

SEBI continues its strict approach towards winding-up of AIF schemes and trustee liability

In an adjudication order dated June 30, 2026, in the matter of Exfinity Technology Fund (the **Fund**) (**Exfinity Order**), Securities and Exchange Board of India (**SEBI**) has reaffirmed its increasingly strict approach towards compliance with the requirements under the SEBI (Alternative Investment Funds) Regulations, 2012 (**AIF Regulations**) with respect to the tenure of an AIF scheme and its winding-up at the end of such tenure. The Exfinity Order builds upon SEBI's recent enforcement trend in matters involving delayed winding-up of AIF schemes and trustee oversight, while also reinforcing principles that have emerged from earlier adjudication proceedings involving AIF governance. While the Exfinity Order also addresses breaches relating to overseas investment limits, valuation, reporting requirements, and others; its principal significance lies in two key aspects: (i) SEBI has once again held that investor consent cannot be relied upon to extend the life of an AIF scheme beyond the tenure and liquidation framework prescribed under the AIF Regulations; and (ii) SEBI has imposed liability on the Fund's trustee, reinforcing the regulator's expectation that trustees play an active oversight role in ensuring compliance with the AIF Regulations.

Background

The Fund's scheme, Exfinity Technology Fund Series I Scheme (the **Scheme**) had a tenure of 5 (five) years ending in August 2019, which was extended by two years to August 2021. Upon expiry of the tenure, the Scheme in accordance with Regulation 29(7) of the AIF Regulations ought to have been wound up within the liquidation period ending in August 2022. However, owing to unfavourable market conditions and the inability to secure commercially viable exits for certain portfolio investments, the investment manager did not wind up the AIF scheme. Instead, the investment manager obtained investor approval to further continue the Scheme for an additional year.

SEBI issued a show cause notice to the Fund, its investment manager, trustee and the trustee's directors (the **Noticees**), alleging various violations of the AIF Regulations, including the failure in not winding up of the Scheme in a timely manner.

▪ **Issue 1: Investor Consent vis-à-vis the Statute**

The Noticees argued that the investor consent for extension of the Scheme beyond August 2022 was not in violation of the AIF Regulations primarily due to the following among others:

- The private placement memorandum (**PPM**) of the Scheme was a contract between the investors and the Fund and the terms of a contract could be amended basis mutual understanding and consent;
- Regulation 29(1)(a) of the AIF Regulation (which stipulates the timeline to be per the PPM) was directory in nature and not mandatory since it did not impose a strict penalty for violation of the same, therefore the same could have been read to be amended when the investors consented to amend the timeline provided in the PPM.

SEBI rejected the Noticees' arguments stating that the terms of a PPM, once filed is SEBI is not a mere private contract between the parties, instead is the statutory basis upon which a fund operates. Therefore, the tenure provided in the PPM could not be held to be a commercial or contractual arrangement, amendable by the parties. It held that the obligation to wind up the Scheme after its tenure is a regulatory mandate deriving its force from Regulation 29(1)(a) of the AIF Regulations and not the PPM and hence could not be overridden by investor consent.

▪ **Issue 2: Trustee Oversight**

Perhaps the most significant aspect of the order is SEBI's treatment of the trustee.

The trustee of the Fund, Vistra ITCL (India) Limited (the **Trustee**), argued that its role under the trust deed and investment management agreement was limited to oversight and did not extend to directing or compelling the investment manager to liquidate portfolio investments. It also submitted that it had continuously engaged with the investment manager through meetings, correspondence and action plans regarding closure of the Scheme and therefore had discharged its obligations as trustee.

SEBI rejected the Trustee's argument and imposed a penalty on the Trustee for the delay in winding up the scheme. While acknowledging that trustees are not responsible for the day-to-day operations or investment decisions of an AIF, SEBI held that trustees owe an independent fiduciary duty towards investors and are expected to exercise due diligence and independent professional judgment in ensuring compliance with the AIF Regulations. According to SEBI, merely engaging with or advising the investment manager was insufficient where the Scheme ultimately continued beyond the permissible regulatory timelines.

ELP Comments

- *SEBI's findings are consistent with its earlier adjudication orders dealing with delayed winding-up of AIFs. In its earlier adjudication order dated June 20, 2025 concerning India Asset Growth Fund (IAGF Order), SEBI had penalised the failure to windup an AIF scheme beyond the tenure contemplated under the PPM and the AIF Regulations, notwithstanding investor approval.*
- *In the IGAF Order as well the current order in the matter of Exfinity Technology Fund, SEBI has taken the stand that trustees are independently accountable for regulatory failures of AIFs, even though, the commercial reality is that trustees of AIFs do not wield much control over AIFs and merely act as the front desk for the investment manager who has the real authority over AIFs.*
- *The winding up of AIFs has been a challenge for AIFs and the reasons are usually commercial such as adverse market conditions and commercial realities. Recognising these practical difficulties, SEBI introduced the "liquidation scheme" route in June 2023 (vide a circular dated June 15, 2023), permitting AIFs whose tenure had expired to transfer their unliquidated investments into a separate scheme, subject to specified conditions and investor approval. Subsequently, with effect from April 25, 2024, (vide a circular dated April 25, 2024) SEBI introduced the "dissolution period" route, providing a more flexible and practical framework for the management and eventual liquidation of residual assets that could not be exited before the expiry of the fund's tenure.*
- *The Fund's term (including the two year extension) had ended before SEBI introduced the liquidation scheme option. SEBI has examined the Fund's failure to windup on schedule strictly from a compliance perspective without making any allowance for the fact that the violations took place before SEBI introduced the liquidation scheme option. In addition to its failure to windup on schedule, the Fund has committed other breaches as well. If the Fund had not committed any other violation, it is possible that SEBI might have been more lenient with respect to the Fund's failure to windup on time.*
- *SEBI has consciously refrained from imposing any monetary penalty on the Fund itself, pointing out that any pecuniary penalty imposed on an AIF would, in effect, be borne by the investors through the assets of the scheme, thereby penalising the very stakeholders whom the regulatory framework seeks to protect.*

Please find the Exfinity Order [here](#).

Please find the IGAF Order [here](#).

We hope you have found this information useful. For any queries/clarifications, please write to us at insights@elp-in.com or write to our authors:

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