



N. A. SHAH ADVISORY SERVICES LLP

BULLETIN

CAPITAL MARKETS BULLETIN – DECEMBER 2022

EXECUTIVE SUMMARY

- ◆ SEBI has issued a notification to keep in abeyance on acceptance of any fresh commitment or making of any new investment till further notice to all such AIFs who have adopted priority distribution model wherein one class of investors (other than sponsor/manager) share loss more than pro rata to their holding in the AIF vis-à-vis other classes of investors/unit holders.
- ◆ Guidelines for AIFs have been issued by SEBI in relation to:
 - for declaration of first close of schemes;
 - calculation of tenure in case of close-ended schemes; and
 - applicable fees in case of change of sponsor/manager or change in control of sponsor/manager.
- ◆ Based on discussion in its board meeting in September 2022, SEBI has notified its proposals by way of amendment of LODR in relation to:
 - independent directors' (IDs) appointment, re-appointment or removal;
 - appointment of a monitoring agency for overseeing the utilisation of the issues proceeds from the preferential issue and the QIP;
 - requirement of obtaining NoC from SEBI for schemes of arrangement involving such companies which have listed their Non-Convertible Securities; etc.
- ◆ SEBI has introduced the option to confidentially pre-file draft red herring prospectus with SEBI and the stock exchanges for issuers who intend to keep confidential their business information at the initial stages of the IPO process. Such option may be exercised by the issuer entity subject to certain eligibility requirements and conditions.
- ◆ If an InvIT fails to make any offer of its units within three years from the date of registration with the Board, it shall surrender its certificate of registration. Further, no InvIT shall make a private placement of unlisted shares.

GUIDELINES ISSUED FOR AIFs

- ◆ Timeline for declaration of First Close for all schemes:

Type	Timeline for declaring First Close
Open-ended scheme of Category III AIF	Shall refer to the close of their Initial Offer Period
Existing schemes who have not declared their first close	not later than 12 months from the date of this circular
Large Value Fund for Accredited Investors (LVF)	not later than 12 months from the date of grant of registration of the AIF or date of filing of PPM of scheme with SEBI, whichever is later
Existing LVF schemes	not later than 12 months from 17 November 2022
Others	not later than 12 months from the date of SEBI communication for taking the PPM of the scheme on record

In case of non-disclosure, the AIFs shall make a fresh application for launch of the said schemes by paying requisite fee to SEBI.

- ◆ Calculation of tenure of close-ended schemes:
 - Tenure of a close ended schemes of AIFs shall be calculated from the date of declaration of the First Close.
 - AIFs may modify the tenure at any time before declaration of the first close allowing the investor to withdraw or reduce commitment prior to declaration.
- ◆ Fees in case of change in control of manager/sponsor or change in manager/sponsor of AIFs:
 - A fee equivalent to the registration fee shall be payable within 15 days of such change. In case of both events occurring simultaneously, a single registration fee shall be leviable.
 - The aforesaid fees shall not be levied in following cases:
 - The manager is acquiring control in or replacing the sponsor.
 - Exit of sponsor(s) where AIF has multiple sponsors.
 - The prior approval granted by SEBI in this regard shall be valid for a period of 6 months from the date of SEBI communication for the approval.

APPOINTMENT OF ID, SCHEME OF ARRANGEMENTS, SUBMISSION OF FINANCIAL RESULTS AND OTHER AMENDMENTS IN LODR

SEBI has amended the LODR regulations to incorporate the proposals made during its board meeting in relation to the various aspects for certain types of entities:

- ◆ All equity listed and high value debt listed entities:

The process for appointment of Independent Director (ID) has been amended to include dual voting system to provide that public shareholders may block the appointment of ID. In case of dual voting system, if the resolution for appointment of an ID has not been passed by special majority, then such resolution may be taken as passed only when both the following conditions are satisfied:

- there is an ordinary majority of all the shareholders;
- there is an ordinary majority of the public shareholders

- ◆ All equity listed entities:


- The requirement of monitoring agency in case of preferential issue or qualified institutional placement (QIP) has been introduced.

- ◆ Entities which have listed their non-convertible debentures, non-convertible preference shares:

- Timeline for submission of financial results for the last quarter has been provided as 60 days from the end of last quarter to be in line with equity listed entities;
- Disclosure of various financial ratios to the stock exchanges along with filing of quarterly and annual financial results;
- Requirement of publishing of only consolidated financial results in case of submission of both standalone and consolidated results to the exchange;
- Prior NoC from the stock exchanges to be obtained before filing scheme of arrangement with the NCLT (similar requirement exists for equity listed entities)

- ◆ Draft scheme of Merger and Arrangement

- Listed entities which have listed their non-convertible debt securities or non-convertible redeemable preference shares on stock exchanges and intend to undertake a scheme of arrangement or is involved in a scheme of arrangement are required to obtain No Objection Letter from the stock exchange before filing the scheme of arrangement with the NCLT.



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