

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11(1), 11B(1), 11(4A) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

IN RESPECT OF –

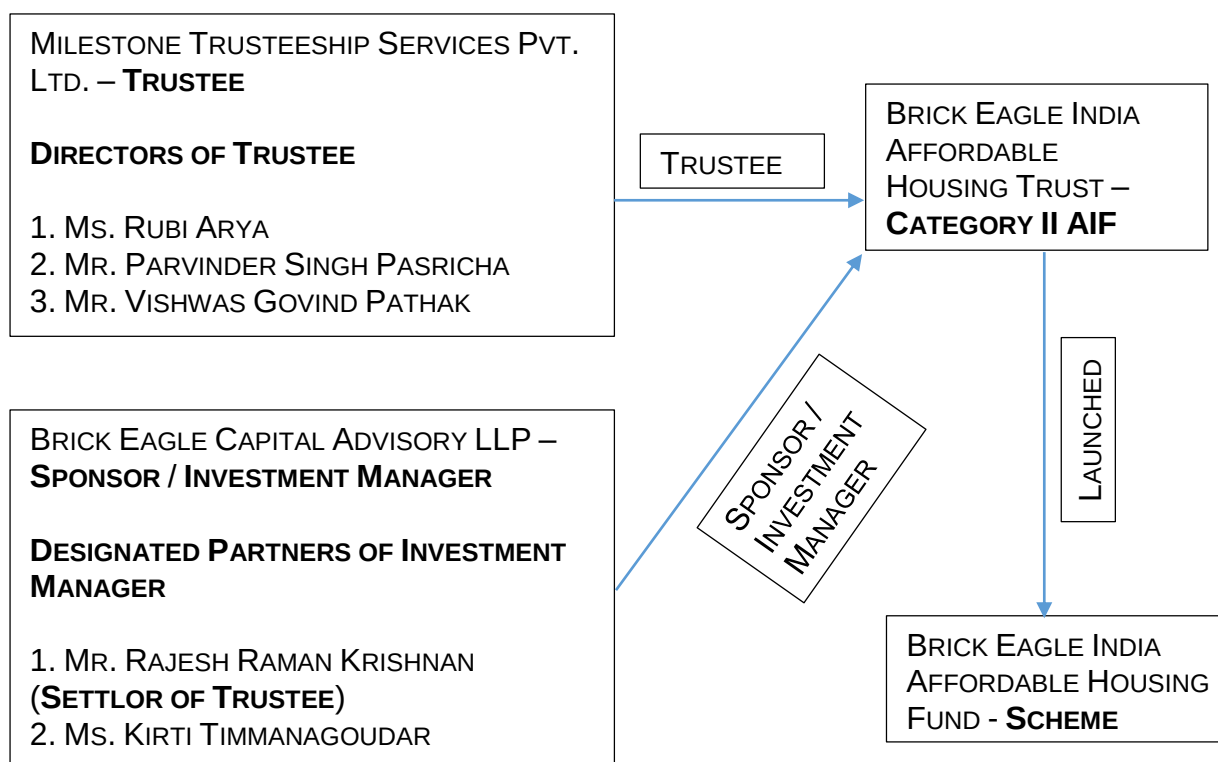
SR. NO.	NOTICEE	PAN
1.	BRICK EAGLE CAPITAL ADVISORY LLP	AALFB8806C
2.	MR. RAJESH RAMAN KRISHNAN	BRQPK9968P
3.	MS. KIRTI MALLANAGOUDA TIMMANAGOUDAR	ACHPT5483B
4.	MILESTONE TRUSTEESHIP SERVICES PVT. LTD.	AAFCM6451M
5.	MS. RUBI ARYA	AAVPA0654P
6.	MR. PARVINDER SINGH PASRICHA	AAFPP7525G
7.	MR. VISHWAS GOVIND PATHAK	ABUPP7843H

IN THE MATTER OF BRICK EAGLE INDIA AFFORDABLE HOUSING TRUST

BACKGROUND

1. Brick Eagle India Affordable Housing Trust ("**Brick Eagle Trust / Fund**") is registered as Category II Alternate Investment Fund with Securities and Exchange Board of India ("**SEBI**") under the provisions of SEBI (Alternate Investment Funds) Regulations, 2012 ("**AIF Regulations, 2012**") bearing registration No. IN/AIF2/16-17/0290.
2. Brick Eagle Trust is sponsored by Brick Eagle Capital Advisory LLP ("**Brick Eagle LLP**" / "**Sponsor**" / "**Manager**" / "**Noticee 1**"). Mr. Rajesh Raman Krishnan ("**Noticee 2**") and Ms. Kirti Mallanagouda Timmanagoudar ("**Noticee 3**") were the Designated Partners of Noticee 1. Both Noticees 2 and 3 comprise the key investment team of Noticee 1. Noticee 2 is also the settlor of Brick Eagle Trust. Milestone Trusteeship Services Pvt. Ltd. ("**Noticee 4**" or "**Milestone**") is the trustee of Brick Eagle Trust. Ms. Rubi Arya ("**Noticee 5**") , Mr. Parvinder Singh Pasricha ("**Noticee 6**") and Mr. Vishwa Govind Pathak ("**Noticee 7**") were the directors of Noticee 4 during the period from April 1, 2019 to March 31, 2020.

3. A pictorial representation of the same is given below:



4. Brick Eagle Trust had launched one scheme namely ‘*BRICK EAGLE INDIA AFFORDABLE HOUSING FUND*’, in January 2017. The details of the said scheme as on March 31, 2020, are as follows:

TABLE I	
NAME OF THE SCHEME	BRICK EAGLE INDIA AFFORDABLE HOUSING FUND
TYPE OF SCHEME	CLOSE ENDED
TARGET CORPUS (IN RS. CRORE)	500
CORPUS (IN RS. CRORE)	112
INVESTIBLE FUNDS (IN RS. CRORE)	111.95
SPONSOR CONTRIBUTION (IN RS. CRORE)	0.15
NO. OF INVESTORS	5
AUM (IN RS. CRORE)	17.15
DATE OF INITIAL CLOSING	31.08.2017
DATE OF FINAL CLOSING	NA*
TENURE OF SCHEME AS PER PPM	5 YEARS FROM DATE OF FINAL CLOSING + 2 YEARS EXTENDABLE

* – BRICK EAGLE TRUST HAS NOT MADE SECOND CLOSING AND FINAL CLOSING

5. SEBI had conducted an Inspection of Brick Eagle Trust for the period from April 1, 2019 to March 31, 2020 (“*Inspection Period*”) to examine compliance by Brick Eagle Trust, with regulatory requirements stipulated under the SEBI Act, 1992 (“*SEBI Act, 1992*”), AIF Regulations, 2012 and other Circulars, Guidelines, etc. framed thereunder. The aforementioned Inspection was carried out off-site based on the information / data provided by Brick Eagle Trust vide e-mails / letters / telephonic calls etc.

6. On the basis of findings contained in the Inspection Report, SEBI issued a show cause notice dated April 28, 2022 ("**SCN 1**"), to Noticees 1 to 3 and a show cause notice dated April 28, 2022 ("**SCN 2**") to Noticees 4 to 7. Both SCN 1 and SCN 2 (hereinafter SCN 1 and SCN 2 together referred to as "**SCNs**") *inter-alia* alleged that Noticees 1 to 7 violated provisions of AIF Regulations, 2012 and SEBI Circulars framed thereunder. The violations alleged in the SCN 1 and SCN 2 are reproduced and discussed in later part of this Order.
7. Vide SCN 1, Noticees 1 to 3 (Sponsor and Partners of Sponsor) were called upon to show cause as to why suitable non-monetary and monetary directions under Sections 11(1) and 11B (1) of the SEBI Act, 1992 read with Regulation 34 of AIF Regulations, 2012 and penalty under Sections 11B (2) and 11(4A) of the SEBI Act, 1992 should not be issued against them for the violations alleged in the SCN 1.
8. Vide SCN 2, Noticees 4 to 7 (Trustee and Directors of Trustee) were called upon to show cause as to why suitable non-monetary directions under Sections 11(1) and 11B (1) of the SEBI Act, 1992 read with Regulation 34 of AIF Regulations, 2012 should not be issued against them for the violations alleged in the SCN 2.
9. Vide an e-mail dated July 17, 2023, Noticees 1 to 6 were also provided with another opportunity to make any further submissions in respect of the SCN 1 and SCN 2 issued to them.
10. The details with regard to service of SCNs and the subsequent reply filed by the Noticees are provided as under:

TABLE II				
SCN 1				
S. No.	NOTICEE	SCN SENT THROUGH SPEED POST ACKNOWLEDGEMENT DUE ("SPAD") AT THE FOLLOWING ADDRESSES	DELIVERY STATUS	REPLY FILED BY THE NOTICEE
1.	BRICK EAGLE CAPITAL ADVISORY LLP	23, FLOOR-2, PLOT 59/61, ARSIWALA MANSION, NATHALAL PARIKH MARG, COLABA, MUMBAI, MAHARASHTRA - 400005	DELIVERED	LETTER DATED JUNE 12, 2022 ON BEHALF OF ITSELF AND NOTICEE 2, LETTER DATED SEPTEMBER 14, 2023, EMAIL DATED JANUARY 15, 2024
2.	RAJESH RAMAN KRISHNAN	2303, TOWER 6, CRESCENT BAY, JERBAI WADIA ROAD, BHOIWADA, PAREL, MUMBAI - 400012	DELIVERED	
3.	KIRTI MALLANAGOUDA TIMMANAGOUDAR	14081, PHASE 2, KOHINOOR CITY, KURLA WEST – 400071.	DELIVERED	LETTER DATED JUNE 10, 2022
SCN 2				
4.	MILESTONE TRUSTEESHIP SERVICES PVT. LTD.	WINDSOR, 6 TH FLOOR, OFFICE NO. 604, C.S.T. ROAD, KALINA, SANTACRUZ (EAST), MUMBAI - 400098	DELIVERED	LETTER DATED MAY 26, 2022 ON BEHALF OF ITSELF AND ITS DIRECTORS I.E. NOTICEES 5 ,6 AND 7 LETTER DATED JUNE 17, 2022 AND LETTER DATED JULY 27, 2023 LETTER DATED AUGUST 19, 2022 AND SEPTEMBER 23, 2022
5.	RUBI ARYA		DELIVERED	LETTER DATED JUNE 17, 2022 AND EMAIL DATED JULY 25, 2023

6.	PARVINDER SINGH PASRICHA		DELIVERED	LETTER DATED JUNE 15, 2022 AND EMAIL DATED JULY 28, 2023
7.	VISHWAS GOVIND PATHAK		DELIVERED	-

11. Vide reply dated June 17, 2022, Noticee 4 *inter alia* submitted a copy of the Death Certificate dated September 29, 2020 (issued by Municipal Corporation Kalyan Dombivli, Department of Health, Government of Maharashtra) of Noticee 7. On perusal of the aforesaid Death Certificate, it is understood that the Noticee 7 i.e. Vishwas Govind Pathak expired on September 15, 2020.
12. Subsequently, an opportunity of hearing was granted to Noticees 1 to 6 on August 23, 2022. As regards Noticee 7, in view of the reply submitted by Noticee 4, no opportunity of hearing was granted.
13. Noticee 2 and Ms. Shailashri Bhaskar (Practicing Company Secretary) appeared in person on behalf of Noticees 1 to 3 and made oral submissions.
14. Vide e-mail dated August 22, 2022, it was informed that Advocate Vivaik Sharma and Advocate Sagar Gaba would be appearing on behalf of Noticees 4 to 6. It was also mentioned in the aforesaid e-mail that Noticee 4 amalgamated with Catalyst Trusteeship Limited ("**Catalyst**") and the following persons pertaining to Catalyst namely, Mr. Jagdish Kondur, Ms. Manisha Shinde and Ms. Vishaka Bhagvat would be present for the hearing on August 23, 2022. Advocate Vivaik Sharma and Advocate Sagar Gaba appeared in person on behalf of Noticees 4 to 6 on August 23, 2022 and made oral submissions. The aforesaid advocates were accompanied by Mr. Jagdish Kondur, Ms. Manisha Shinde and Ms. Vishaka Bhagvat. Post the aforesaid personal hearing, vide e-mail dated September 23, 2022, Jagdish Kondur made supplementary submission in the matter on behalf of Noticee 4.
15. The contents of the replies of the Noticees have been reproduced and discussed in the subsequent paragraphs of this Order.

CONSIDERATION OF ISSUES

16. I have considered the allegations contained in the SCNs along with the replies filed by Noticees 1 to 6.
17. The following violations have been alleged against Noticees 1 to 3 in SCN 1:
 - A. *Failure of Sponsor to have continuing interest in Brick Eagle Trust in violation of Regulation 10(d) of AIF Regulations, 2012 read with Clause 3(e) of the SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.*

- B. *Failure of Brick Eagle Trust to comply with the terms and conditions specified in Private Placement Memorandum ("PPM") by not achieving second and final closing in violation of Regulation 11(1) of AIF Regulations, 2012 read with Clauses 2(C)(b)(i) and (ii) and Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.*
- C. *Failure of Brick Eagle Trust to obtain approval from investors before making investments in associate companies in violation of Regulation 15(1)(e) of AIF Regulations, 2012 read with Clause 3(h) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.*
- D. *Brick Eagle Trust invested un-invested portion of the investible funds in Low Duration Funds instead of Liquid Funds in violation of Regulation 15(1)(f) of AIF Regulations, 2012.*
- E. *Failure of Brick Eagle Trust to intimate the changes in Designated Partner of the Sponsor / Manager to SEBI in violation of Regulation 20(3) of AIF Regulations, 2012.*
- F. *Failure of Brick Eagle Trust to disclose information in respect of its financial, risk management, operational, portfolio and transactional information regarding investments to its investors for the F.Y. 2017-18, 2018-19 and 2019-20 in violation of Regulation 22(a) of AIF Regulations, 2012.*
- G. *Failure of Brick Eagle Trust to disclose information such as financial information of its investee companies, management of material risks to its investors for the F.Y. 2017-18, 2018-19 and 2019-20 in violation of Regulation 22(g) of AIF Regulations, 2012.*
- H. *Failure of Brick Eagle Trust to maintain dated and signed rationale for the investments made and failure to maintain high standards of integrity and fairness in all their dealings in violation of Regulation 27(1)(e) of AIF Regulations, 2012.*
- I. *Failure of Brick Eagle Trust to undertake valuation of its investments for the period from December 21, 2018 and August 25, 2020 in violation of Regulation 23(2) of AIF Regulations, 2012.*
- J. *Failure of Brick Eagle Trust to maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and failure to render high standard of service and exercise due diligence in violation of Clause 2(C)(c)(ii) of Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.*
- K. *Failure of Brick Eagle Trust to upload KYC information of its clients in the KRA and failure to carry out In-Person Verification of its clients in violation of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with Clause 3(m) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.*

- L. *Failure of Brick Eagle Trust to maintain Anti Money Laundering policy and failure to appoint Principal Officer and Designated Director in violation of SEBI Circulars No. ISD/CIR/RR/AML/1/06 dated January 18, 2006, No. ISD/CIR/AML/2/06 dated March 20, 2006 and SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018 read with Clause 3(m) of the SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.*
 - M. *Failure of Brick Eagle Trust to submit Compliance Test Report to Trustee within 30 days from the end of F.Y. 2019-20 in violation of Clause 4 of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.*
 - N. *Failure of Brick Eagle Trust to carry out annual audit of compliance for F.Y. 2020-21 in violation of SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 5, 2020 read with Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020.*
 - O. *Failure of Brick Eagle Trust to act in best interest of all its investors for conduct of business and providing preferential treatment to certain investors by failing to drawdown requisite amounts in line with the Contribution Agreements from two investors in violation of Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.*
18. The following violations have been alleged against Noticees 4 to 7 in SCN 2:
- A. *Failure of Milestone to comply with the terms and conditions specified in Private Placement Memorandum (“PPM”) by not achieving second and final closing in violation of Regulation 11(1) of AIF Regulations, 2012 read with Clauses 2(C)(b)(i) and (ii) and Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.*
19. I shall now proceed to deal with the violations alleged against the Noticees in light of the reply submitted by them.
- A. ***Failure of Sponsor to have continuing interest in Brick Eagle Trust in violation of Regulation 10(d) of AIF Regulations, 2012 read with Clause 3(e) of the SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.***
- 19.1 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 10: *Investment in all categories of Alternative Investment Funds shall be subject to the following conditions:-*

- (d) *the Manager or Sponsor shall have a continuing interest in the Alternative Investment Fund 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 Alternative Investment Fund and such interest shall not be through the waiver of management fees.*

SEBI Circular CIR/IMD/DF/14/2014 dated June 19, 2014 - Guidelines on disclosures, reporting and clarifications under AIF Regulations, 2012

“...3. Clarification on certain aspects of the AIF Regulations

e. For the purpose of maintaining continuing interest under Regulation 10(d) of the AIF Regulations, such interest maybe maintained pro-rata to the amount of funds raised (net) from other investors in the AIF. ...

- 19.2 In terms of the provisions of Regulation 10(d) of AIF Regulations, 2012, the Manager or Sponsor of an Alternative Investment Fund (“AIF”) is required to have a continuing interest in the said AIF, in the form of investment in AIF and such interest shall not be through the waiver of management fees and such continuing interest cannot be less than two and half percent of the corpus of the particular scheme managed by the said Manager or Sponsor or Rs. 5 Crore, whichever is lower. This provision was further clarified by SEBI vide Circular ref. CIR/IMD/DF/14/2014 dated June 19, 2014 that continuing interest under Regulation 10(d) of AIF Regulations, 2012 may be maintained by the Manager, pro-rata to the amount of funds raised (net) from other investors in the AIF.
- 19.3 It was observed from the *Contribution Agreement* dated August 23, 2017, entered into between Trustee and Manager / Sponsor of the Fund that the Sponsor had committed an amount of Rs. 5 Crores. It was also stipulated in the aforesaid *Contribution Agreement* that, if the contribution of an investor is less than Rs. 10 Crore, then the contributor (Sponsor) is required to contribute 100% of commitment amount agreed upon by it to the Fund, immediately upon the execution of *Contribution Agreement*. It was also stipulated in the aforesaid *Contribution Agreement* that, if the contribution of an investor is more than Rs. 10 Crore, then the contributor (Sponsor) is required to contribute 50% of commitment amount agreed upon by it to the Fund, immediately upon the execution of *Contribution Agreement*
- 19.4 It was observed from submissions made by the Fund during the course of inspection that out of a total committed amount of Rs. 107 Crores from its investors (excluding sponsor’s commitment), Brick Eagle Trust had drawn down an amount of Rs. 17 Crore as on March 31, 2020 which is 15.89% of total commitment amount from all investors excluding the Sponsor. Accordingly, the Sponsor was also required to contribute to the Brick Eagle Trust, an amount equal to that of the investors in percentage terms for it to have continued interest in Brick Eagle Trust in terms of provisions of AIF Regulations, 2012. Thus, the Sponsor was required to contribute Rs. 79.45 Lakh (15.89% of Rs. 5 Crore commitment). However, it was observed from the submissions made by Brick Eagle Trust during the course of inspection and Audited Financial Statement for the Financial Year 2019-20 that the Sponsor had contributed an amount of Rs. 15 Lakh only, as on March 31, 2020. Thus, the Sponsor allegedly failed to ensure a continuing interest in Brick Eagle Trust.

19.5 In their reply, Noticees 1 and 2 *inter alia* submitted:

We confirm that we as sponsors had committed to contributing Rs. 5 Crores. Out of the funds mobilized amounting to Rs. 107 Crores, an amount of Rs. 17 Crores were drawn down which was approximately 15.89% of the total commitment. We had contributed only Rs. 15 Lakh as against our commitment of Rs. 79.45 lacs because, we negotiated with each of the individual investors for the amount to be contributed by them and some of the contributors had committed to contribute and contributed 100% of their commitment. Our Commitment was linked pro-rata to the contribution by Axis Bank whose drawdown was capped at Rs. 1.5 Crores out of Rs. 50 Crores commitment. Hence our contribution was also Rs. 15 lacs only pro-rata to that of Axis Bank's contribution. Hence we would like to submit that we have not violated the provisions of Regulation 10(d) of AIF Regulations read with the provisions of Clause 3(e) of the SEBI Circular Ref No: CIR/IMD/DF/14/2014 dated June 19, 2014.

19.6 In this regard, I note that that pro-rata requirement mentioned under Clause 3(e) of the SEBI Circular dated June 19, 2014 is with respect to the “**amount of funds raised (net) from other investors**” and the same is nowhere related to the contribution from individual investors. However, Brick Eagle Trust had pro-rated the aforesaid requirement on the basis of the contribution from an individual investor and therefore, the same cannot be said to be in compliance with Regulation 10(d) of the AIF Regulations, 2012 read with Clause 3(e) of the SEBI Circular dated June 19, 2014. Thus, I find no merit in the contention of the Noticees. I find the same is just an afterthought to evade the outcome of this proceeding. In view of the same, I find that the Sponsor failed to have continuing interest in Brick Eagle Trust and violated Regulation 10(d) of AIF Regulations, 2012 read with Clause 3(e) of the SEBI Circular dated June 19, 2014.

B. Failure of Brick Eagle Trust and Milestone to comply with the terms and conditions specified in PPM by not achieving second / final closing in violation of Regulation 11(1) of AIF Regulations, 2012 read with Clauses 2(C)(b)(i) and (ii) and Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.

19.7 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 11: Placement Memorandum

Regulation 11(1): Alternative Investment Fund shall raise funds through private placement by issue of information memorandum or placement memorandum, by whatever name called.

SEBI Circular CIR/IMD/DF/7/2015 dated October 1, 2015 – Guidelines on Overseas Investments and other issues / clarifications for AIFs/VCFs

“...2 (C). Other issues/clarifications:

b. All managers shall:

- i. organise, operate and manage the AIFs and its schemes in the interest of unitholders of the AIF/scheme.*
- ii. carryout all the activities of the AIF in accordance with the placement memorandum circulated to all unit holders and as amended from time to time in accordance with AIF Regulations and circulars issued by SEBI.*

c. The AIF, manager, trustee and sponsor shall:

- ii. maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment...”*

19.8 It was noticed during the course of inspection that Brick Eagle Trust had launched only one scheme, viz. Brick Eagle India Affordable Housing Fund, for which the initial closing was achieved on August 31, 2017 and no second and/or final closing was achieved by Brick Eagle Trust. In view thereof, Brick Eagle Trust and Milestone allegedly failed to comply with the terms and conditions specified in PPM, subject to which funds were raised from investors.

19.9 In this regard, Noticees 1 and 2 submitted as under:

We do confirm that we intended to have a second closing upon receipt of Rs. 200 Crores and subsequent final closing within 12 months of the final closing. However, since the IL&FS / DHFL crisis created a Financial Market crisis we could not raise any funds from the Market. There was a bad timing and hence we could not proceed with a second closing or a final closing. This was not done out of any malafide intention and purely due to the poor market conditions. Hence, we humbly submit that we have not violated the provisions of Regulation 11(1) of the AIF Regulations read with Clauses 2(C)(b)(i) and (ii) as well as Clause 2(C)(ii) of the SEBI Circular No: CIR/IMD/DF/7/2015 dated October 01, 2015.

19.10 In their reply, Noticees 4,5 and 6 submitted as under:

- a. It is an admitted fact that the First and Initial Closing of the Fund was achieved on August 31, 2017 and as per PPM the Second Closing was expected within six months of first / initial closing i.e. on or before February 28, 2018. As per the PPM and Indenture of Trust, Brick Eagle Capital Advisory LLP, the Sponsor of the Trust was appointed as Investment Manager by executing the Investment Management Agreement dated October 7, 2016. The Investment Manager, vide its letter dated February 27, 2018 informed the Trustee of extending the timelines for second closing by three months for the time being, due to an unfavorable macro environment, which caused delay in raising of the funds.*

- b. However, even after the extended time, the Fund could not raise the requisite capital commitments from the investors, due to poor financial market conditions prevailing during relevant time and the crisis notices due defaults by large NBFCs like IL&FS. The real estate sector was also very badly hit during relevant time due to various reasons like liquidity crunch, uncertainties and delays in payments, subdued consumer sentiment, regulatory changes impacting business models. This had resulted into the execution delays by developers, in which the Fund has made the investments. The Fund was therefore, unable to raise even the committed funds from the reputed investors, despite the efforts made it. The situation was aggravated during COVID-19 situation from December, 2019. As such, the Fund could not achieve the Second Closing.
- c. As per the clauses 2(C)(b)(i) & (ii) of SEBI Circular dated October 01, 2015 the Investment Manager is under obligation to (i) organize, operate and manage the AIFs and its schemes in the interest of unitholders of the AIF/Scheme and (ii) carry out all activities of the AIF in accordance with the PPM and in accordance with the AIF Regulations and circulars of SEBI. As stated above, the AIF could not raise the committed funds from reputed investors, due to prevailing conditions in financial sector, which was worsened due to COVID-19 situation. Hence, the violation of clauses 2(C)(b)(i) & (ii), on part of Investment Manager may kindly be condoned.
- d. As to allegation of violation of clauses 2(C)(c) (ii) of SEBI Circular dated October 01, 2015 is also based on the failure of the Fund to make the second and / or final closing as per the terms of PPM. The reasons / justifications of the fund in this behalf is stated above. As per clauses 2(C)(c) (ii) it is seen that apart from AIF, Manager and Sponsor, the Trustee also has to maintain high standards of integrity and fairness in all their dealing and exercise due diligence.

In this connection, it is very respectfully submitted that the issue of raising funds was the exclusive responsibility of Investment Manager and Sponsor of AIF and the Trustee had no role to play in this regards. However, in the context of the general responsibility of the Trustee, we have exercised due diligence in the matter to the extent possible. To quote a few, the attention is invited to the following:

- i) Pursuant to SEBI (AIF) Regulations and circulars, the Investment Manager has to prepare a Compliance Test Report (CTR). To comply with the such reporting requirements, we as a Trustee, prepared and used in the instant case as well, a standard set of trackers to monitor the activities of Investment Manager. The standard e-mails are sent to our AIFs, immediately after end of each year and followed up at regular intervals. It will be seen from the Inspection Report that during the Inspection period of 2019-20, the Fund has submitted the CTR as on

31.03.2020 on 25.09.2020 as against 30.04.2020, for which the Fund has given the justified reasons of unprecedented nationwide lock down situation due to COVID-19.

- ii) We have prepared a Trustee Quarterly Compliance Report (QCR). We send the e-mails to the Investment Managers requesting them to submit the compliance report on the SEBI's Intermediary Portal, within 7 days from the end of each quarter as prescribed by SEBI. It will be seen from the Inspection report under reference that the Fund has submitted the quarterly reports for the quarters ending on 30.06.2019, 30.09.2019 and 31.12.2019 within the stipulated time of seven days. It is only for the quarter ending on 31.03.2020, it was delayed by only three days, for the reasons COVID-19 situation. It is seen that considering the COVID-19 situation, SEBI had granted relaxation in compliance for regulatory filings by AIFs for the months of March, to June 2020 up to 07.08.2020, vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/92 dated June 04, 2020.
- iii) It is sincerely and respectfully submitted that as a Trustee of the said AIF / Fund, we have taken all possible steps and exercised due diligence to the extent possible during the inspection period.
- e. We have very few AIF transactions where we are acting as Trustee and we try our level best to comply with the Regulations and guidelines issued by SEBI from time to time and to protect the interest of the investors / unitholders. However, your exhaustive Inspection Report in the matter has given us great insight to understand the role and responsibility of each one involved in the AIF transactions. We have taken due note of each and every observation in the Report, which will be a guidance for us in discharging our duties more diligently hereafter. We assure and undertake that we shall continue to maintain high standard of integrity and fairness in our dealings and exercise stringent due diligence and professional judgement, in all the transactions.
- f. In view of the above, we kindly request to please accept the above explanation in its right perspective and conclude that no directions are required to be given to us as a Trustee of the said Fund, under Section 11(B) of the SEBI Act and earnestly request to withdraw the aforementioned show cause notice issued to us at your earliest.

19.11 In terms of provisions of Regulation 11 (1) of AIF Regulations, 2012, an AIF is required to issue a placement memorandum prior to raising of capital wherein the AIF is required to mention all the relevant details stated in Regulation 11(2) of AIF Regulations, 2012. In continuation to the aforesaid, SEBI issued certain Guidelines vide Circular ref. CIR/IMD/DF/7/2015 dated October 1, 2015. In terms of Clause 2(C)(b)(i) and Clause 2(C)(b)(ii) of the aforesaid circular, the Manager of an AIF shall manage the AIF and its schemes in the interest of the

unitholders and shall carry out all its activities in accordance with the placement memorandum circulated to all unitholders. Further, in terms of the Clause 2(C)(c)(ii) of the Circular dated October 1, 2015, an AIF, its Manager, Trustee and its Sponsor shall maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment in the interest of unitholders of the scheme.

- 19.12 It was noted that the PPM issued by Brick Eagle Trust regarding the scheme *inter-alia* defined Second Closing and Final Closing in the following terms: -

Second Closing means the date of receipt of Capital Commitments of minimum Rs. 200,00,00,000 (Rupees Two Hundred Crores) which shall not be later than 6 (six) months from the date of the first closing unless extended by the Investment Manager in consultation with the Trustee.

Final closing means the last of the closings permitted by the Investment Manager for accepting Capital Commitments to the Fund in accordance with the terms of the Material Documents which shall not be later than 12 (twelve) months from the date of the Second Closing.

- 19.13 In terms of the timelines mentioned in the PPM, the Fund should have achieved *second closing* on February 2018 and Final Closing on February 2019. I note that the Manager of Brick Eagle Trust failed to achieve second and final closing of the fund within 18 months (6 months from *first closing* for *second closing* and 12 months from *second closing* for final closing) as stipulated in the PPM. The same has been admitted by the Sponsor of Brick Eagle Trust, i.e. Brick Eagle LLP and the Trustee of Brick Eagle Trust i.e. Milestone, in their submission to the SCNs.

- 19.14 I note that even after extending the timeline for *second closing*, Brick Eagle Trust was unable to achieve *second closing*. Brick Eagle Trust cited poor financial market conditions as a reason for the same. However, I find that no documents have been submitted to indicate that steps were taken to follow up on the investee companies or to raise additional capital. Brick Eagle Trust did not take any steps to liquidate and distribute its existing investments till December 2022, so that its investors' interests were protected. Without achieving Second and Final Closing, the funds of the investors have been locked up in the investments made by the Fund in its associate companies.

- 19.15 In view of the above, I find that Brick Eagle Trust did not operate and manage its scheme in the interest of the unitholders and did not carry out the activities of the fund in accordance with the PPM. Further, I find that Brick Eagle Trust and Milestone failed to maintain high standards of integrity in the conduct of the business and failed to render high standards of service and due diligence. Accordingly, I find that Brick Eagle Trust and Milestone violated Regulation

11(1) of the AIF Regulations, 2012 read with Clauses 2(C)(b)(i) and (ii) and Clause 2(C)(c)(ii) of the SEBI Circular dated October 1, 2015.

- C. Failure of Brick Eagle Trust to obtain approval from investors before making investments in associate companies in violation of Regulation 15(1)(e) of AIF Regulations, 2012 read with Clause 3(h) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.**

19.16 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 15: General Investment Conditions

Regulation 15(1)(e): *Alternative Investment Fund shall not invest in associates except with the approval of seventy-five percent of investors by value of their investment in the Alternative Investment Fund.*

19.17 Brick Eagle Trust submitted the details of investments made in its associate companies and the same are given as under:

TABLE III				
S. No.	NAME OF THE ASSOCIATE / INVESTEE COMPANY	DATE OF INVESTMENT	INVESTMENT IN Rs.	TOTAL AMOUNT INVESTED IN Rs.
1	SHELTREX DEVELOPERS PRIVATE LIMITED	01/09/2017	5,00,00,000	5,50,00,000
		26/12/2017	50,00,000	
2	SHELTREX COMMUNITIES PRIVATE LIMITED	01/09/2017	2,50,00,000	5,50,00,000
		29/09/2017	3,00,00,000	
3	PLAYTOR LIFESPACES PRIVATE LIMITED	12/09/2017	3,50,00,000	5,50,00,000
		16/10/2017	85,00,000	

19.18 In terms of provisions of Regulation 15(1)(e) of AIF Regulations, 2012, an AIF can invest funds of a scheme into its associates only after the approval of 75% investors of that particular scheme by value of their investment in the AIF. The same was further clarified by Clause 3(h) of SEBI Circular ref. CIR/IMD/DF/14/2014 dated June 19, 2014 wherein it was stated that such approval is required to be taken prior to every investment in an associate.

19.19 Brick Eagle Trust vide e-mail dated January 14, 2021 stated that it did not take approval of 75% of investors by value of their investment in the Brick Eagle Trust prior to making the aforesaid investments in its associate companies. Thus, Brick Eagle Trust allegedly violated Regulation 15(1)(e) of AIF Regulations, 2012 read with Clause 3(h) of SEBI circular CIR/IMD/DF/14/2014 dated June 19, 2014.

19.20 In this regard, Noticees 1 and 2 subsequently submitted as under:

We confirm that Sheltrex Developers Private Limited, Sheltrex Communities Private Limited and Playtor Lifespaces Private Limited are our associates and we have invested Rs 550 lacs in each of these entities, as specified in the SCN.

With regard to your allegation that we did not take any prior approval from 75% of the investors in a particular scheme, we would like to submit that the primary object of the Scheme was to invest in projects which were incubated by us and this communicated to our investors before they made the investment. We are attaching a copy of the Fund Information Memorandum (Annexure 3), which was used to communicate with the investors. The IM clearly mentions Brick Eagle's strategy and the projects considered for investment. Hence the projects and Brick Eagle's roles were clearly presented to the investors prior to their investment. Further, we have taken approval from the Investment Committee for each of the investments made. The Investment Committee comprised of the representatives of the Bennett Properties Holdings and Axis Bank who represent majority of the Investors and approved the investments made by the Fund. The approval of the investment made by the Committee is enclosed as Annexure 4 to this letter. We therefore humbly submit that we have not violated Regulation 15(1)(e) of AIF Regulations, 2012 read with Clause 3(h) of SEBI circular CIR/IMD/DF/14/2014 dated June 19, 2014.

- 19.21 I note that the present submission of the Noticees that they had invested in their associates only with approval of 75% of investors is contrary to the submission of the Noticees during inspection that they had not taken such approval before investing.
- 19.22 With respect to the contention of the Noticees that the object of the scheme and the projects considered for investment were communicated to its investors, I note that though the project details were available in the Fund Information Memorandum ("**FIM**"), it was nowhere mentioned in the FIM that a few of the aforesaid projects are developed by the associates of Brick Eagle Trust. Thus, I note that any approval if received from the investors would have been based on incomplete information presented in the aforesaid FIM.
- 19.23 With respect to the contention of the Noticees that the Investment Committee approved all their investments and the Investment Committee comprised of Axis Bank and Bennett Properties Holdings, I note that details such as composition of the Investment Committee, approval given by the aforesaid Investment Committee to all the investments made by Brick Eagle Trust in its associates, have not been submitted by the Noticees.
- 19.24 I note the present submission of the Noticees is an afterthought to the allegations made w.r.t. the violation of Regulation 15(1)(e) of AIF Regulations, 2012. In view of the above, I reject the contention of the Noticees that they had taken approval before investing in their associate companies. Accordingly, I find that the Fund has violated Regulation 15(1)(e) of AIF Regulations, 2012 read with Clause 3(h) of SEBI circular CIR/IMD/DF/14/2014 dated June 19, 2014.

D. Brick Eagle Trust invested un-invested portion of the investible funds in low duration funds instead of liquid funds in violation of Regulation 15(1)(f) of AIF Regulations, 2012.

19.25 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 15: General Investment Conditions

Regulation 15(1)(f): *Un-invested portion of the investible funds may be invested in liquid mutual funds or banks deposits or other liquid assets of higher quality such as Treasury Bills, CBLOs, Commercial Papers, Certificates of Deposits, etc. till deployment of funds as per the investment objective.*

19.26 Brick Eagle Trust invested the un-invested portion of investible funds amounting to Rs. 20.79 Lakh in low-duration funds and allegedly violated Regulation 15(1)(f) of AIF Regulations, 2012.

19.27 In their reply, Noticees 1, 2 and 3 submitted as under:

We would like to submit that we had made the investment of the surplus fund only to maximize our return and not with any mala fide intention. We request you to kindly take a lenient view as this was done only to maximize returns and drop the charges under Regulation 15(1)(f) of the AIF Regulations.

19.28 In terms of Regulation 15(1)(f) of AIF Regulations, 2012, an AIF may invest un-invested portion of investible funds in liquid mutual funds or bank deposits or other liquid assets of higher quality such as Treasury bills, CBLOs, Commercial Papers, Certificates of Deposits etc. till deployment of funds as per the investment objective.

19.29 From the financial statements of Brick Eagle Trust for the F.Y. 2019-20, I note that the value of investments made by Brick Eagle Trust in three low duration funds was Rs. 20,79,487/- as on March 31, 2019. The details of such funds are given as under:

TABLE IV		
S. No.	NAME OF THE MUTUAL FUND	VALUE AS ON MARCH 31, 2019 (IN RS.)
1	DSP BLACKROCK LOW DURATION FUND – REGULAR PLAN - GROWTH	4,02,510
2	IDFC LOW DURATION FUND – GROWTH – REGULAR PLAN	10,20,067
3	TATA TREASURY ADVANTAGE FUND REGULAR PLAN GROWTH	6,56,910
	TOTAL	20,79,487

19.30 In terms of Regulation 15(1)(f) of AIF Regulations, 2012, any un-invested portion of the investible funds should only be invested in liquid assets of higher quality with less risk. Accordingly, the Regulation gives freedom to AIFs to invest in products like liquid mutual funds, bank deposits, Treasury Bills, CBLOs, Commercial Papers, Certificates of Deposits etc. The purpose is to allow the deployment of un-invested funds while reducing any potential risk of loss of capital. However, Brick Eagle Trust invested the un-invested portion of its investible funds in low duration funds instead of liquid funds and other investment products mentioned in Regulation 15(1)(f) of AIF Regulations, 2012. Brick Eagle Trust accepted the aforesaid allegation and stated that it was done

only to maximize the returns. In view thereof, I find that Brick Eagle Trust violated Regulation 15(1)(f) of AIF Regulations, 2012.

E. Failure of Brick Eagle Trust to intimate the changes in its Designated Partners of its Sponsor / Manager to SEBI in violation of Regulation 20(3) of AIF Regulations, 2012.

19.31 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 20: General Obligations

Regulation 20(3): *All Alternative Investment Funds shall inform the Board in case of any change in the Sponsor, Manager or designated partners or any material change from the information provided by the Alternative Investment Fund at the time of application for registration.*

19.32 The partners of the Sponsor of Brick Eagle Trust changed on four instances. However, the same was not informed to SEBI.

19.33 In their reply, Noticees 1, 2 and 3 submitted as under:

We did not intimate the changes in the Manager due to oversight and also because of the fact that the original persons were brought back into the LLP within a period of 2 months due to poor investor feedback. Mr. Prabhat Ranjan resigned on December 26, 2016 even before we launched the Scheme. Mr. Divyanshu Mishra joined as Designated Partner in January 2017 and resigned in February 2017 and he remained only for a period of 2 months. There was essentially no change in the management of the sponsors / Managers as both Mr Rajesh Raman Krishnan and Ms Kirti Mallanagouda Timmamagoudar were managing the affairs of the Manager. Since we did not intimate only due to oversight and not due to any malafide intention, we request you to kindly drop the charges under Regulation 20(3) of the AIF Regulations.

19.34 From the communication dated January 20, 2021, received by SEBI from the Sponsor, the following are the details of designated partners of Sponsor / Manager of Brick Eagle Trust from the date of its registration as Category II AIF:

TABLE V				
S. No.	NAME OF DESIGNATED PARTNER	DATE OF APPOINTMENT	DATE OF RESIGNATION	IN CASE OF NEW APPOINTMENT/ RESIGNATION OF DESIGNATED PARTNER, WHETHER SUCH CHANGE INFORMED TO SEBI (Yes/No)
1	MR. RAJESH RAMAN KRISHNAN	04/12/2011	01/12/2017	No
2	MR. PRABHAT RANJAN	04/12/2011	26/12/2016	No
3	MS. KIRTI MALLANAGOUDA TIMMANAGAUDAR	10/11/2014	10/01/2018	No
4	MR. DIVYANSHU MISHRA	01/12/2017	24/01/2018	No

TABLE V				
S. No.	NAME OF DESIGNATED PARTNER	DATE OF APPOINTMENT	DATE OF RESIGNATION	IN CASE OF NEW APPOINTMENT/ RESIGNATION OF DESIGNATED PARTNER, WHETHER SUCH CHANGE INFORMED TO SEBI (Yes/No)
5	MR. RAJESH RAMAN KRISHNAN	10/01/2018	-	No
6	MS. KIRTI MALLANAGOUDA TIMMANAGOUDAR	24/01/2018	-	No

19.35 From the Table V above, I note that Noticee 2, Noticee 3 and Prabhat Ranjan were the designated partners of the Fund at the time of registration with SEBI viz. January 02, 2016. Subsequently, Prabhat Ranjan and Noticee 2 resigned one after another and Divyanshu Mishra joined in place of Noticee 2. Later on, Noticee 3 resigned from the Fund and Noticee 2 joined in her place and sometime after that, Divyanshu Mishra resigned as a Designated Partner and Noticee 3 once again joined the Fund to replace him.

19.36 In terms of Regulation 20(3) of AIF Regulations, 2012, an AIF is mandatorily required to inform the Board in case of any change in the Sponsor, Manager or Designated Partners or any other material change from the information provided by the AIF at the time of application for registration. From the Table V above, I note that the Designated Partners of the Sponsor were changed on 4 instances. Vide their submission dated January 20, 2021, it was *inter-alia* submitted that none of the aforesaid changes were informed to SEBI.

19.37 Noticees 1, 2 and 3 *inter-alia* submitted that the changes in Designated Partners of the Sponsor / Manager was not informed due to oversight and there was no change in management of Sponsors / Managers. However, from the Table V above, I note that there was change in the Designated Partners and accordingly there was a change in the management of the Sponsor. Hence, I am not inclined to accept the submission of the Noticees in this regard. In view of the above, I find that the Fund failed to inform SEBI about the change in the Sponsor and thus violated Regulation 20(3) of AIF Regulations, 2012.

F. Failure of Brick Eagle Trust to disclose information in respect of its financial, risk management, operational, portfolio and transactional information regarding investments to its investors for the F.Y. 2017-18, 2018-19 and 2019-20 in violation of Regulation 22(a) of AIF Regulations, 2012.

G. Failure of Brick Eagle Trust to disclose information such as financial information of its investee companies, management of material risks to its investors for the F.Y. 2017-18, 2018-19 and 2019-20 in violation of Regulation 22(g) of AIF Regulations, 2012.

- H. Failure of Brick Eagle Trust to maintain dated and signed rationale for the investments made and failure to maintain high standards of integrity and fairness in all their dealings in violation of Regulation 27(1)(e) of AIF Regulations, 2012.**
- I. Failure of Brick Eagle Trust to maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and failure to render high standard of service and exercise due diligence in violation of Clause 2(C)(c)(ii) of Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.**

19.38 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 22: Transparency

Regulation 22: All Alternative Investment Funds shall ensure transparency and disclosure of information to investors on the following:

- (a) financial, risk management, operational, portfolio, and transactional information regarding fund investments shall be disclosed periodically to the investors;
- (g) Alternative Investment Fund shall provide at least on an annual basis, within 180 days from the year end, reports to investors including the following information, as may be applicable to the Alternative Investment Fund: -
 - A. financial information of investee companies
 - B. material risks and how they are managed which may include:
 - (i) concentration risk at fund level;
 - (ii) foreign exchange risk at fund level;
 - (iii) leverage risk at fund and investee company levels;
 - (iv) realization risk (i.e. change in exit environment) at fund and investee company levels;
 - (v) strategy risk (i.e. change in or divergence from business strategy) at investee company level;
 - (vi) reputation risk at investee company level;
 - (vii) extra-financial risks, including environmental, social and corporate governance risks, at fund and investee company level.

Regulation 27: Maintenance of Records

Regulation 27(1): The Manager or Sponsor shall be required to maintain following records describing:

- (d) rationale for investments made.

SEBI Circular CIR/IMD/DF/7/2015 dated October 1, 2015 – Guidelines on Overseas Investments and other issues / clarifications for AIFs/VCFs

“...2 (C). Other issues/clarifications:

c. The AIF, manager, trustee and sponsor shall:

- ii. *maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment...”*

19.39 In terms of Regulation 22(a) of AIF Regulations, 2012, an AIF shall disclose financial, risk management, operational, portfolio and transactional information regarding investments to its investors in a periodical manner. In terms of Regulation 22(g) of AIF Regulations, 2012, an AIF shall disclose information such as information such as financial information of its investee companies, management of material risks to its investors at least on an annual basis.

19.40 In terms of Regulation 27(1)(e) of AIF Regulations 2012, the Sponsor or Manager shall be required to maintain the rationale for the investments made. In terms of Clause 2(C)(c)(ii) of Circular CIR/IMD/DF/7/2015 dated October 1, 2015, the AIF, Manager, Trustee and Sponsor shall maintain high standards of integrity and fairness in all their dealings and in the conduct of the business render at all times high standards of service, exercise due diligence and exercise independent professional judgement.

19.41 The Noticees 1, 2 and 3 *inter-alia* submitted that the information as specified in Regulations 22(a) and 22(g) of AIF Regulations, 2012 were not disclosed to the investors of Brick Eagle Trust. Further, they have submitted that the aforesaid non-disclosure was due to ignorance of the requirements of the law and undertook to comply with the requirements in the future. Similar plea of unawareness of the requirement of Regulation 27(1)(e) of AIF Regulations 2012 has been taken by these Noticees.

19.42 I note that during the inspection Noticee 1 failed to provide the rationale for the investments made. Further, vide its submission dated June 12, 2022, Noticee 1 admitted to the aforesaid violation of non-maintenance of rationale for investments made. Noticee 1 further submitted that they were unaware of the said requirement and failed to maintain the same as they lacked the necessary professional expertise.

19.43 I note that Noticees 1 and 2 *inter-alia* submitted that the non-disclosure was due to ignorance of the requirements of the law. Being SEBI Registered Intermediary, it is mandatory that the Noticee 1 should have been conversant with the relevant requirements of the Regulations under which it obtained the registration. It cannot simply act ignorant of such regulatory requirements. Hence, I do not find any merit in the submissions of the Noticee that they were ignorant about the disclosure requirements.

19.44 In view of the above, I find that the Fund has violated Regulations 22(a), 22(g) and 27(1)(e) of AIF Regulations 2012.

19.45 I further note that the aforesaid acts of the Fund i.e. not disclosing information about investments to its investors, not maintain rationale for its investments indicate that the Noticee failed to maintain high standards of integrity in the conduct of its business. The Noticee has itself admitted that it lacked the necessary professional expertise and did not make any submission in respect of the aforesaid allegation of violation of Circular dated October 1, 2015. I, accordingly, find that the Fund violated Clause 2(C)(c)(ii) of Circular CIR/IMD/DF/7/2015 dated October 1, 2015.

J. Failure of Brick Eagle Trust to undertake valuation of its investments for the period from December 21, 2018 and August 25, 2020 in violation of Regulation 23(2) of AIF Regulations, 2012.

19.46 The relevant provisions of law are reproduced below:

PROVISIONS OF AIF REGULATIONS, 2012

Regulation 23: Valuation

Regulation 23(2): *Category I and Category II Alternative Investment Funds shall undertake valuation of their investments, at least once in every six months, by an independent valuer appointed by the Alternative Investment Fund:*

Provided that such period may be enhanced to one year on approval of at least seventy-five percent of the investors by value of their investment in the Alternative Investment Fund.

19.47 The Fund allegedly failed to undertake valuation of its investments at least once in every six months and violated Regulations 22(3) of AIF Regulations, 2012.

19.48 In their reply, Noticees 1 and 2 submitted as under:

We had overlooked and inadvertently missed the requirement of valuation on a half yearly basis for the two half years March 2019 and September 2019 due to a change in our Compliance Team. We undertake that such lapses will not occur in future. We request you to kindly take a lenient view and kindly drop the charges under Regulation 23(2) of the AIF Regulations.

19.49 In terms of Regulation 23(2) of AIF Regulations, 2012 all Category I and Category II AIFs shall undertake valuation of their investments, at least once in every six months by an independent valuer appointed by the AIF. In this regard, the details of the valuation of the investments made by the Noticee is as under:

TABLE VI		
S. No.	HALF YEAR ENDED	DATE OF VALUATION REPORT
1	MARCH 2018	SEPTEMBER 24, 2018
2	SEPTEMBER 2018	DECEMBER 21, 2018
3	MARCH 2019	AUGUST 25, 2020
4	SEPTEMBER 2019	AUGUST 28, 2020

TABLE VI		
S. No.	HALF YEAR ENDED	DATE OF VALUATION REPORT
5	MARCH 2020	AUGUST 31, 2020

19.50 From the Table VI above, I note that the valuation of the investments had not been conducted for a period of 20 months from December 21, 2018 to August 25, 2020. The Noticees inter-alia admitted to the aforesaid violation of the Regulation 23(2) of AIF Regulations, 2012 and submitted that such lapses will not occur in the future.

19.51 In view of the above, I find that the Fund violated Regulation 23(2) of AIF Regulations, 2012.

K. Failure of Brick Eagle Trust to upload KYC information of its clients in the KRA and failure to carry out In-Person Verification of its clients in violation of SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with Clause 3(m) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.

19.52 The relevant provisions of law are reproduced below:

SEBI Circular MIRSD/Cir-26/2011 dated December 23, 2011 - Guidelines in pursuance of the SEBI KYC Registration Agency (KRA) Regulations, 2011 and for In-Person Verification (IPV)

“ ...

1. Guidelines for intermediaries

- i. After doing the initial KYC of the new clients, the intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch.
2. **In-Person Verification (IPV):** With regard to the requirement of in-person' verification (IPV), SEBI has issued guidelines to the stock brokers and depository participants (DPs). However, in line with the uniformity brought out in the KYC procedure across intermediaries, the IPV requirements for all the intermediaries have now been streamlined and harmonized, as follows:
 - i. It shall be mandatory for all the intermediaries addressed in this circular to carry out IPV of their clients.
 - ii. The intermediary shall ensure that the details like name of the person doing IPV, his designation, organization with his signatures and date are recorded on the KYC form at the time of IPV.
 - iii. The IPV carried out by one SEBI registered intermediary can be relied upon by another intermediary...”

SEBI Circular CIR/IMD/DF/14/2014 dated June 19, 2014 - Guidelines on disclosures, reporting and clarifications under AIF Regulations, 2012

“...3. Clarification on certain aspects of the AIF Regulations ...

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. ...

19.53 In terms of Circular ref. MIRSD/Cir- 26 /2011 dated December 23, 2011, all registered intermediaries including Venture Capital Funds were directed to upload the KYC information of their clients on the system of any of the SEBI registered KYC Registration Agencies (“**KRA**”). Further, the intermediary was also mandated to carry out in-person verification (“**IPV**”) of all its clients. The said circular became applicable to all SEBI registered AIFs by virtue of clause 3(m) of SEBI Circular ref. CIR/IMD/DF/14/2014 dated June 19, 2014.

19.54 During the inspection, it was observed that Brick Eagle Trust was not registered with any KRA. With respect to uploading of KYC of its clients on the system of KRA, Brick Eagle Trust vide e-mail dated January 20, 2021 submitted that it was unable to trace the records.

19.55 In their reply, Noticees 1 and 2 submitted as under:

The same was missed out due to inadvertence. We undertake to upload KYC records in future.

19.56 I note that, till date, Brick Eagle Trust did not submit any records to indicate that it conducted IPV of its clients and uploaded KYC of its clients to KRA. Brick Eagle Trust itself admitted that it did not conduct IPV and did not upload the KYC records. In view of the same, I find that the Brick Eagle Trust violated SEBI Circular No. MIRSD/Cir-26/2011 dated December 23, 2011 read with Clause 3(m) of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.

L. Failure to maintain Anti Money Laundering policy and failure to appoint Principal Officer and Designated Director in violation of SEBI Circulars No. ISD/CIR/RR/AML/1/06 dated January 18, 2006, No. ISD/CIR/AML/2/06 dated March 20, 2006 and SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018 read with Clause 3(m) of the SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.

19.57 The relevant provisions of law are reproduced below:

SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006 - Guidelines on Anti Money Laundering Standards

“... All intermediaries are advised to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place within one month from the date of the circular. The intermediaries are also advised to

designate an officer as 'Principal Officer' who would be responsible for ensuring compliance of the provisions of the PMLA. Names, designation and addresses (including e-mail addresses) of 'Principal Officer' shall also be intimated to the Office of the Director-FIU, 6th Floor, Hotel Samrat, Chanakyapuri, New Delhi - 110021, India on an immediate basis..."

SEBI Circular ISD/CIR/RR/AML/2/06 dated March 20, 2006 – Guidelines on Anti Money Laundering Standards

" ...

1. Please refer to our circular no. ISD/CIR/RR/AML/1/06 dated January 18, 2006 laying down broad guidelines on Anti Money Laundering Standards. As per the circular, all the intermediaries registered with SEBI under Section 12 of the SEBI Act were advised to ensure that a proper policy framework on anti-money laundering measures is put into place within one month from the date of the circular. The intermediaries were also advised to designate an officer as 'Principal Officer' and intimate their details to the Financial Intelligence Unit, India on an immediate basis..."

SEBI Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018 – Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under

" ...

- 2.11. Designation of officers for ensuring compliance with provisions of PMLA

- 2.11.1. Appointment of Principal Officer:

- 2.11.1.1. To ensure that the registered intermediaries properly discharge their legal obligations to report suspicious transactions to the authorities, the Principal Officer would act as a central reference point in facilitating onward reporting of suspicious transactions and for playing an active role in the identification and assessment of potentially suspicious transactions and shall have access to and be able to report to senior management at the next reporting level or the Board of Directors. Names, designation and addresses (including e-mail addresses) of 'Principal Officer' including any changes therein shall also be intimated to the Office of the Director-FIU. As a matter of principle, it is advisable that the 'Principal Officer' is of a sufficiently senior position and is able to discharge the functions with independence and authority.

2.11.2.3 Registered intermediaries shall communicate the details of the Designated Director, such as, name designation and address to the Office of the Director, FIU –IND...”

SEBI Circular CIR/IMD/DF/14/2014 dated June 19, 2014 - Guidelines on disclosures, reporting and clarifications under AIF Regulations, 2012

“...3. Clarification on certain aspects of the AIF Regulations ...

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.”

- 19.58 In terms of Clause 4 of SEBI Circulars ISD/CIR/RR/AML/1/06 dated January 18, 2006 read with Clause 1 of SEBI Circular ref. ISD/CIR/AML/2/06 dated March 20, 2006, every SEBI registered intermediary is required to have an Anti-Money Laundering Policy and designate an officer as ‘Principal Officer’ who would be responsible for ensuring compliance of the provisions of the Prevention of Money Laundering Act, 2002. The said provisions became applicable to the AIFs by virtue of Clause 3(m) of SEBI circular no. CIR/IMD/DF/14/2014 dated June 19, 2014. In terms of SEBI Master Circular No. SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018, all intermediaries shall also designate a person as a ‘Designated Director’.
- 19.59 During inspection, Brick Eagle Trust submitted vide communication dated January 7, 2021 that it did not have a laid down AML policy in place. It was observed that Brick Eagle Trust did not appoint Principal Officer and Designated Director for ensuring compliance with the provisions of PMLA.
- 19.60 From the available records, I note that the Noticee 1 failed to have an AML policy in place and did not appoint Principal Officer and Designated Director. The same has been admitted by the Noticee 1 itself in its submission.
- 19.61 I note that Noticees 1 and 2 inter-alia submitted that the aforesaid violation was due to ignorance of the requirements of the Regulation. Being the SEBI Registered Intermediary, it is mandatory that the Noticee 1 should have been conversant with the relevant requirements of the Regulations under which it obtained the registration. Hence, I do not find any merit in the submissions of the Noticee that they were ignorant about the disclosure requirements.
- 19.62 In view of the above, I find that the Brick Eagle Trust violated of SEBI Circulars No. ISD/CIR/RR/AML/1/06 dated January 18, 2006, No. ISD/CIR/AML/2/06 dated March 20, 2006 and SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018 read with Clause 3(m) of the SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.

- M. Failure of Brick Eagle Trust to submit Compliance Test Report to Trustee within 30 days from the end of F.Y. 2019-20 in violation of Clause 4 of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.**

19.63 The relevant provisions of law are reproduced below:

SEBI Circular CIR/IMD/DF/14/2014 dated June 19, 2014 - Guidelines on disclosures, reporting and clarifications under AIF Regulations, 2012

“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...”*

19.64 In terms of Clause 4 of SEBI Circular ref CIR/IMD/DF/14/2014 dated June 19, 2014, an AIF is required to prepare a Compliance Test Report (**‘CTR’**) on compliance with AIF Regulations, 2012 and circulars issued thereunder. The said CTR is mandatorily required to be submitted to the Trustee and Sponsor within 30 days from the end of the Financial Year, if the AIF is a trust. Brick Eagle Trust vide communication dated January 07, 2021 inter-alia submitted that it submitted the CTR for Financial Year 2019-20 to its Trustee on September 25, 2020.

19.65 In their reply, Noticees 1 and 2 submitted as under:

With regard to the allegation regarding the delay in submitting the CTR Test to the Trustee for the Financial Year 2019-20 with a delay, it is submitted that there was delay due to lock-down and the other ancillary issues arising out of the Covid-19 Pandemic. We will ensure that such delays do not occur in the future. We request you to kindly take a lenient view and kindly drop the charges for non-compliance of Clause 4 of the Circular Ref No: CIR/IMD/DF/14/2014 dated June 19, 2014.

19.66 I note that the CTR for the F.Y. 2019-20 was required to be submitted by Brick Eagle Trust to its Sponsor and Manager by April 30, 2020 i.e. within 30 days from the end of financial year in terms of Circular dated June 19, 2014.

19.67 In this regard, Noticees 1 and 2, while admitting to the delay submitted that the aforesaid delay was due to lock-down and other ancillary issued arising out of the Covid-19 Pandemic. I note that vide Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/58 dated March 20, 2020, SEBI extended the due date for regulatory filings for AIFs and VCFs for the period ending March 31, 2020 and April 30, 2020 by 2 months. Further, vide Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/92 dated June 4, 2020, the due date for regulatory filings for AIFs and VCFs for the months ending March, April, May and June 2020 was August 7, 2020. I note that Brick Eagle Trust did not submit the CTR to its Trustee and Sponsor even after SEBI extended the timeline for submission of the same.

19.68 In view of the above, I find that the Noticee violated Clause 4 of SEBI Circular No. CIR/IMD/DF/14/2014 dated June 19, 2014.

N. Failure of Brick Eagle Trust to carry out annual audit of compliance for F.Y. 2020-21 in violation of SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 5, 2020 read with Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020.

19.69 The relevant provisions of law are reproduced below:

SEBI Circular SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 5, 2020 – Disclosure Standards for Alternative Investment Funds (AIFs)

“5. Further, in order to ensure compliance with the terms of PPM, it will be mandatory for AIFs to carry out an annual audit of such compliance. The audit shall be carried out by either internal or external auditor/legal professional. However, audit of sections of PPM relating to ‘Risk Factors’, ‘Legal, Regulatory and Tax Considerations’ and ‘Track Record of First Time Managers’ shall be optional.

6. The findings of the audit, along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI.

7. The terms of contribution or subscription agreement (by any name as it may be called), shall be aligned with the terms of the PPM and shall not go beyond the terms of the PPM.

9. The aforesaid requirements shall come into effect from March 01, 2020...”

SEBI Circular SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020 – Clarifications with respect to Circular dated February 05, 2020 on ‘Disclosure Standards for Alternative Investment Funds (AIFs)’

“2. In this regard, it is clarified as under:

- (i) Audit of compliance with terms of PPM as provided in Paragraph 5 of the Circular, shall be conducted at the end of each Financial Year and the findings of audit along with corrective steps, if any, shall be communicated to the Trustee or Board or Designated Partners of the AIF, Board of the Manager and SEBI, within 6 months from the end of the Financial Year.*
- (ii) The requirement of audit of compliance with terms of PPM shall not apply to AIFs which have not raised any funds from their investors. However, such AIFs shall submit a Certificate from a Chartered Accountant to the effect that no funds have been raised, within 6 months from the end of the Financial Year.*
- (iii) For the Financial Year 2019-20, the above requirements shall be fulfilled on or before December 31, 2020...”*

19.70 In terms of SEBI Circular no. SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 05, 2020 read with Circular no. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020, it is mandatory for AIFs to carry out an annual audit of compliance with terms of PPM at the end of each financial year, either by an internal or external auditor/legal professional. Vide SEBI Circular No. SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020, the timeline for requirement for audit of compliance with terms of PPM for the F.Y. 2019-20 was extended till December 31, 2020. From the information submitted by Brick Eagle Trust vide communication dated June 17, 2021, it is observed the Brick Eagle Trust allegedly did not carry out the aforesaid compliance audit.

19.71 In their reply, Noticees 1 and 2 submitted as under:

With regard to the allegation regarding the non-conduct of the Annual Audit, we would like to submit that since we are not getting adequate returns on our investment, we are unable to afford the Annual Audit and hence could not hire a professional to carry out the Audit. We request you to kindly take a lenient view and kindly drop the charges for non-compliance of provisions of SEBI Circular No: SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 5, 2020 read with SEBI Circular No: SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020.

19.72 I note that Noticees 1 and 2 while admitting to the not conducting the annual audit, inter-alia submitted that since they were not getting adequate returns from their investment, they could not afford to hire a professional to conduct the audit.

19.73 I note that PPM is a primary document in which all necessary information about the AIF is disclosed to the investors like investment objective, strategy, process etc. SEBI Circular dated June February 05, 2020 mandates that an annual audit of compliance with the terms of PPM shall be conducted and the findings of the audit along with corrective steps, if any, shall be communicated to Trustee, Manager and SEBI. From the above, it is clear that the objective of the aforesaid audit is to act as a guidance / course correction for the activities of an AIF. By

not conducting the Annual Audit, Brick Eagle Trust had wasted an opportunity to review its strategy and processes which could have resulted in less than expected returns. I note that the annual audit is mandatory and is not depended on the returns earned by an AIF. Further, in terms of the Circular dated February 5, 2020, the audit shall be carried out by *either internal or external auditor/legal professional*. The audit of a few sections of PPM like risk factors, legal, regulatory and tax considerations and track record for first time managers are optional in terms of the Circular dated February 5, 2020. The timeline for compliance with the audit was extended till December 31, 2020. I note that even after the aforesaid concessions, Brick Eagle Trust failed to carry out the annual audit. Hence, I reject the contention of the Noticees in this regard.

19.74 In view of the above, I find that Brick Eagle Trust violated provisions of SEBI Circular No: SEBI/HO/IMD/DF6/CIR/P/2020/24 dated February 5, 2020 read with SEBI Circular No: SEBI/HO/IMD/DF6/CIR/P/2020/99 dated June 12, 2020.

O. Failure to act in best interest of all its investors for conduct of business and providing preferential treatment to certain investors by failing to drawdown requisite amounts in line with the Contribution Agreements from two investors in violation of Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.

19.75 The relevant provisions of law are reproduced below:

SEBI Circular CIR/IMD/DF/7/2015 dated October 1, 2015 – Guidelines on Overseas Investments and other issues / clarifications for AIFs/VCFs

“...2 (C). Other issues/clarifications: ...

c. The AIF, manager, trustee and sponsor shall: ...

iii. *maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and render at all times high standards of service, exercise due diligence and exercise independent professional judgment...*”

19.76 It is observed from the *Contribution Agreements* entered into with investors that they had to contribute certain portion of committed amounts upon execution of the *Contribution Agreements*. It is observed that Brick Eagle Trust had not drawn down such amounts upon execution of *Contribution Agreements*. The details of amounts committed and drawdowns, as submitted by the Fund vide its communication dated October 01, 2020 are tabulated below:

TABLE VII				
S. No.	NAME OF THE INVESTOR	COMMITMENT AMOUNT (IN Rs.)	AMOUNT TO BE CONTRIBUTED UPON EXECUTION OF AGREEMENT (IN Rs.)	ACTUAL AMOUNT DRAWDOWN TILL DATE (IN Rs.)
1	AXIS BANK	50,00,00,000	1,00,00,000	1,50,00,000

TABLE VII				
S. No.	NAME OF THE INVESTOR	COMMITMENT AMOUNT (IN Rs.)	AMOUNT TO BE CONTRIBUTED UPON EXECUTION OF AGREEMENT (IN Rs.)	ACTUAL AMOUNT DRAWDOWN TILL DATE (IN Rs.)
2	PULKIT BENEFIT TRUST	5,00,00,000	5,00,00,000	5,00,00,000
3	RIDAAN AND RUHAAN BUILDWELL P. LTD	2,00,00,000	2,00,00,000	50,00,000
4	BENNET PROPERTY HOLDINGS COMPANY LTD	50,00,00,000	10,00,00,000	10,00,00,000
5	BRICK EAGLE CAPITAL ADVISORY LLP	5,00,00,000	5,00,00,000	15,00,000

19.77 In their reply, Noticees 1 and 2 submitted as under:

With regard to the allegation regarding the amount contributed by each investor, we would like to submit that the amount to be contributed by each investor was duly negotiated with them and would vary from investor to investor. Axis Bank being an entity regulated by the RBI, the amount of drawdown was capped at 10% of the amount committed and hence they contributed only Rs. 1.5 Crores of the Rs. 50 cores committed, which was more than the amount contributed on the time of execution of agreement. Pulkit Benefit Trust contributed 100% of the amount committed at the time of execution of the Agreement. Ridaan and Ruhaan Buildwell Private Limited invested 50,00,000 out of Rs. 200 lacs committed by them. Bennet Property Holding Private Limited committed to invest Rs. 25 Crores within 3 months of drawdown, but they invested only Rs. 10 Crores at the time of execution of the agreement. Our Contribution was pro-rata in line with the contribution with that of Axis Bank and hence we have not defaulted in our contribution. Ridaan and Ruhaan have defaulted to the extent of Rs. 50 lacs and we were continuously following up with them to get the balance, which they did not contribute. In view of the submission we have not violated the provisions of Clause 2C(c)(ii) of Circular No: CIR/IMD/DF/7/2015 dated October 1, 2015 and request you to kindly drop this charge.

19.78 It is observed from Table VII that Brick Eagle Trust failed to draw down requisite amounts in line with the *Contribution Agreements* from investors namely Ridaan and Ruhaan Buildwell Pvt. Ltd and Brick Eagle Capital Advisory LLP, which is also the Sponsor/Manager to the Fund.

19.79 The submission of Brick Eagle Trust that they were following up with Ridaan and Ruhaan Buildwell Pvt. Ltd is not backed by any supporting documents. In terms of the PPM, Brick Eagle Trust is at liberty to pursue several actions against the investors who defaulted on the capital contribution pursuant to the drawdown Notice including taking legal or other action, suspension of right to receive distribution proceeds, forfeiture of units, selling allotted units to other contributors/ third parties etc. However, Brick Eagle Trust did not submit details

of any such actions in terms of PPM pursued against Ridaan and Ruhaan Buildwell Pvt. Ltd. With respect to their non-contribution of capital commitment, the Sponsor of Brick Eagle Trust itself failed to contribute the capital commitment and the same has been discussed earlier in this Order.

19.80 I note that Brick Eagle Trust did not take any steps to enforce the capital commitment from Ridaan and Ruhaan Buildwell Pvt. Ltd. Further, Brick Eagle Trust's Sponsor itself did not honor the commitment amount to the fund. I note that out of the commitment amount of Rs. 112 Crore, an amount of Rs. 17.15 Crore only had been drawn down by Brick Eagle Trust. By not making drawdowns from investors in accordance with the provisions of the *Contribution Agreement*, Brick Eagle Trust had not acted in the best interest of investors.

19.81 In view of the above, I find that Brick Eagle Trust has violated Clause 2(C)(c)(ii) of SEBI Circular No. CIR/IMD/DF/7/2015 dated October 1, 2015.

ROLE OF BRICK EAGLE LLP AND ITS DESIGNATED PARTNERS

19.82 Before proceeding further, it is pertinent to mention here that the Trust, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Trustees who are controlling the overall functioning of the Trust. In the instant case, I note that being a Trust, Brick Eagle Trust cannot act on its own and all the activities of Brick Eagle Trust are managed by its Trustee, Milestone. In terms of the Investment Management Agreement dated October 7, 2016, Milestone had in turn appointed Brick Eagle LLP to make investments on behalf of Brick Eagle Trust and also administer the affairs of Brick Eagle Trust and Brick Eagle India Affordable Housing Fund.

19.83 In terms of Section 27 of the SEBI Act, 1992, the designated partners of Brick Eagle LLP who were in charge of and responsible for the management and administration of Brick Eagle Trust when the contraventions were committed are liable for the aforesaid contraventions. Accordingly, Brick Eagle LLP and its designated partners namely Noticee 2 and 3, during their respective tenure as designated partners of Brick Eagle LLP are liable for the violations of Brick Eagle Trust as brought out in the paragraphs above.

19.84 In this regard, vide letter dated June 10, 2022, Noticee 3 *inter-alia* submitted as under:

I would like to submit that I was not a settlor of the Trust nor was I associated with the Manager in any ownership or controlling capacity. I was only a key managerial personnel and have resigned from the services of the LLP with effect from 31st July 2019. My resignation letter duly accepted by the Company is enclosed as Annexure 1 to this letter.

In view of the above submission, I only carried out the duties assigned to me to the best of my abilities and capabilities. All the decisions with regard to the operation of the Fund, having another closing, investment decisions, audit of the scheme and all other operational aspects were carried on by Mr. Rajesh

Krishnan and the members of the Committee formed for these purposes. Hence, I humbly submit that I cannot be held responsible for the various lapses that have been pointed out by you in the Show Cause Notice issued to me.

- 19.85 I note that the resignation of Kirti Mallanagouda Timmanagoudar as of July 31, 2019 has been confirmed by Brick Eagle LLP vide their submission to SEBI dated June 12, 2022. I note that she was the designated partner of Brick Eagle LLP during her tenure and was responsible for the activities of Brick Eagle LLP. She had also signed the Investment Management Agreement with Milestone in capacity of authorized signatory of Brick Eagle LLP. Kirti Mallanagouda Timmanagoudar was mentioned as the Partner of Brick Eagle Fund in the PPM and also in Fund Information Memorandum submitted by Brick Eagle LLP vide letter dated June 12, 2022. In view of the above, I note that Kirti Mallanagouda Timmanagoudar was also involved in managing the affairs of Brick Eagle LLP and she was not only a key managerial personnel. Accordingly, I find that Noticee 3 is liable for the contraventions of the Trust during her tenure as the Designated Partner i.e. from November 10, 2014 till January 10, 2018 and from January 24, 2018 onwards till her resignation (July 31, 2019).
- 19.86 I also note that Noticee 2 vide e-mail dated January 15, 2024 has submitted that all the investments of Brick Eagle India Affordable Housing Fund have been liquidated and the sponsors are in the process of drafting the Investor settlement deed and plan to distribute proceeds to investors. He also submitted that the process of winding down Brick Eagle India Affordable Housing Fund will be started by February 2024.

ROLE OF MILESTONE AND ITS DIRECTORS AND CATALYST

- 19.87 I note that being a Company, Milestone cannot act on its own. All the activities of Milestone are managed and executed by its Directors. In this context, reference is drawn to Section 27 of the SEBI Act, which is reproduced below:

RELEVANT EXTRACT FROM SECTION 27 OF THE SEBI ACT 1992

27. (1) Where [a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder] has been committed by a company, every person who at the time the [contravention] was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the [contravention] was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such [contravention].

(2) Notwithstanding anything contained in sub-section (1), where an 169[contravention] under this Act has been committed by a company and it is

proved that the [contravention] has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the [contravention] and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section, —

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

19.88 In terms of Section 27 of the SEBI Act, 1992, the directors of Milestone who were in charge of and responsible for the management and administration of Brick Eagle Trust when the contraventions were committed are liable for the aforesaid contraventions. Accordingly, Milestone and its directors namely, Rubi Arya, Parvinder Singh Pasricha and Vishwas Govind Pathak during their respective tenure as directors of Milestone are liable for the violations of Brick Eagle Trust as brought out in the paragraphs above.

19.89 As regards Vishwas Govind Pathak (Noticee 7), it was informed that he had passed away on September 15, 2020. In view of the aforesaid, the instant proceedings against Vishwas Govind Pathak stand abated.

19.90 In this regard, vide e-mail dated August 19, 2022, September 21, 2022 and July 27, 2023, Catalyst *inter-alia* submitted that Milestone amalgamated with Catalyst on May 23, 2022. Further to the above, vide e-mail dated July 27, 2023, Catalyst *inter-alia* submitted the following:

The alleged violations occurred prior to Amalgamation of Milestone Trusteeship Services Private Limited with Catalyst Trusteeship Limited.

Since as a result of the Amalgamation, Catalyst Trusteeship Limited has become the trustee of the Fund, it has proactively, and in discharge of its regulatory duties, including the duties emanating from the ‘Code of Conduct’ as applicable to trustees of AIFs, taken various steps in the interest of the Fund’s investors and in line with the requirements of the AIF Regulations. Please see a summary of the steps taken by Trustee below.

The Trustee undertook effective steps before and after the Hearing

The Trustee has taken several affirmative and necessary steps before and after the Hearing. The Trustee has endeavored to liquidate the investment proceeds to protect the interests of the contributors, in preparedness of orderly winding up of the Fund and have kept the contributors well informed about the status of the three investee companies of the Fund namely, Playtor Lifespaces Pvt. Ltd., Sheltrex Developers Pvt. Ltd. and Sheltrex Communities Pvt. Ltd.

Participating in meeting with Contributors

The Trustee oversaw and attended a meeting of the contributors of the Fund on April 10, 2023 whereby Mr. Jagdish Kondur chaired the meeting and the following proposals were discussed:

- (i) Transfer of right/title/interest of the investment made by the Fund in the Non-Convertible Debentures ("NCDs") issued by SDPL for consideration of Rs. 2.75 Crores after getting a legal opinion.
- (ii) The Manager informed that contributors about possible division of the land admeasuring 10.60 acres located at Karjat, District Raigad owned by Brick Eagle Projects Pvt. Ltd. mortgaged in favour of the Trustee as security for NCDs issued by PLPL with contributor's assent.

Constant Communication with Contributors and Manager

The Trustee has actively called for meeting with Manager and the Contributors of the Fund as it is evident from the e-mails dated August 18, 2022 and March 30, 2023 to apprise them of the status of the Fund and explore the way forward for an orderly resolution

Further, the Trustee vide e-mails dated April 13, 2023 and June 15, 2023 to contributors has actively sought assent of the contributors for appointment of lawyers for conducting of due diligence, valuation etc. of PLPL's land (one of the investee companies of the Fund).

Submissions

We humbly submit that as per Regulation 20(5) of the AIF Regulations and the PPM and the Contribution Agreement of the Fund, the Manager is legally and contractually obligated to undertake the management of the Fund and ensure its compliance with the fund documents and applicable law.

Further, the Manager, given its key management person's expertise and experience is rightly authorized and made responsible for undertaking day to day operations of the Fund and deciding on all commercial matters pertaining to the Fund, including holding of a Second Closing and/or the Final Closing as per the PPM. In our humble submission, the alleged violations (i.e. pertaining to not holding second closing as per the PPM) being generally commercial in nature falls within the domain of the Manager in line with clause 7 of the Investment Management Agreement dated October 7, 2016. The Trustee has limited role to lay in commercial matters like holding of second closing of the Fund which is a matter related to management of the Fund by the Manager. However, as indicated above before and after the Amalgamation and upon learning of the alleged violations of the AIF Regulations by SEBI, we have taken various steps and measures to resolve the Fund's assets in preparedness to orderly winding up of the Fund.

Winding up of the Fund

We humbly submit that Regulation 29(5) of AIF Regulations states that the trustee of the AIF shall intimate SEBI and the contributors about the circumstances leading to winding up of the AIF. Further Regulation 29(6) of the AIF Regulations stipulates that after such intimation, the AIF should not make any further investments and liquidate its investment proceeds within the liquidation period. Subsequently, as per Regulation 29(7) of the AIF Regulations all the proceeds arising from liquidation has to be distributed to the contributors after satisfying all liabilities.

In the present case, we submit that the Fund has already started the process of winding up envisaged under Regulations 29(5), (6) and (7) of the AIF Regulations, and the same has been intimated to the investors. The Trustee highlighted the process of winding up to the contributors and sought their views on the same.

Prayers

In light of the above, it is most humbly prayed that this Learned Adjudicating authority may graciously be pleased to consider that:

- The alleged violations contained in the Notice occurred prior to Amalgamation.
- The Trustee has taken all necessary steps before and after the Hearing in the interest of contributors of the Fund in discharge of its obligations under the AIF Regulations including the Code of Conduct and accordingly not take any punitive or adverse action against the Trustee.

19.91 Milestone in its reply had *inter-alia* submitted that it was primarily the responsibility of the Investment Manager to take care of the working of the Fund and Milestone had no say in the management of daily affairs of the Trust. In this regard, the following is mentioned in the PPM regarding the Trustee:

“The Trust shall have all powers in respect of the property of the Trust including power to manage the same which has been delegated to the Investment Manager in terms of the Investment Agreement. The Trustee shall not interfere with the actions of the Investment Manager so long as the actions are within the powers of the Investment Manager as set forth in the Investment Management Agreement and are consistent with the objectives of the Trust.”

19.92 From the above, it is clear that Milestone had all the powers to manage the Trust and a part of the same was delegated to Brick Eagle LLP. Milestone was aware that the Fund had not achieved Second Closing. Milestone as a Trustee should have stepped in and taken necessary steps in respect of the same including discussion with the Manager, Contributors in the interest of the investors. Further, Clause 2(C)(c)(iii) of the SEBI Circular dated October 01, 2015 casts the obligation on both the Trustee and the Manager to maintain high

standards of integrity and fairness in all their dealings and in the conduct of business. In view thereof, I reject the contention of Milestone that the Manager is alone responsible for the working of the Trust. Accordingly, I find that Milestone and its erstwhile Directors namely, Ruby Arya and Parvinder Singh Pasricha violated Clauses 2(C)(b)(i) and (ii) and 2(C)(c)(iii) of the SEBI Circular dated October 01, 2015.

19.93 I note that Milestone was amalgamated into Catalyst. Based on the submissions of Catalyst vide letters dated August 19, 2022 and September 23, 2022, I note that Catalyst is taking steps to liquidate the investment proceeds of the Fund after discussion with the Contributors and the Investment Manager, i.e. Brick Eagle LLP and had submitted supporting documents in respect of the same. In view thereof, I accept the submission of Catalyst that it is taking necessary steps in the interest of the investors in Brick Eagle Trust.

19.94 However, in terms of paragraph 3.4 of Part B of the Scheme of Amalgamation of Milestone with Catalyst, all the liabilities of Milestone shall stand transferred to Catalyst so as to become the debts, liabilities, duties and obligations of note that Milestone amalgamated with Catalyst with effect from May 23, 2022. Accordingly, Catalyst is liable for all liabilities of Milestone before amalgamation including the violation of Clauses 2(C)(b)(i) and (ii) and 2(C)(c)(iii) of the SEBI Circular dated October 01, 2015.

CONCLUSION

20. From the preceding paragraphs, the following is noted:

- a. *The Sponsor of Brick Eagle Trust i.e. Brick Eagle LLP failed to have continuing interest in Brick Eagle Trust.*
- b. *Brick Eagle Trust failed to achieve Second Closing and Final Closing in terms of the PPM.*
- c. *Brick Eagle Trust failed to obtain approval from investors before making investments in the associate companies of its Sponsor.*
- d. *Brick Eagle Trust invested un-invested portion of the investible funds in Low Duration Funds instead of Liquid Funds.*
- e. *Brick Eagle Trust failed to intimate the changes in Designated Partner of the Sponsor / Manager to SEBI.*
- f. *Brick Eagle Trust failed to disclose information in respect of its financial, risk management, operational, portfolio and transactional information regarding investments to its investors for the F.Y. 2017-18, 2018-19 and 2019-20.*
- g. *Brick Eagle Trust failed to disclose information such as financial information of its investee companies, management of material risks to its investors for the F.Y. 2017-18, 2018-19 and 2019-20.*

- h. Brick Eagle Trust failed to undertake valuation of its investments for the period from December 21, 2018 and August 25, 2020*
 - i. Brick Eagle Trust failed to maintain dated and signed rationale for the investments made and also failed to maintain high standards of integrity and fairness in all their dealings.*
 - j. Brick Eagle Trust failed to maintain high standards of integrity and fairness in all their dealings and in the conduct of the business and failure to render high standard of service and exercise due diligence.*
 - k. Brick Eagle Trust failed to upload KYC information of its clients in the KRA and failure to carry out In-Person Verification of its clients.*
 - l. Brick Eagle Trust failed to maintain Anti Money Laundering policy and failure to appoint Principal Officer and Designated Director.*
 - m. Brick Eagle Trust failed to submit Compliance Test Report to Trustee within 30 days from the end of F.Y. 2019-20.*
 - n. Brick Eagle Trust failed to carry out annual audit of compliance for F.Y. 2020-21.*
 - o. Brick Eagle Trust failed to act in best interest of all its investors for conduct of business and providing preferential treatment to certain investors by failing to drawdown requisite amounts in line with the Contribution Agreements from two investors.*
 - p. Brick Eagle LLP along with its partners namely, Rajesh Raman Krishnan and Kirti Mallanagouda Timmanagoudar, during their tenure as Designated Partners are liable for the aforesaid violations of Brick Eagle Trust.*
 - q. The erstwhile Trustee of Brick Eagle Trust i.e. Milestone (now amalgamated with Catalyst) along with its directors namely, Rubi Arya and Parvinder Singh Pasricha are liable for the violations of Brick Eagle Trust.*
21. The abovementioned acts and omissions by the Noticees amount to violation of the provisions of AIF Regulations, 2012 and SEBI Circulars, as detailed above.
 22. In view of the aforementioned, I find that it to be a fit case for issuing appropriate directions under Sections 11(1) and 11B(1) of the SEBI Act, 1992 against Noticees 1 to 6.
 23. The SCN in this matter also calls upon Noticees 1 to 3 to explain as to why appropriate penalty be not imposed upon them under Section 11B(2) and 11(4A) read with Section 15EA of the SEBI Act, 1992 for the abovementioned violations. The relevant extracts of the said provisions are as under:

Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment funds (Inserted by Finance Act, 2018 w.e.f. 08-03-2019)

Section 15EA of the SEBI Act. *“Where any person fails to comply with the regulations made by the Board in respect of alternative investment funds, infrastructure investment trusts and real estate investment trusts or fails to comply with the directions issued by the Board, such person shall be liable to penalty which shall not be less than one Lakh rupees but which may extend to one Lakh rupees for each day during which such failure continues subject to a maximum of one Crore rupees or three times the amount of gains made out of such failure, whichever is higher.”*

24. As noted from paragraphs 20 (a) to 20 (g) of this Order, the Investment Manager of Brick Eagle Trust and its Designated Partners namely, Noticee 2 and 3 during their respective tenures are liable for the stated violations. I, therefore, find that penalty under Sections 15EA of the SEBI Act, is clearly attracted for such lapses.

25. While deciding the quantum of monetary penalty under the abovementioned provisions of SEBI Act, factors mentioned under Section 15J of the said Act, have to be considered. The said provision reads as under:

“Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”

26. I also note that the SCN has not brought out the quantum of profit/ gains made by the Noticees or the loss caused to the investors as a result of the defaults/ violations committed by the Noticees though the complaint received from certain investors show that they have suffered losses due to the actions of the Noticees. Further, since multiple lapses have occurred and they are still continuing, I find that the defaults are repetitive in nature. I also note that the Noticees have already initiated the process of winding up of the scheme of the Fund. I have considered these factors while deciding the monetary penalties.

27. In consideration of the above, I shall now proceed to issue appropriate directions, including the imposition of monetary penalties.

DIRECTIONS

28. I, in exercise of powers conferred upon me under Sections 11(1), 11B(1), 11(4A) and 11B (2) of the Securities and Exchange Board of India Act, 1992 and in the interest of investors do hereby pass the following directions: –
- A. The Noticees shall ensure that the Scheme of the Fund is wound up by providing exit to its investors / unit holders within a maximum period of 6 months from the date of this Order.
 - B. The Noticees shall file a report certified by a Chartered Accountant declaring that all the investors of the Scheme have been provided an exit and the Scheme of Fund stands wound up as directed in paragraph 28(A) above. The said report shall be filed within a period of three weeks after completion of the exit and repayment to the investors / unit holders of the Scheme.
 - C. Noticee 1 shall not take up new assignments as investment manager for a period of 1 year. This direction shall come into force after 45 days from the date of this Order.
 - D. Noticee 4 / Catalyst shall not take up new assignments as trustee of Alternative Investment Fund of any category, for a period of 1 year. This direction shall come into force after 45 days from the date of this Order.
 - E. Noticee 1 is hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner, either directly or indirectly, for a period of 1 year from the date of this Order.
 - F. Noticees 1 to 6 are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediaries including SEBI registered funds such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investor's money in any manner for a period of 3 months from the date of this Order.
 - G. The following Noticees are hereby imposed with, the monetary penalties, as provided hereunder:

TABLE VIII			
NOTICEE NO.	NAME OF THE NOTICEE	PROVISIONS UNDER WHICH PENALTY IMPOSED	AMOUNT OF PENALTY TO BE PAID JOINTLY AND SEVERALLY
1.	BRICK EAGLE CAPITAL ADVISORY LLP	SECTION 15 EA	RS. 5 LAKH (RUPEES FIVE LAKH ONLY)
2.	RAJESH RAMAN KRISHNAN		
3.	KIRTI MALLANAGOUDA TIMMANAGOUDAR		
TOTAL			RS. 5 LAKH (RUPEES FIVE LAKH ONLY)

- H. The Noticees 1 to 3 shall remit / pay the amount of penalty mentioned in the Table VIII under sub-paragraph (G) above, within 45 days of receipt of this order by using the undermentioned pathway: www.sebi.gov.in/Enforcement → Orders → Orders of Chairperson/ Members → Click on PAY NOW or by using the web link: <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. The Noticees shall forward the details/confirmation of penalty so paid through e-payment to “The Chief General Manager, AFD-SEC, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051” and also to e-mail id: tad@sebi.gov.in in the format given in the table below:

CASE NAME	
NAME OF PAYEE	
DATE OF PAYMENT	
AMOUNT PAID	
TRANSACTION NO.	
PAYMENT IS MADE FOR : (LIKE PENALTIES/DISGORGEMENT /RECOVERY/SETTLEMENT AMOUNT/LEGAL CHARGES ALONG WITH ORDER DETAILS)	

29. The instant proceedings against Noticee 7, vide the SCN 2 dated April 28, 2022, shall stand abated in view of the observations at paragraph 19.89 of this Order.
30. This Order is without prejudice to any other action that SEBI may initiate.
31. The above directions shall come into force with immediate effect.

Place: Mumbai
Date: February 28, 2024

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA