

February 24, 2021

Securities and Exchange Board of India  
Investment Management Department  
Division of Fund-1  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra-Kurla Complex, Bandra (E),  
Mumbai - 400 051

Kind Attention : Ms. Manaswini Mahapatra, General Manager.

Madam,

**Subject: Request for an interpretive letter under SEBI (Informal Guidance) scheme, 2003 regarding applicability of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and provisions of SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 for the following query.**

**Query:**

Can Investment Adviser continue to collect performance-based fee whenever the same is due in terms of the agreement executed with Client, even if such fee is due on a date after March 31, 2021.

**Reference to Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020;**

Regulation 15A of SEBI (Investment Advisers) Regulations, 2013 reads as under:

Investment Adviser shall be entitled to charge fees for providing investment advice from a client in the manner as specified by the Board.

**Clause 2 (iii) of the aforementioned SEBI circular stipulates that:**

**(iii) Fees**

Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:

**(A) Assets under Advice (AUA) mode**

- a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.
- b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.
- c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

**JADE CAPITAL MARKETS PVT. LTD.**

(SEBI Investment Adviser Registration Number - INA000013068)  
2, Ground Floor, Century Arcade, 243-244/B, Narangibaug Road, Pune-411001.  
Tel. : (020) 26165821 / 26165827 / 26165833  
Email : jadecapitalpune@gmail.com



**(B) Fixed fee mode**

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

- a. In case "family of client" is reckoned as a single client, the fee as referred above shall be charged per "family of client".
- b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.
- c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.
- d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum brokerage fee of not greater than one quarter fee.

**Background:**

SEBI, vide the aforesaid Circular dated September 23, 2020 (hereinafter referred to as 'SEBI Circular'), has amended the criteria for charging fees from Clients by Investment Advisers. SEBI has mandated the modes under which investment advisory fees can be charged from Clients and also has placed the upper limit for charging such fees. Further, Clause 3. **Applicability** of the SEBI Circular, inter-alia, states that Investment Adviser shall ensure compliance with measures stated at Clause 2(iii) latest by April 1, 2021.

Jade Capital Markets Pvt Ltd ('Jade') is registered with SEBI as an Investment Adviser (SEBI Registration No. INA000013068). As a matter of transparency in our dealings with Clients, Jade had already made it a practice to execute a legal agreement with Clients setting out the terms and conditions including fee structure for rendering Investment Advisory services, before commencing business relationship. We have further strengthened our agreement by ensuring that necessary revisions/additions are done to ensure clauses mandated under Annexure-A to SEBI Circular are duly covered. We are at present in the process of executing the revised agreement with our clients. Revisions to agreement also include new fee structure which is prepared in compliance to Clause 2 (iii) (A) of the SEBI circular and is made applicable with effect from April 1, 2021 by terms of the new agreement.

We wish to submit that the fee structure in terms of our previous agreement made with our clients includes performance-based fee payable by the Client when the returns on the portfolio built by the client based on our advice overcome a mutually agreed hurdle rate of return.

For better clarity and by way of illustration, we have set out our fee structure in terms of previous agreement in the table below.

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Client Sr. No.	Plan start date	Plan Expiry Date	Fee Structure	Amount under Advice (AUA) In INR (a)	Minimum Corpus to be achieved for profit sharing, as per Hurdle rate (in INR) (b) = (a + (25% of a))	Current Value of AUA (c)	Returns till date (d) = [(c-a)/a]x100	Performance based Fee due as per current valuation @20% above Hurdle Rate (INR) (e) = (c-b) x 20%
1	8-Oct-2020	7-Oct-2021	2.5% fixed fee and 25% Hurdle Rate	15,00,000	18,75,000	23,52,000	56.80%	95,400
2	19-May-2020	18-May-2021	0.6% fixed fee and 0% Hurdle Rate	25,00,000	25,00,000	36,76,000	47.04%	2,35,200

Performance based fee (please refer 'e' or last column of above table) is payable at the end of tenure of the plan. In case of some of our clients the said fee shall become due on a date beyond March 31, 2021. Also, the total fee paid by client including performance based fee may exceed the maximum limit of 2.5% percent of AUA per annum per client prescribed under clause 2(iii) (A) of SEBI Circular.

**Our Understanding:**

The provisions of Clause 2 (iii) of SEBI Circular, including the stipulation on maximum fees that may be charged under Assets under Advisory mode, is to be complied with latest by April 1, 2021. We are required to onboard the clients under fee structure in accordance with Clause 2(iii) of SEBI Circular from April 1, 2021. In case of clients on boarded till March 31, 2021 we can continue to collect performance-based fee whenever the same is due in terms of the agreement executed with them, even if such fee is due on a date after March 31, 2021.

**Our Request for Guidance:**

We request for an interpretive letter on our understanding of the provisions of SEBI (Investment Advisers) regulations, 2013 and more particularly the Circular dated September 23, 2020 as stated above in accordance with SEBI (Informal Guidance) Scheme, 2003.

**Fees:**

Demand Draft of Rs.25,000 in favour of Securities and Exchange Board of India payable at Mumbai is enclosed towards fees for informal guidance and request for your opinion.

Thanking you,

Yours Faithfully,  
For Jade Capital Markets Pvt Ltd

  
Sangeeta Rokade  
Authorised Signatory



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