

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

Noticee No.	Noticee Name	PAN	SEBI Registration No.
1.	Karvy Capital Alternative Investment Trust	AACTK1328H	IN/AIF3/13-14/0045
2.	KCAP Alternative Investment Fund	AADTK7212M	IN/AIF2/19-20/0751

(The aforesaid entities are hereinafter individually referred to by their Noticee number and collectively as 'Noticee(s)', unless the context specifies otherwise).

In the matter of Karvy Capital Alternative Investment Trust and KCAP Alternative Investment Fund

A. BACKGROUND IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had vide Order dated April 28, 2023 *inter alia* restrained Karvy Stock Broking Limited (hereinafter referred to as "**KSBL**") and others from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of seven (7) years. Additionally, SEBI vide Order dated May 31, 2023 had cancelled the certificate of registration of KSBL as a Stock Broker.

2. As per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred as “**AIF Regulations**”), one of the eligibility conditions for grant of Alternative Investment Funds (AIF) registration is that the Applicant, Sponsor and Manager shall satisfy ‘fit and proper person’ criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred as “**Intermediaries Regulations**”). Schedule II of Intermediaries Regulations further provide that ‘fit and proper person’ criteria shall apply to the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly.
3. Karvy Capital Alternative Investment Trust (hereinafter referred to as “**Noticee No. 1**”) and KCAP Alternative Investment Fund (hereinafter referred to as “**Noticee No. 2**”) are Category II and Category III Alternative Investment Funds (**AIFs**). Karvy Capital Limited is the Manager and Sponsor of Noticee No. 1 and 2 and a wholly owned subsidiary of KSBL. In view thereof, an examination was conducted to ascertain the ‘fit and proper’ person criteria in the matter of AIFs (Noticee No. 1 and 2) managed and sponsored by Karvy Capital Limited.
4. Pursuant to the examination, it was observed that Noticee No. 1 and 2 along with its Manager and Sponsor failed to satisfy the ‘fit and proper person’ criteria and thereby violated the provisions of Regulation 4(f), 7(1)(a) and 35 of AIF Regulations read with Regulation 9, Clause 2, 3, 6 and 7 of Schedule II of the Intermediaries Regulations.

B. ENQUIRY PROCEEDINGS BY DESIGNATED AUTHORITY:

5. Based on the findings of the examination and the aforesaid observations, an enquiry proceeding was initiated under Regulation 23 of the Intermediaries Regulations and a Designated Authority (hereinafter referred to as “**DA**”) was appointed under Regulation 24 of the Intermediaries Regulations to enquire and make recommendations under Regulation 25 and 26 of the Intermediaries Regulations in respect of the alleged violations of the abovementioned provisions of law by the Noticee No. 1 and 2.

6. Accordingly, in terms of Regulation 25(1) of the Intermediaries Regulations, the DA issued an Enquiry Show Cause Notice (hereinafter referred to as “**Enquiry SCN**”) dated June 7, 2024 asking the Noticee(s) to show cause as to why appropriate recommendations be not made for the alleged violations of the provisions of Regulation 4(f), 7(1)(a) and 35 of AIF Regulations read with Regulation 9, Clause 2, 3, 6 and 7 of Schedule II of the Intermediaries Regulations.
7. Thereafter, the DA, based on the findings and observations so recorded in the Enquiry Report dated December 31, 2024, recommended that the certificate of registration of the Noticee(s) be cancelled in the interest of the securities market and protection of interest of investors. The relevant excerpt of the Report is reproduced hereunder:

“36. After taking into consideration the facts and circumstances of the case, material available on record, having regard to orderly functioning of the securities market and protection of interest of investors, I recommend that the certificate of registration of Noticees i.e., Karvy Capital Alternative Investment Trust IN/AIF3/13-14/0045 (AIF1) and KCAP Alternative Investment Fund IN/AIF2/19-20/0751 (AIF2) be cancelled in terms of Regulation 26(1)(ii) of SEBI (Intermediaries) Regulations, 2008.”

C. POST ENQUIRY PROCEEDINGS BY THE COMPEPENT AUTHORITY - SHOW CAUSE NOTICE AND REPLY:

8. Pursuant to the submission of the Enquiry Report in the matter, a Post Enquiry Show Cause Notice dated January 27, 2025 enclosing therewith the Enquiry Report of the DA was issued to the Noticee(s) under regulation 27(1) of the Intermediaries Regulations calling upon the Noticee(s) to show cause as to why action as recommended by the DA or any other action including passing of directions, as deemed appropriate by the Competent Authority, should not be taken against the Noticee(s). The SCN further advised the Noticee(s) to submit their reply, if any, within 21 days of receipt of the said SCN, failing which it shall be presumed that the Noticee(s) have no reply to submit.

9. Pursuant to the above, Karvy Capital Limited, Manager and Sponsor of the Noticee(s) vide letter dated February 18, 2025 submitted that a resolution has been passed by the Board of Directors of Karvy Capital Limited on June 12, 2024 to surrender the AIF registrations. Moreover, no funds have been raised by the Noticee(s) and there are also no investors in the subject AIFs. Karvy Capital Limited further conveyed its agreement to the recommendations of cancellation of certificate of registration made by the DA in the Enquiry Report.
10. In terms of the Intermediaries Regulations, an opportunity of personal hearing may be granted where the DA has recommended cancelation of certificate of registration or the competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration. In the instant case, the Noticee(s) have conveyed their agreement to the recommendation of cancellation of certificate of registration made by the DA in the Enquiry Report and a resolution is also passed to surrender the AIF registrations. I hence proceed the matter based on the material available on record and the submissions made by the Noticee(s) before me and before the DA.

D. CONSIDERATION OF ISSUES AND FINDINGS:

11. I have perused the Enquiry SCN including the Enquiry Report served to the Noticee(s), the submissions made by the Noticee(s) before the DA and the other materials available on record. After considering the allegation levelled against the Noticee(s), the issue which arises for my consideration in the present proceeding is whether the Noticee(s) satisfy the 'fit and proper person' criteria as provided under the provisions of AIF Regulations read with Intermediaries Regulations.
12. In order to address the issue at hand, it would be apposite to refer to the relevant provisions of law alleged to have been violated in the matter, extracts whereof are reproduced below:

SEBI (Alternative Investment Funds) Regulations, 2012:

Eligibility Criteria.

4. For the purpose of the grant of certificate to an applicant, the Board shall consider the following conditions for eligibility, namely, —

.....

(f) the applicant, Sponsor and Manager are fit and proper persons based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

Conditions of certificate.

7.(1) The certificate granted under regulation 6 shall, inter-alia, be subject to the following conditions:-

(a) the Alternative Investment Fund shall abide by the provisions of the Act and these regulations;

...

Liability for action in case of default.

35.(1) An Alternative Investment Fund which—

(a) contravenes any of the provisions of the Act or these regulations;

(b) fails to furnish any information relating to its activity as an Alternative Investment Fund as required by the Board;

(c) furnishes to the Board information which is false or misleading in any material particular;

(d) does not submit periodic returns or reports as required by the Board;

(e) does not co-operate in any enquiry, inspection or investigation conducted by the Board;

(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

(2) Sub-regulation (1) shall not prejudice the powers of the Board to issue directions or measures under regulation 34 or under sections 11, 11B, 11D, sub-section (3) of section 12 or section 24 or Chapter VIA of the Act or under any other law for the time being in force.

SEBI (Intermediaries) Regulations, 2008:

Conditions of certificate.

9.(1) Any certificate granted by the Board to an intermediary shall be subject to the following conditions, namely:—

....

(c) it shall abide by the provisions of the securities laws and the directions, guidelines and circulars as may be issued thereunder;

....

(e) it shall meet the eligibility criteria and other requirements specified in these regulations and the relevant regulations:

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[See regulation 7]

(2) *The 'fit and proper person' criteria shall apply to the following persons:*

(a) the applicant or the intermediary;

(b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and

(c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.

Explanation—For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.

(3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;

(b) the person not incurring any of the following disqualifications:

(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;

(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;

(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;

(iv) recovery proceedings have been initiated by the Board against such person and are pending;

(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;

(vii) such person has been declared insolvent and not discharged;

(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(ix) such person has been categorized as a wilful defaulter;

(x) such person has been declared a fugitive economic offender; or

(xi) any other disqualification as may be specified by the Board from time to time.

(6) *Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or*

intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:

Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.

(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.

13. As per Regulation 4(f) of AIF Regulations, one of the eligibility conditions for grant of AIF registration is that the Applicant, Sponsor and Manager are 'fit and proper person' based on the criteria as specified under Schedule II of the Intermediaries Regulations.
14. Clause 2(c) of Schedule II of the Intermediaries Regulations *inter alia* states that 'fit and proper person' criteria shall apply to the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly. In case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria. Clause 6 of Schedule II *inter alia* specifies that in case any person as referred in clause 2(c) fails to satisfy 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within 6 months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.
15. In the instant matter I observe that the Noticee(s) and its Manager/Sponsor (Karvy Capital Limited) are unlisted entities. As noted earlier, SEBI had vide Order dated April 28, 2023 restrained KSBL from accessing the securities market and further

prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 7 years. Subsequently, the certificate of registration of KSBL as a Stock Broker was cancelled vide Order dated May 31, 2023.

16. Here, it is relevant to refer to Clause 3(b)(iii) of Schedule II of Intermediaries Regulations where for the purpose of determining as to whether any person is a 'fit and proper person', SEBI may take into account an order of restraint, prohibition or debarment that has been passed against such person by SEBI or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force. This clause, in my view, covers scenarios of 'cancelation' of the certificate of registration.
17. From the shareholding details as submitted by the Noticee(s) as on March 31, 2023, it is noted that KSBL held approx. 100% shareholding (8,20,256 shares) in Karvy Capital Limited, Manager and Sponsor of Noticee No. 1 and 2. I further find from the submission of the Noticee(s) before the DA that Karvy Capital Limited is a part of the Karvy group of companies and a wholly owned subsidiary of KSBL.
18. As KSBL was holding more than 20% voting rights in Karvy Capital Limited (Manager and Sponsor of Karvy AIFs) and by virtue of the directions passed against KSBL vide SEBI Order dated April 28, 2023 and May 31, 2023, KSBL attracts the disqualification provided in Clause 3(b)(iii) of the Schedule II of the Intermediaries Regulations. In terms of the provisions of the Intermediaries Regulations, KSBL was thereby required to divest its shareholding in Karvy Capital Limited within 6 months from the date of the order.
19. On perusal of the materials on record, I find that Karvy Capital Limited had provided a 'fit and proper' declaration dated December 6, 2023 wherein, it had pointed out that – *"In so far as promoter of KCL viz. KSBL is concerned, it may be noted that, recently several regulatory and enforcement actions have been initiated against KSBL, and it may not satisfy 'fit and proper' persons criteria", and set out material facts for SEBI's consideration.* Furthermore, vide email dated January 18, 2024 Karvy Capital Limited had *inter alia* submitted that as per the Intermediaries Regulations the divesting of the holding of

the promoter (KSBL) within six months from the date of disqualification was not possible due to regulatory proceedings against it.

20. The Noticee(s) have submitted that they have passed a Board Resolution on June 12, 2024 to surrender the AIF licenses in accordance with law and necessary compliances/ permissions are in motion to this effect. From the materials available on record I also find that there are no active schemes and no investors in its AIFs. The Noticee(s) have submitted 'no funds raised' certificate from a CA – Kamdar Desai & Patel LLP and also Compliance Test Report (CTR) for FY 2022-2023 wherein it is mentioned that no funds had been raised for the year ended March 31, 2023 and that there were no contributors as on March 31, 2023. The same was also observed by SEBI from the quarterly report filed by the Noticee(s) for December 2023.
21. I note that being a 'fit and proper person' is a continuing 'eligibility criteria'/ statutory requirement, which must be satisfied at all times. I note that the Noticee(s) have contended that there were legal impediments and KSBL was unable to divest its shareholding in Karvy Capital Limited, however, the regulations mandate that 'fit and proper person' criteria shall be applicable during the continuity of registration and the intermediary shall ensure that the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary comply with the 'fit and proper person' criteria.
22. I note that the present proceedings have been initiated to adjudge whether the Noticee(s) meet the criteria for 'fit and proper person' as specified in the AIF Regulations and the Intermediaries Regulations. The Noticee(s) were obliged to maintain the 'fit and proper person' criteria on a continuous basis. In the instant case, as KSBL is holding more than 20% in Karvy Capital Limited (Manager and Sponsor of Karvy AIFs) and being not 'fit and proper person' was required to divest its holding within 6 months from the date of its disqualification. I find that KSBL has failed to divest its holding in Karvy Capital Limited. Accordingly, the Noticee(s) no longer satisfy the 'fit and proper person' criteria in terms of the provisions of Regulation 4(f),

7(1)(a) and 35 of AIF Regulations read with Regulation 9, Clause 2, 3, 6 and 7 of Schedule II of Intermediaries Regulations.

23. As a regulator of the capital markets, SEBI has the duty to safeguard the interest of investors and protect the integrity of the securities market. The 'fit and proper person' criteria aim to uphold market integrity by ensuring that only individuals and entities with a clean track record and sound financial standing can operate as intermediaries. Allowing Noticee(s) who are not 'fit and proper person' to continue would leave the door open for future fund raising exercise and other possible misuse of SEBI registration which is not in the interest of the securities market. Therefore, I find no reason to disagree with the recommendation given by the DA in the Enquiry Report.

E. ORDER:

24. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27 of the Intermediaries Regulations, hereby, cancel the certificate of registration granted to the Noticee(s) viz. Karvy Capital Alternative Investment Trust (SEBI Reg. No. IN/AIF3/13-14/0045) and KCAP Alternative Investment Fund (SEBI Reg. No. IN/AIF2/19-20/0751).

25. The Order shall come into force with the immediate effect.

26. A copy of this order shall be served upon the Noticee(s) and the Recognized Stock Exchanges for necessary compliance.

Date: March 25, 2025

Place: Mumbai

**G. RAMAR
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA**