Securities and Exchange Board of India **30th September, 2014**
Plot No. C4- A, G Block
Bandra Kurla Complex
Mumbai 400051, India

Kind Attention: **Shri Ananta Barua – Executive Director**

Sub: IVCA Recommendation Regulatory **support for Facilitating Exits of PE Funds**

Dear Sir,

Indian private equity, in a global context, is often accused of having done very little for the investors (domestic as well as international) on account of a poor exit track record of having returned only 35% of the capital raised over past decade (ref :Bain Report on Indian PE). Lack of exits from investments by Indian PE Funds is a major factor impeding the growth of investible capital from Indian PE funds.

It is also a well established fact that the Indian PE industry has done a great job of improving the quality of corporate governance in most investee companies. In general, the post - IPO performance of PE - backed companies, has been superior to the performance of non - PE backed companies.

It is requested that impediments on exits mentioned in this letter be removed. This will have the following three principal benefits:

(i) More exit opportunities for PE funds. This is crucial for PE funds all of which have a defined fund termination date;
(ii) Re-cycling of capital to other deserving companies in due course; and
(iii) Help kick-start and revitalise the IPO market- which has been moribund in recent past - by bringing in a new stream of more well- governed PE portfolio companies to India's IPO market.

Accordingly, may we respectfully request SEBI to please consider the recommendations mentioned below.

01. PE fund(s) should not be classified as promoters in an IPO:

In situations where a PE fund decides to incubate a professionally - managed business in the capacity of a transient majority or sole sponsor ;or in situations where a PE Fund does a buy-out with, or without, the support of existing management, with an intent to exit the business after professionalising management and creating value for stakeholders, then the PE fund should not be classified as a promoter in an IPO, subject to certain conditions to ensure sustained continuity and accountability to the satisfaction of incoming share holders.

These conditions may include factors such as: a) minimum size of the company in terms of Revenue/Asset base; b) minimum number of years of stewardship by PE funds; c) a minimum post issue Institutional percentage holding etc. Any such conditions should be capable of being practically satisfied.

Most PE Funds have a diversified beneficial ownership. These beneficial owners are not able to exercise any voting rights in investee companies. Such rights are exercised by the Fund Manger in the best interest of the company. Therefore, technically, there is no single dominant shareholder.

ICICI Ltd, L&T Limited, IDFC Limited, and CARE Ltd are a few examples in which the listed entity does not have a named sponsor/promoter.

An enabling policy framework to allow PE funds to be exempt from being classified as promoters in an IPO, subject to suitable conditions being fulfilled by the company, will help PE funds to bring well managed, majority- owned companies to the IPO market.

02. PE Funds should not be subject to lock - in an IPO

- **If such shares are issued to PE Funds as part of a swap from a subsidiary or group company to facilitate exit and the investment holding period, from the date of the original investment, is more than a year prior to the date of filing of the DRHP.**

Very often PE Funds seek a swap as a mode of exit. This entails the exchange of their investment into shares of either a listed parent, or another listed group company, or a parent/group company ready to go for an IPO. Such swaps are carried out at fair market valuation between the two entities through a preferential allotment route.

Under the current ICDR regulations, the swapped shares are locked-in for a period of one year from the date of issue. It is necessary that in calculating the lock-in period, the original investment period (a period prior to such swap taking place) should be considered. Such swap- based exits are only exercised, when other means of exit in the original investee company have been exhausted and at that stage another year of lock-in becomes a challenge. VCF/AIF cannot take a price risk for one year in a non- investee company.

Accordingly, It is recommended that AIF/VCF/FVCI investors should be exempt from mandatory lock - in of one year, provided that their original investment , in the entity from which the swap was initiated, has been held for at least a year prior to the date of filing the DRHP.

03. VCF/AIF/FVCI should be exempt from lock-in of shares acquired by way of a merger of an investee company with the demerged entity of a listed company.

As per the SEBI notification CIR/CFD/DIL/5/2013, the whole of the pre-merger capital of an investee company, merging into a demerged entity of a listed a company, is required to be locked- in for an period of three years from the date of listing.

It is recommended that registered DVCF/AIF/FVCI funds be exempted from such lock-in to enable exit for such funds. This is specifically relevant as a merger of any investee company into a listed entity (instead of demerged entity of the same listed entity) does not entail such lock in.

May we request you for a favorable consideration at the earliest.

Thanking you,

Yours sincerely,

Arvind P. Mathur
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