



CIRCULAR

CIR/IMD/DF/14/2014

June 19, 2014

To

All Alternative Investment Funds ("AIFs") registered with SEBI

All custodians of Category III Alternative Investment Funds

All Alternative Investment Funds which are exempt from registration under sub-regulation (1) of Regulation (3) of the SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations")

Dear Sir / Madam,

Sub: Guidelines on disclosures, reporting and clarifications under AIF Regulations

SEBI (Alternative Investment Funds) Regulations, 2012 were notified on May 21, 2012. A Circular no.CIR/IMD/DF/10/2013 dated July 29, 2013 was also subsequently issued for operational, prudential and reporting requirements for AIFs. Certain amendments were also made to the AIF Regulations on September 16, 2013. It is decided to provide certain clarifications on the AIF Regulations, increase transparency to the investors and provide reporting norms for AIFs as under:

1. Submission of information to SEBI under sub-regulation (1) of Regulation (3) of AIF Regulations
 - a. Circular no. CIR/IMD/DF/10/2013 dated July 29, 2013 requires that all Category III AIFs report to the custodian on a daily basis the amount of leverage at the end of the day (based on closing prices) and whether there has been any breach of limit during the day.
 - b. It has been observed that with respect to reporting of amount of leverage at the end of the day, the AIF is dependent on various parties in order to calculate and submit to the custodian the amount of leverage as at the end of the day. Such various parties provide information at varied time periods due to which the AIFs are finding it difficult to report to the custodian the amount of end-of-day leverage on the same day.
 - c. Therefore, in part modification of the aforesaid circular dated July 29, 2013, all Category III AIFs shall report to the custodian the amount of leverage at the end of the day (based on closing prices) by the end of next working day.



2. Disclosures in placement memorandum

a. Disclosure on fees and charges and litigations

- i. It has been observed that fee structure applicable to the investors in an AIF is generally complex in nature. Therefore, for better understanding, every AIF shall, in its placement memorandum, add by way of an annexure, a detailed tabular example of how the fees and charges shall be applicable to the investor including the distribution waterfall.
- ii. While Regulation 11(2) requires that an AIF shall include disciplinary actions in its placement memorandum, it has been observed that many AIFs have not been including the same in their placement memorandum.

In view of the above, it is clarified that all AIFs shall include in their placement memorandum, disciplinary history of:

- (1) AIF, sponsor, manager and their Directors/partners/promoters and associates
- (2) If applicant is a trust, Trustees or trustee company and its directors

Such disciplinary history shall, inter alia, include:

- (1) Details of outstanding/pending and past cases (where the person has been found guilty) of litigations, criminal or civil prosecution, disputes, non-payment of statutory dues, overdues to/defaults against banks or financial institutions, contingent liabilities not provided for, proceedings initiated for economic offences or civil offences, adverse findings with respect to compliance with securities laws, penalties levied, disputed tax liabilities, etc.
- (2) any disciplinary action taken by the Board or any other regulatory authority.

In case of operational actions such as administrative warnings/deficiency letters, the same may be grouped together and summarized. However, if the investor seeks details of the summarized portion, the same shall be provided by the AIF to the investor.

Any further litigations/cases, etc. as may arise in the course of the activities of the AIF shall be appropriately incorporated in the placement memorandum and intimated to the investors.

- iii. Existing AIFs shall send the annexure as stated in clause (a)(i) above and disciplinary actions, if not already included, to all their investors as an addendum to the existing placement memorandum within 30 days of this



circular. A copy of the same shall also be filed with SEBI at least 7 days prior to sending the same to the investors.

b. Changes to placement memorandum

- i. At the time of submission of final placement memorandum to SEBI, any changes which have been made vis-à-vis the draft placement memorandum submitted to SEBI at the time of application shall be listed clearly in the covering letter. Further, the changes shall also be highlighted in the copy of the final placement memorandum.
- ii. Further, it has been observed in several cases that changes are being made to the placement memorandum without intimation to or consent from unit holders, which is not in the interest of the investors.
- iii. All AIFs shall intimate any change to the placement memorandum to all unit holders (including investors who have provided commitment to the AIF) within 7 days of making such change, specifically indicating the changes made. Such changes shall also be intimated to SEBI.
- iv. However, in cases of material changes significantly influencing the decision of the investor to continue to be invested in the AIF, the process as mentioned hereunder shall be complied with. Such changes shall include, but not be limited to the following:
 - a. Change in sponsor/manager (*not including an internal restructuring within the group*)
 - b. Change in control of sponsor/manager
 - c. Change in fee structure or hurdle rate which may result in higher fees being charged to the unit holders

The following process shall be followed by the AIF:

- a. Existing unit holders who do not wish to continue post the change shall be provided an exit option. The unit holders shall be provided not less than one month for expressing their dissent.
- b. In case the scheme of the AIF is open-ended, the exit option may be provided by either of the following:
 - (1) Buying out of units of the dissenting investors by the manager/ any other person as may be arranged by manager, valuation of which shall be based on market price of underlying assets.
 - (2) Redemption of units of the investors through sale of underlying assets.



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- c. In case the scheme of the AIF is close-ended, the exit option may be provided as under:
 - (1) The exit option shall be provided by buying out of units of the dissenting investors by the manager/ any other person as may be arranged by manager.
 - (2) Prior to buying out of such units, valuation of the units shall be undertaken by 2 independent valuers and the exit shall be at value not less than average of the two valuations.
- d. The responsibility to provide exit to the dissenting investors shall be on the manager. The expenses for the entire process shall be borne by the manager/sponsor/proposed new manager or sponsor and shall not be charged to the unit holders.
- e. The entire process of exit to dissenting investors shall be completed within 3 months from the date of expiry of last date of the offer for dissent.
- f. The trustee of AIF (in case AIF is a trust)/ sponsor (in case of any other AIF) shall be responsible for overseeing the process, ensuring compliance and regularly updating SEBI on the developments.

3. Clarification on certain aspects of the AIF Regulations

- a. For the purpose of Regulation 10(b) of the AIF Regulations, in case the corpus of an open-ended scheme falls below rupees twenty crores :
 - i. The AIF shall intimate to SEBI within 2 days of receiving request for redemption from the client.
 - ii. The AIF shall take necessary action to bring back the scheme size to twenty crores within 3 months from the date of such breach.
 - iii. In case the AIF fails to bring back the corpus within the prescribed period, it shall redeem entire units of all investors.
 - iv. In case of repeated violations by the AIF, SEBI may take action against the AIF, as may be appropriate.
- b. With respect to units of AIF issued to the employees of the manager of the AIF for profit-sharing, Regulation 10(c) shall not be applicable in cases where such units do not entail any contribution/investment from the employees.



- c. With respect to investment by the sponsor/manager in the AIF, the sharing of loss by the sponsor/manager shall not be less than pro rata to their holding in the AIF vis-à-vis other unit holders.
- d. With respect to Regulation 10(c), an AIF may accept the following as joint investors for the purpose of investment of not less than one crore rupees:
 - i. an investor and his/her spouse
 - ii. an investor and his/her parent
 - iii. an investor and his/her daughter/sonWith respect to the above investors, not more than 2 persons shall act as joint-investors in an AIF. In case of any other investors acting as joint-investors, for every investor, the minimum investment amount of one crore rupees shall apply.
- e. For the purpose of maintaining continuing interest under Regulation 10(d) of the AIF Regulations, such interest may be maintained pro-rata to the amount of funds raised (net) from other investors in the AIF.
- f. An AIF shall not invest in units of another AIF unless it is fund of AIFs as specified under the Regulations.
- g. For the purpose of Regulation 15(1)(c), in case the AIF proposes to invest into real estate or infrastructure projects, every such investee company shall hold not less than one project.
- h. For the purpose of Regulation 15(1)(e), prior to every investment in an associate, approval of the investors as specified shall be obtained.
- i. In case of an AIF which is open-ended, the first single lump-sum investment amount received from the investor should not be less than the minimum investment amount. Further, in case of request for partial redemption of units by an investor in an open-ended AIF, the AIF shall ensure that after such redemption, the amount of investment retained by the investor in the fund does not fall below the prescribed minimum limit as provided under the Regulations.
- j. With respect to an in-principle approval is granted to an applicant, in case the registered trust deed or duly filed partnership deed is not submitted within the prescribed time period, the applicant shall file a fresh application for registration under the Regulations.
- k. Pooling vehicles shall not be created solely for the purpose of investing in an AIF unless the pooling vehicles are registered with SEBI as AIFs (acting as Fund of AIFs).
- l. With respect to Regulation 17(a), it is clarified that the term 'primarily' is indicative of where the main thrust of Category II AIFs ought to be. The



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investment portfolio of a Category II AIF ought to be more in unlisted securities as against the aggregate of other investments.

- m. All circulars/guidelines as may be issued by SEBI with respect to KYC requirements, Anti-Money Laundering and Outsourcing of activities shall be applicable to AIFs and the manager of the AIF shall be responsible for compliance with such circulars/guidelines.

4. Compliance Test Report (CTR)

- a. At end of financial year, the manager of an AIF shall prepare a compliance test report on compliance with AIF Regulations and circulars issued thereunder in the format as specified in the Annexure to this circular.
- b. In case the AIF is a trust, the CTR shall be submitted to the trustee and sponsor within 30 days from the end of the financial year. In case of other AIFs, the CTR shall be submitted to the sponsor within 30 days from the end of the financial year.
- c. In case of any observations/comments on the CTR, the trustee/sponsor shall intimate the same to the manager within 30 days from the receipt of the CTR. Within 15 days from the date of receipt of such observations/comments, the manager shall make necessary changes in the CTR, as may be required, and submit its reply to the trustee/sponsor.
- d. In case any violation of AIF Regulations or circulars issued thereunder is observed by the trustee/sponsor, the same shall be intimated to SEBI as soon as possible.

5. Submission of information to SEBI under sub-regulation (1) of Regulation (3) of AIF Regulations

- a. Under fourth proviso to Regulation 3(1) of AIF Regulations, 'such existing funds, which do not propose to accept any fresh commitments after commencement of these regulations shall not be required to obtain registration under these regulations subject to submission of information on their activities to the Board in the manner as may be specified.'
- b. Funds falling under the purview of the aforesaid proviso shall disclose to SEBI information in the manner as specified hereunder:
- Such funds shall download the excel sheet provided on SEBI website under the Section *Info for → Alternative Investment Funds → "Information to be filled by unregistered funds"*
 - The fund shall not add any additional rows/columns to the excel sheet or fill any information other than the information sought in the excel sheet.
 - Once filled, the excel sheet shall be emailed to aifreporting@sebi.gov.in.



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- iv. The aforesaid information shall be sent only by email. No physical copy of the aforesaid sheet shall be sent to SEBI.
 - v. The information shall be sent to SEBI within 30 days from the date of this circular.
- c. Funds which have been closed/wound up (*where all moneys have been returned to all the investors*) on the date of commencement of the AIF Regulations need not submit the aforesaid information. Funds which have not been wound up and which have launched multiple schemes shall submit information only for those schemes which have not been closed/ wound up as on the date of commencement of the AIF Regulations.

This Circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992. This Circular is available on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Alternative Investment Funds".

Yours faithfully,

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Annexure

Format of Compliance Test Reports (CTRs)

Name of the AIF:

Category:

CTR for the Year:

Contact details of the compliance officer:

<u>Sr. No</u>	<u>Compliance with respect to</u>	<u>Details of compliance</u>	<u>Any other comments</u>
1.	<u>Regulation 7(1)(c):</u> During the year, whether the AIF has informed the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.		
2.	<u>Regulation 9(2):</u> Whether there has been any material alteration to the fund strategy during the year and in such case, whether consent of atleast two-thirds of unit holders by value of their investment in the AIF has been obtained.		
3.	<u>Regulation 10(b):</u> Whether each scheme of the AIF has corpus of atleast twenty crore rupees;		
4.	<u>Regulation 10(c):</u> Whether the AIF has added any new investors during the year. If yes, whether the AIF has accepted from an investor, an investment of value not less than one crore rupees.		
5.	<u>Regulation 10(d):</u> Whether the Manager or Sponsor has a continuing interest in the AIF of not less than two and half percent of the corpus or five crore rupees, whichever is lower, in the form of investment in the AIF and such interest is not through the waiver of management fees. In case of Category III AIF,		



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	whether the continuing interest is not less than five percent of the corpus or ten crore rupees, whichever is lower.		
6.	Regulation 10(e): Whether the Manager and Sponsor have disclosed their investments in the AIF to the investors of the AIF.		
7.	Regulation 10(f): Whether each scheme of the AIF has not more than one thousand Investors.		
8.	Regulation 10(g): Whether the AIF has solicited or collected funds only by way of private placement.		
9.	Regulation 11(2): Whether the placement memorandum contains all information as specified in Regulation 11(2)		
10.	Regulation 12: Whether the AIF has launched any new scheme during the year and in such case, whether the placement memorandum has been filed with SEBI atleast thirty days prior to launch of scheme along with the scheme fees.		
11.	Regulation 13(4) & 13(5): Whether there has been any extension of the tenure of the close ended AIF. If yes, whether the same is not more than two years and approved by two-thirds of the unit holders by value of their investment in the AIF. In the absence of consent of unit holders, whether the AIF has fully liquidated within one year following expiration of the fund tenure or extended tenure.		
12.	Regulation 14(1): In case the units of the AIF are listed during the year, whether the listing is after final close of the fund or scheme.		



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13.	<u>Compliance with every clause of Regulation 15</u> <i>(Separate compliance for every clause shall be provided)</i>		
14.	<u>Compliance with every clause of Regulation 16/17/18, as applicable</u> <i>(Separate compliance for every clause shall be provided)</i>		
15.	<u>Compliance with every clause of Regulation 20</u> <i>(Separate compliance for every clause shall be provided)</i>		
16.	<u>Regulation 21:</u> In case of any conflict of interests that have arose during the year, whether Regulation 21 has been complied with.		
17.	<u>Regulation 22:</u> Whether the AIFs have disclosed information contained in the clauses under Regulation 22 to the investors.		
18.	<u>Regulation 23:</u> <i>(Separate compliance for every clause shall be provided)</i>		
19.	<u>Regulation 25:</u> Whether the AIF, by itself or through the Manager or Sponsor, has laid down procedure for resolution of disputes between the investors, AIF, Manager or Sponsor through arbitration or any such mechanism as mutually decided between the investors and the AIF.		
20.	<u>Regulation 28:</u> Whether reports to be submitted the SEBI during the year have been submitted in the manner as specified by SEBI.		
21.	<u>Regulation 29:</u> In case the AIF has wound up during the year, whether Regulation 29 has been complied with.		



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22.	<u>Compliance with SEBI circular No. CIR/IMD/DF/10/2013 dated July 29, 2013 regarding Operational, Prudential and Reporting Norms for Alternative Investment Funds (AIFs):</u> Compliance with respect to: <ul style="list-style-type: none">• Risk management and compliance• Redemption norms• Prudential requirements		
23.	<u>Compliance with circular No. CIR/IMD/DF/14/2014 dated June 19, 2014</u> Compliance with respect to: <ul style="list-style-type: none">• Disclosures in placement memorandum• every clause under point (3) on 'Clarification on certain aspects of the AIF Regulations'.		
24.	<u>Compliance with any circular as may be issued by SEBI</u>		