as given in para 12.14 of SEBI Master Circular No. SEBI/HO/AFD-1/AFD-1-PoD/P/CIR/2024/39 dated May 07, 2024 for AIFs ('Master Circular for AIFs') shall not be applicable with effect from the date of this circular.

9. The trustee/sponsor of AIF, as the case may be, shall ensure that the 'Compliance Test Report' prepared by the manager in terms of Chapter 15 of Master Circular for AIFs, includes compliance with the provisions of this circular.

10. This circular shall come into force with immediate effect.

11. This circular is issued with the approval of the competent authority.

12. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992, read with Regulations 13(5), 16(1)(c), 17(c) and 36 of AIF Regulations, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

13. The circular is available on SEBI website at www.sebi.gov.in under the categories "Legal framework - Circulars" and "Info for - Alternative Investment Funds".

Yours faithfully,

Sanjay Singh Bhati
Deputy General Manager
Tel no.: +91-22-26449222
ssbhati@sebi.gov.in