

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2025-26/31447**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of

Manoj Jethanand Varyani Proprietor of Smart Financial

(PAN: ADRPV6762A / SEBI Registration Number: INA000015419)

In the matter of Manoj Jethanand Varyani Proprietor of Smart Financial

A. BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter also 'SEBI', in short) and BSE Administration and Supervision Limited ('BASL' in short) carried out surprise on-site inspection of Investment Adviser Manoj Jethanand Varyani Proprietor of Smart Financial on August 18, 2023 at IA's registered address for the period from April 01, 2022 – July 31, 2023 (hereinafter also referred to as 'Inspection Period' / 'IP').
2. Pursuant to the said inspection, based on the analysis of response received and examination in the matter by SEBI, SEBI had initiated Adjudication Proceedings under Section 15 I of the SEBI Act, 1992 (hereinafter also referred as 'SEBI Act') in respect of Manoj Jethanand Varyani Proprietor of Smart Financial in the subject matter for the alleged violations of following provisions:
 - 2.1. Regulation 13 (b) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter also referred to as 'SEBI (IA) Regulations, 2013' 'IA Regulations, 2013').
 - 2.2. Regulation 19 (1) SEBI (IA) Regulations, 2013.
 - 2.3. Regulation 15 (8) of SEBI (IA) Regulations, 2013

- 2.4. Regulation 16 of SEBI (IA) Regulations, 2013
- 2.5. Regulation 17 of SEBI (IA) Regulations, 2013
- 2.6. Regulation 18 of SEBI (IA) Regulations, 2013 by the IA
- 2.7. Regulation 13 (e) of SEBI (IA) Regulations, 2013
- 2.8. Clause 1,2,8 and 9 of Schedule III as specified in Regulation 15(9) of SEBI (IA) Regulations, 2013 read with Regulation 25 (1) and 25 (2) of SEBI (IA) Regulations, 2013.
- 2.9. Regulation 15A of SEBI IA Regulations, 2013 and Clause 2 (iii) of SEBI Circular ref. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticee, as stated above and therefore, in exercise of the powers conferred under Section 19 read with Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as “Adjudication Rules”), the Competent Authority appointed the undersigned as Adjudicating Officer (“AO”) vide order dated June 21, 2024 to inquire into and adjudicate under Section 15 EB of the SEBI Act, 1992 the alleged violations by the Noticee. The said proceeding of appointment was communicated to the undersigned vide Communiqué dated July 03, 2024.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice No. SEBI/EAD5/P/OW/2024/22931/1 dated July 12, 2024 (hereinafter also referred to as ‘SCN’ / ‘SCN dated July 12, 2024’ in short) was issued to Noticee in terms of Section 15-I of the SEBI Act, 1992, Rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry

should not be held against them and why penalty be not imposed under Section 15EB of SEBI Act, 1992 for the aforesaid alleged violations. The SCN was duly served on the Noticee through SPAD and Digitally Signed Email dated July 12, 2024. In this regard, copy of the tracking details and email delivery receipt dated July 12, 2024 has been placed in file. Noticee submitted its reply and additional reply to the SCN vide its letter dated August 08, 2024, respectively.

5. Following was inter alia observed and alleged in respect of the Noticee:

‘ ...

- 5.1 *Non-Disclosure of material information to regulators*
On the verification of data submitted by IA-Manoj Jethanand Varyani, it is observed that Naarendra Singh and Vikas Soni are also acting as persons associated with investment advice and Manoj Jethanand Varyani has not informed SEBI and BASL about their appointment.
 - 5.1.1 *It was observed by SEBI that on the verification of data submitted by IA-Manoj Jethanand Varyani, it was observed that Naarendra Singh and Vikas Soni are also acting as persons associated with investment advice and Manoj Jethanand Varyani has not informed SEBI and BASL about their appointment. (Copy of the shareholding details and data submitted by IA-Manoj Jethanand Varyani of Bestway Smart Financial private Ltd and smart Financials is enclosed as Annexure 1).*
 - 5.1.2 *In this regard Noticee in its response to the findings of the Inspection stated that "intimation of PAIA to BASL and SEBI was inadvertently missed."*
 - 5.1.3 *In this regard SEBI observed that the IA has not intimated the appointment of PAIAs (Persons Associated with the IA) to BASL thereby the material changes were not intimated to BASL thus not complying with Regulation 13 (b) of SEBI IA Regulation, 2013*
In view thereof, it is alleged that Noticee has violated Regulation 13(b) of SEBI (IA) Regulations, 2013.
- 5.2 *Maintenance of Books of Accounts, Records etc.*
IA-Manoj Jethanand Varyani Proprietor of Smart Financial failed to provide the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients at the time of onsite inspection.
 - 5.2.1 *It was observed by SEBI that IA-Manoj Jethanand Varyani Proprietor of Smart Financial failed to provide the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients at the time of onsite inspection.*
 - 5.2.2 *In this regard Noticee in its response to the findings of the Inspection stated that "During the office renovations, our data files were temporarily relocated for safekeeping, causing a temporary inaccessibility. In light of the unanticipated inspection, we promptly assured the inspecting team that all necessary data would be made available. In response to their request, we reverted to the Pre-Inspection Questionnaire (PIQ) with comprehensive data and information. It is important to highlight that the details regarding clients, including but not limited to KYC information, risk profiling, suitability assessments, and client agreements, were submitted to BASL as part of our PIQ response. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. A sample copy of all the aforesaid documents are again enclosed herewith as Annexure G for your ready reference."*
 - 5.2.3 *In this regard SEBI observed that the IA has failed to furnish the requisite documents sought by the inspection team in respect of the clients chosen as samples, such as, risk profiling, suitability assessment, client agreement, at the time of inspection as well as after subsequent follow-ups. Thus, the IA has not carried out the core activities of an IA in the manner stipulated by SEBI. Hence, the IA has violated Regulation 19(1) SEBI (IA) Regulations, 2013.*
In view thereof, it is alleged that Noticee has violated Regulation 19(1) SEBI (IA) Regulations, 2013
- 5.3 *Client on-boarding process*
IA-Manoj Jethanand Varyani has failed to provide the details for KRA process at the time of onsite inspection.
As informed by the IA-Manoj Jethanand Varyani, he is registered with KRA and after receiving the consent and KYC from clients, he verifies the KYC through authorized KRA and on the confirmation of KYC status, he initiates the execution of client's agreement.
 - 5.3.1 *It was observed by SEBI that IA-Manoj Jethanand Varyani has failed to provide the details for KRA process at the time of onsite inspection.*
 - 5.3.2 *As informed by the IA-Manoj Jethanand Varyani, he is registered with KRA and after receiving the consent and KYC from clients, he verifies the KYC through authorized KRA and on the confirmation of KYC status, he initiates the execution of client's agreement.*

- 5.3.3 In this regard Noticee in its response to the findings of the Inspection stated that "During the office renovations, our data files were temporarily relocated for safekeeping, causing a temporary inaccessibility. In light of the unanticipated inspection, we promptly assured the inspecting team that all necessary data would be made available. In response to their request, we reverted to the Pre-Inspection Questionnaire (PIQ) with comprehensive data and information.
It is important to highlight that the details regarding clients, including but not limited to list of clientele details and client agreement, were submitted to BASL as part of our PIQ response. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. Client details are enclosed herewith as Annexure H for your ready reference. Agreement copy has been enclosed as part of Annexure G."
- 5.3.4 In this regard SEBI observed that the information submitted by the IA, it was seen that the IA has failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data. Hence, the IA has violated Regulation 15 (8) of SEBI (IA) Regulations, 2013
In view thereof, it is alleged that Noticee has violated Regulation 15 (8) of SEBI (IA) Regulations, 2013
- 5.4 Risk Profiling
IA-Manoj Jethanad Varyani failed to provide documented process and the detailed questionnaire for risk profiling which is required to ascertain the risk category under which financial product may be advised to the clients based on risk score
- 5.4.1 It was observed by SEBI that IA-Manoj Jethanad Varyani failed to provide documented process and the detailed questionnaire for risk profiling which is required to ascertain the risk category under which financial product may be advised to the clients based on risk score.
- 5.4.2 In this regard Noticee in its response to the findings of the Inspection stated that
- 5.4.3 "The documented process flow and the detailed questionnaire for risk profiling was submitted to BASL vide our response to Question no 28 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly.
...
- 5.4.4 In this regard SEBI observed that the IA has failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data. Hence, the IA has violated Regulation 16 of SEBI (IA) Regulations, 2013.
In view thereof, it is alleged that Noticee has violated Regulation 16 of SEBI (IA) Regulations, 2013
- 5.5 Suitability
IA-Manoj Jethanad Varyani failed to provide the documented process which is undertaken in respect of the clients to understand the nature and risks of products or assets selected for clients.
- 5.5.1 It was observed by SEBI that IA-Manoj Jethanad Varyani failed to provide the documented process which is undertaken in respect of the clients to understand the nature and risks of products or assets selected for clients.
- 5.5.2 In this regard Noticee in its response to the findings of the Inspection stated that "Please note that the documented process flow for investment product suitability based on risk score and the risk profile of the client is submitted to BASL vide our response to question no 28 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. ...
- 5.5.3 In this regard SEBI observed that the IA has failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data. Therefore, the IA has violated Regulation 17 of SEBI (IA) Regulations, 2013.
In view thereof, it is alleged that Noticee has violated Regulation 17 of SEBI (IA) Regulations, 2013
- 5.6 Disclosures to Clients
IA- Manoj Jethanand Varynani does not have an active website as of date and has failed to provide material information about himself including his business, to his prospective clients.
- 5.6.1 It was observed by SEBI that IA- Manoj Jethanand Varynani does not have an active website as of date and has failed to provide material information about himself including his business, to his prospective clients.
- 5.6.2 In this regard Noticee in its response to the findings of the Inspection stated that "Details and data related to process followed in disclosures about himself to his clients, is submitted to BASL vide our response with respect to Regulation 18 under Question 20 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly."
- 5.6.3 In this regard SEBI observed that the IA during inspection and subsequently, it was seen that the IA has no system in place to disclose to the prospective clients, all material information about itself including its business, etc. Hence, the IA has violated Regulation 18 of SEBI (IA) Regulations, 2013.
In view thereof, it is alleged that Noticee has violated Regulation 18 of SEBI (IA) Regulations, 2013 by the IA.
- 5.7 Number of clients
On the verification of client data submitted by the IA-Manoj Jethanand Varyani, it is observed that IA-Manoj Jethanand Varyani has on-boarded 1928 clients, out of which 823 were unique clients.
- 5.7.1 On the verification of client data submitted by the IA-Manoj Jethanand Varyani, it was observed by SEBI that IA-Manoj Jethanand Varyani has on-boarded 1928 clients, out of which 823 were unique clients. (Copy of Client summary submitted by the IA at the time of inspection is enclosed as Annexure 3)
- 5.7.2 In this regard Noticee in its response to the findings of the Inspection stated that "It may be noted here that para (v)(d) mentions the word "150 clients as on September 30, 2020 shall not on-board fresh clients". Further, the paragraph does not mention "per year" or "yearly" word anywhere. The reading of the clause mentioned in the paragraph indicates that the clause is referring to the active clients of IA at any point of time. Had it been total 150 clients, the fraternity of Individual IAs would have been lost. It is to note that at

any point during the financial year, IA has not crossed the total active client number of 150 at any time. In view of the above, we humbly request you to consider our submission as above and not to consider it as a violation since I have not crossed the total active client number of 150 at any point of time. Total number of clients served during the time was 823 however, at any point of time not more than 150 clients were active clients."

5.7.3 In this regard SEBI observed that the IA had on-boarded 1928 out of which 823 were unique clients at the time of onsite inspection. The IA was unable to provide details of account opening procedure and client summary as well as agreements entered into with the clients sought by the inspection team in respect of the clients chosen as samples. There was no means available to ascertain the number of active clients as on a particular date. Hence, the IA has violated Regulation 13 (e) of SEBI (Investment Advisers) Regulations, 2013.

In view thereof, it is alleged that Noticee has violated Regulation 13 (e) of SEBI (IA) Regulations, 2013

5.8 Non-Cooperation with regulators

The IA has failed to cooperate with the joint inspection team of SEBI and BASL by not providing the documents sought for both at the time of inspection and during subsequent follow ups.

5.8.1 It was observed by SEBI that The IA has failed to cooperate with the joint inspection team of SEBI and BASL by not providing the documents sought for both at the time of inspection and during subsequent follow ups.

In view thereof, it is alleged that Noticee has violated Clause 1,2,8 and 9 of Schedule III as specified in Regulation 15(9) of SEBI (IA) Regulations, 2013 read with Regulation 25 (1) and 25 (2) of SEBI (IA) Regulations, 2013.

5.9 Fees and Charges during the inspection period

IA-Manoj Jethanand Varyani charges fees to advisory clients by Fixed Fee mode.

On the verification of data submitted by IA-Manoj Jethanand Varyani, it is observed that he had collected the fees of Rs. 2,02,11,439/- from 823 clients during the inspection period, i.e. from April 01, 2022 to July 31, 2023.

On the verification of data submitted by the IA-Manoj Jethanand Varyani, it is observed that, He has charged more than Rs.1,25,000/- per annum from 1 client - ALTAF KARIMI - AWZPK1620P.

5.9.1 It was observed by SEBI that IA-Manoj Jethanand Varyani charges fees to advisory clients by Fixed Fee mode.

5.9.2 On the verification of data submitted by IA-Manoj Jethanand Varyani, it was observed that he had collected the fees of Rs. 2,02,11,439/- from 823 clients during the inspection period, i.e. from April 01, 2022 to July 31, 2023.

5.9.3 On the verification of data submitted by the IA-Manoj Jethanand Varyani, it was observed that, he has charged more than Rs.1,25,000/- per annum from 1 client - ALTAF KARIMI - AWZPK1620P.

5.9.4 In this regard Noticee in its response to the findings of the Inspection stated that "Total Amount received from Altaf Karimi is INR 1,35,000/- which includes GST as well. Excluding GST our service charge in the amount received is only INR 1,14,407/-, which is well within the statutory limits of INR 1,25,000/-. The same may be validated using the invoice issued. Invoice of Altaf Karimi is enclosed herewith as Annexure I. Agreement copies of Altaf Karimi has been enclosed herewith as part of Annexure G."

5.9.5 On scrutiny of the data furnished by the IA, it was observed by SEBI that he has not charged more than Rs. 125000/- from any client except one client, i.e Altaf Karimi. However, as per the details submitted by the IA, excluding GST, the amount received from Altaf Karimi is less than Rs. 125000/-

5.9.6 Notwithstanding the above, the IA has not been able to furnish the documents such as risk profiling, suitability assessment, client agreement, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups. There was no means available to ascertain the number of active clients as on a particular date. Hence, the amount of Rs. 2,02,11,439/- collected from 823 clients during the inspection period, i.e. from April 01, 2022 to July 31, 2023 doesn't appear to have been collected in the manner in which advisory fee has to be collected as stipulated by SEBI. Thus, the IA has violated Regulation 15A of SEBI IA Regulations, 2013 and Clause 2 (iii) of SEBI Circular ref. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

In view thereof, it is alleged that Noticee has violated Regulation 15A of SEBI IA Regulations, 2013 and Clause 2 (iii) of SEBI Circular ref. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

...

6. Having regard to the principles of Natural Justice, vide Hearing Notice dated August 13, 2024, an opportunity of personal hearing was provided to the Noticee on August 20, 2024. On the Scheduled date of hearing, Noticee along with his Authorized Representative (AR) viz. Vikas Soni (Advocate) appeared for hearing held through online mode viz., video conferencing. During the hearing, the Noticee and AR relied upon and reiterated the submissions made by Noticee vide letter dated August 08, 2024 and inter

alia submitted that there were no further/ additional submissions to be made and the submissions made vide letter dated August 08, 2024 be taken as final and complete submissions in the matter.

7. Key submissions of the Noticee's reply dated August 08, 2024 to the SCN are as under:

“ ...

My explanation to the delinquencies observed are as below-

Observation 1- Non-Disclosure of material information to regulators- Naarendra Singh and Vikas Soni are also acting as a persons associated with investment advice and Manoj Jethanand Varyani has not informed SEBI and BASL about their appointment.

Response-

It is to submit that intimation of PAIA to BASL and SEBI was inadvertently missed, the same was also submitted as a response to inspection observation of SEBI.

Further, it is to submit that both Mr. Vikas Soni and Mr. Naarendra Singh fulfils the eligibility criteria of PAIA, which has been agreed by SEBI inspection team under “Post inspection Analysis,” which was enclosed as part of the said SCN.

Given that both individuals meet the necessary eligibility requirements and that the omission did not have any material impact on clients, we respectfully request that this issue not be considered a violation.

Observation 2- Maintenance of Books of Accounts, Records etc- failed to provide the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients at the time of onsite inspection.

Response-

It is to submit that the inspection team conducted a visit to the registered office of Smart Financial on August 18, 2023. I would like to clarify that as of April 1, 2023, I had ceased Investment Advisory (IA) activities under Smart Financial. At the time of the visit, the office was undergoing renovation, a fact which was personally verified by the inspecting officials during their visit.

Moreover, it is essential to recognize that the inspecting officials sent a PIQ with all the details of required information and documents to be submitted which inter alia included the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients. We duly submitted all the requested documents to SEBI within the stipulated timeframe. I responded to each and every instruction of submission with complete submission.

At the time of submission of response to inspection observation to SEBI as well we have clearly reiterated that all the details were submitted as a response to the Pre-Inspection Questionnaire with comprehensive data and information. Further it was also mentioned in the response that “We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly.”

The inspecting team has neither refuted our submission that we have submitted all the data nor given any reference to any communication which was sent to us asking for any data which we could not produce. At the time of onsite inspection since the office was under renovation which was noted and seen by the inspection officials as well. The inspection officials have asked to provide the response to pre inspection questionnaire, which was responded with complete information and data. Since the inspection team has visited the place personally during onsite visit and themselves are the proof that the site was under renovations, the same also doesn't require any explanation.

Reference to the post inspection analysis done by inspection team may be taken under consideration in this regard, under which nowhere inspecting team has refuted the fact that the address was under renovation. It is evident that all IA-related data would have been relocated to safeguard it during the renovation.

Regulation 19(1) of the SEBI (Investment Advisers) Regulations, 2013 mandates the maintenance of data by investment advisers. This requirement was fully met, as evidenced by the comprehensive submission of data as part of the Pre-Inspection Questionnaire along with no objection on the same by the inspecting team. Therefore, the observation in question does not constitute a violation of Regulation 19(1) of the SEBI (IA) Regulations, 2013. In light of these facts, I respectfully request that this issue not be regarded as a violation of Regulation 19(1) of the SEBI (IA) Regulations, 2013.

Observation 3- Client on-boarding process- failed to provide the details for KRA process at the time of onsite inspection.

Response-

Please note that the details for KRA process is submitted to BASL vide our response to

...

Further, a part of the same is also reproduced under post inspection analysis as enclosed with the SCN. The same clearly provides for the explanation that the requisite details were submitted.

Reason of not able to provide the data at the time of onsite inspection is explained as part of response to observation number 2.

Regulation 15 (8) of IA regulation mandates below-

An Investment adviser shall follow Know Your Client procedure as specified by the Board from time to time.

It is important to note that a temporary inability to provide data during an onsite inspection due to unforeseen circumstances does not constitute a breach of Regulation 15(8), especially since the KYC procedures were appropriately followed. The inspection team has not raised any concerns or objections regarding the KYC procedures implemented.

In light of these considerations, and given that the inspection team has not objected to the KYC procedures followed, I respectfully request that this issue not be considered a violation of Regulation 15(8) of the IA Regulations.

Observation 4 and 5- Risk profiling and Suitability failed to provide documented process and the detailed questionnaire for risk profiling which is required to ascertain the risk category under which financial product may be advised to the clients based on risk score.

failed to provide the documented process which is undertaken in respect of the clients to understand the nature and risks of products or assets selected for clients.

Response-

Please note that the documented process flow for investment product suitability based on risk score and the risk profile of the client is submitted to BASL vide our response to Question no 28 of the PIQ.

...

Copy of sample suitability assessment was also enclosed as part of Pre-inspection questionnaire. We refute any subsequent follow-ups requesting data with respect to Risk profiling and suitability by Inspecting team and the same has not been referenced as part of the SCN. Further, since the process was detailed as part of response to pre-inspection questionnaire and sample risk profile questionnaire which has the score calculation methodology, and sample suitability assessment which includes details the selection of suitable products for the clients was also submitted. In the above observation the same is not under question, it may not amount to the violation of Regulation 16 & 17 of the SEBI (IA) Regulations, 2013. In light of these facts, I respectfully request that this issue not be regarded as a violation of Regulation 16 & 17 of the SEBI (IA) Regulations, 2013.

Observation 6- Disclosures to Clients -IA does not have an active website as of date and has failed to provide material information about himself including his business, to his prospective clients.

Response-

Active website is not a mandatory requirement under SEBI IA regulation.

Additionally, please note that details and data related to process followed in disclosures of myself and business information to my clients was submitted to BASL vide our response wrt Regulation 18 under Question 20 of the PIQ.

...

Since website is not mandatory and the disclosure is a part of agreement itself which is the pre-requisite for any on-boarding, all the prospective client if disclosed the requisite information in the process. The observation of inspecting team doesn't amount to the violation of as website is not mandatory as per the regulation and I was disclosing all the requisite information as part of agreement with the clients.

Mere absence of website doesnot amount to the violation of any clause under IA regulation. In light of these facts, I respectfully request that this issue not be regarded as a violation of Regulation 18 of the SEBI (IA) Regulations, 2013.

Observation 7- Number of clients- IA has onboarded 1928 clients, out of which 823 were unique clients. There was no means available to ascertain the number of active clients as on a particular date

Response-

I respectfully submit the following in response to the observation:

1. The fact that there were 823 unique clients during the relevant period does not constitute a violation of any regulatory requirements.

2. Regarding the concern about the lack of means to ascertain the number of active clients as of a specific date, I wish to clarify that at no point was any resubmission with respect to the client data demanded by the inspecting team. To facilitate verification and address this concern, I have enclosed the client excel sheet as Annexure 1. This document clearly shows the "Start Date," "End Date," and "Active/Expired" status for each client engagement. By examining the data in Annexure 1, it can be confirmed that the number of active clients never exceeded the limit of 150 at any given time. The sheet meticulously tracks each client's status, and even within any given month, the count of active clients consistently remained below the threshold of 150. This data should provide a clear and comprehensive view, addressing any uncertainties about the number of active clients during the specified period. The structured format of the excel sheet ensures that all relevant information is transparent and easily verifiable, thus resolving any ambiguity regarding the client count.

3. It has also been noted that the account opening procedure, client summary, and client agreements were not provided. I would like to reiterate that the account opening procedure was detailed in our response to Question No. 28 of the PIQ, which is addressed in our response to Observation 3. Additionally, the client summary, including agreement dates, was included in the Excel sheets referenced above and submitted as Annexure 9 with the PIQ response.

In light of these clarifications, I request that this matter not be considered a violation of Regulation 13(e) of the SEBI (Investment Advisers) Regulations, 2013

Observation 8- Non-Cooperation with regulators- Failed to cooperate with the joint inspection team of SEBI and BASL by not providing the documents sought for both at the time of inspection and during subsequent follow ups.

Response-

In response to the observation concerning non-cooperation with the joint inspection team of

SEBI and BASL, I would like to clarify the following:

1. Onsite- inspection visit- It is to submit that the inspection team conducted a visit to the registered office of Smart Financial on August 18, 2023. I would like to clarify that as of April 1, 2023, I had ceased Investment Advisory (IA) activities under Smart Financial. At the time of the visit, the office was undergoing renovation, a fact which

was personally verified by the inspecting officials during their visit. Reference to the post inspection analysis done by inspection team may be taken under consideration in this regard, under which nowhere inspecting team has refuted the fact that the address was under renovation. It is evident that all IA-related data would have to be relocated to safeguard it during the renovation.

2. Provision of Documents Submission During Inspection: Moreover, it is essential to recognize that the inspecting officials sent a PIQ with all the details of required information and documents to be submitted. During the inspection, our team provided all documents and information that were readily accessible and required at that time.

Any unforeseen delays in providing specific documents were communicated to the inspection team, and we requested additional time where necessary to ensure the accuracy and completeness of the information provided.

3. Subsequent Follow-Ups: Following the inspection, we have fully cooperated with all subsequent follow-up requests from SEBI and BASL. We have diligently responded to each follow-up request and have submitted the required documents within the stipulated timeframes. All communications were addressed promptly and comprehensively. It may also be noted that no communication is referenced by the inspecting team which was not responded by me.

4. Commitment to Compliance: Our commitment to compliance and cooperation with regulatory bodies has been unwavering. We have taken all necessary steps to ensure that any requested documents and information were provided and that any issues raised were addressed in a timely manner.

In light of our demonstrated commitment to cooperation with SEBI and BASL, I respectfully request that this observation not to be considered as a violation of violated Clause 1,2,8 and 9 of Schedule III as specified in Regulation 15(9) of SEBI(IA) Regulations, 2013 read with Regulation 25 (1) and 25 (2) of SEBI(IA) Regulations, 2013.

We have acted in good faith and have made every effort to comply with regulatory requirements and address all requests from the inspection team.

Observation 9- Fees and Charges during the inspection period-

Response-

Please note below comments of inspecting officials with respect to the captioned observation, which is mentioned under point 5.9.1 and 5.9.5 of the SCN-

5.9.1- "It was observed by SEBI that IA-Manoj Jethanand Varyani charges fees to advisory clients by Fixed Fee mode."

5.9.5 "On scrutiny of the data furnished by the IA, it was observed by SEBI that he has not charged more than Rs. 125000/- from any client except one client, i.e. Altaf Karimi.

However, as per the details submitted by the IA, excluding GST, the amount received from Altaf Karimi is less than Rs. 125000/-."

In the above said statement the inspecting team themselves have mentioned that IA has charges fee under Fixed fee mode and have not charged more than INR 1,25,000/- from any client. For one client they had raised a concern, which was responded and inspecting team agreed on the explanation that the same was also less than INR 1,25,000/-.

Regulation 15A of SEBI IA Regulations, 2013 mentions below-

15A. Investment Adviser shall be entitled to charge fees for providing investment advice from a client [, including an accredited investor] in the manner as specified by the Board.

Clause 2 (iii) of SEBI Circular ref. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 mentions below-

2 (iii) Fees

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

(A) Assets under Advice (AUA) mode

a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.

b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

a. In case "family of client" is reckoned as a single client, the fee as referred above shall be charged per "family of client".

b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.

d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.

As it is observed by the inspecting team that IA charges fee to advisory clients by Fixed Fee mode, Clause 2 (iii) (B) of SEBI Circular ref. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 will be applicable to the clients which mentions the maximum fee that may be charged under this mode (i.e. Fixed fee mode) shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

The inspecting team themselves have verified and observed that IA had not charged more than INR 1,25,000/- to any of the clients. For one client they had raised a concern during inspection, which was responded and inspecting team agreed on the explanation that the same was also less than INR 1,25,000/-.

All the other facts mentioned under 5.9.6 do not have any relevance in establishing the violation of Regulation 15A of SEBI IA Regulations, 2013 and Clause 2 (iii) of SEBI Circular ref. SEB 1/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

In light of these facts, I respectfully request that this issue not be regarded as a violation of Regulation 15A of SEBI IA Regulations, 2013 and Clause 2 (iii) of SEBI Circular ref. SEB 1/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020.

Cooperation: Please note that all observations are based on the fact that during the on-site visit of the inspection team, the data was not available at the inspection site because the office was undergoing renovation. The data was relocated to ensure its protection during the renovation, which should not be construed as a violation. The renovation was personally witnessed by the inspecting officials, which should address any concerns related to the fact that renovation was in fact happening.

None of the documents or procedures followed by me have been questioned in the inspection team's observations. I wish to emphasize that I have fully cooperated with SEBI throughout its investigation. All requested documents and information were provided promptly and transparently to facilitate the inquiry.

In conclusion, I would like to reiterate my commitment to complying with SEBI regulations and maintaining the highest standards of ethics and integrity in the securities market. I sincerely request SEBI to review my response and consider the circumstances surrounding the alleged delinquencies.

I am ready and willing to cooperate further if SEBI requires any additional information or clarification. Please do not hesitate to contact me at 91 9372589558 or bsemanoj@gmail.com if you have any further questions or if there are any specific documents or evidence you require.

...

D. CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the instant matter are as following:

Issue No. I: Whether the Noticee has violated the provisions of SEBI Regulations and Circular as alleged?

Issue No. II: If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15EB of SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

9. I now proceed to deal with the matter having regard to the submissions of the Noticee on merits:

Issue No. I: Whether the Noticee has violated the provisions of SEBI Regulations and Circular as alleged?

10. In this regard, the following was inter alia observed and alleged in respect of the Noticee:

10.1. Non-Disclosure of material information to regulators

- 10.1.1. In this regard, it was inter alia observed and alleged that Naarendra Singh and Vikas Soni (hereinafter also referred to as “PAIAs” / “Persons Associated with the IA”) were also acting as a persons associated with investment advice and that the Noticee had not informed SEBI and BASL about their appointment. Therefore, it was inter alia alleged that Noticee had violated provisions of Regulation 13(b) of SEBI (IA) Regulations, 2013.

- 10.1.2. The relevant text of provisions alleged to have been violated are reproduced below:

“ ...

13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-

(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;

... ”

- 10.1.3. In this regard, I note that Noticee has neither denied nor disputed the alleged violation on its part and instead Noticee’s response, to SEBI earlier to the findings of inspection and also as part of its submissions as reply to the SCN during the instant proceedings, are in nature of admission in so far Noticee has inter alia submitted that “ ... *intimation of PAIA to BASL and SEBI was inadvertently missed ”.*

- 10.1.4. As regards Noticee’s submission that “*both Mr. Vikas Soni and Mr. Naarendra Singh fulfils the eligibility criteria of PAIA*”, I note that the

alleged violation in the instant matter inter alia is with regard to Noticee not having informed about the appointment of Naarendra Singh and Vikas Soni who were also acting as persons associated with investment advice. Therefore, Noticee's submission in this regard is out of context and hence cannot be accepted.

10.1.5. I note that Noticee was required to intimate the appointment of PAIAs (Persons Associated with the Investment Advice), being material change in the information already submitted in terms of provisions of Regulation 13(b) of IA Regulations, 2013.

10.1.6. In view thereof, the allegation as regards the Noticee that there was non-disclosure of material information to regulators, stands established. Accordingly, I hold that Noticee had violated provisions of Regulation 13(b) of SEBI (IA) Regulations, 2013.

10.2. Maintenance of Books of Accounts, Records etc.

10.2.1. In this regard I note that it had inter alia been alleged that Noticee had failed to provide the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients at the time of onsite inspection. Therefore, it was inter alia alleged that Noticee had violated provisions of Regulation 19(1) SEBI (IA) Regulations, 2013.

10.2.2. In this regard from material available on record I note that Noticee's reply to the findings of the inspection to SEBI earlier was that, '*... during the office renovations, our data files were temporarily relocated for safekeeping, causing a temporary inaccessibility. In light of the unanticipated inspection, we promptly assured the inspecting team that all necessary data would be made available. In response to their*

request, we reverted to the Pre-Inspection Questionnaire (PIQ) with comprehensive data and information. It is important to highlight that the details regarding clients, including but not limited to KYC information, risk profiling, suitability assessments, and client agreements, were submitted to BASL as part of our PIQ response. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. A sample copy of all the aforesaid documents are again enclosed herewith as Annexure G for your ready reference. ...'.

10.2.3. However SEBI in this regard inter alia concluded that, '*... From the information submitted by the IA, it is seen that the IA has failed to furnish the requisite documents sought by the inspection team in respect of the clients chosen as samples, such as, risk profiling, suitability assessment, client agreement, at the time of inspection as well as after subsequent follow-ups.*

10.2.4. In this regard, I note that Noticee as part of its submissions as reply to the SCN has inter alia submitted that, '*...—the inspection team conducted a visit to the registered office of Smart Financial on August 18, 2023. I would like to clarify that as of April 1, 2023, I had ceased Investment Advisory (IA) activities under Smart Financial. At the time of the visit, the office was undergoing renovation, a fact which was personally verified by the inspecting officials during their visit. Moreover, it is essential to recognize that the inspecting officials sent a PIQ with all the details of required information and documents to be submitted which inter alia included the process flow for clients on boarding, process for Risk profiling and Suitability, copies of agreement with clients and list of registered clients. We duly submitted all the requested documents to SEBI within the stipulated timeframe. I responded to each and every instruction of submission with complete submission. At the time of submission of response to inspection observation to SEBI as well we have clearly reiterated that all the details were submitted as a*

response to the Pre-Inspection Questionnaire with comprehensive data and information. Further it was also mentioned in the response that “We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly.” The inspecting team has neither refuted our submission that we have submitted all the data nor given any reference to any communication which was sent to us asking for any data which we could not produce. At the time of onsite inspection since the office was under renovation which was noted and seen by the inspection officials as well. The inspection officials have asked to provide the response to pre inspection questionnaire, which was responded with complete information and data. Since the inspection team has visited the place personally during onsite visit and themselves are the proof that the site was under renovations, the same also doesn’t require any explanation. Reference to the post inspection analysis done by inspection team may be taken under consideration in this regard, under which nowhere inspecting team has refuted the fact that the address was under renovation. It is evident that all IA-related data would have been relocated to safeguard it during the renovation. Regulation 19(1) of the SEBI (Investment Advisers) Regulations, 2013 mandates the maintenance of data by investment advisers. This requirement was fully met, as evidenced by the comprehensive submission of data as part of the Pre-Inspection Questionnaire along with no objection on the same by the inspecting team. Therefore, the observation in question does not constitute a violation of Regulation 19(1) of the SEBI (IA) Regulations, 2013. In light of these facts, I respectfully request that this issue not be regarded as a violation of Regulation 19(1) of the SEBI (IA) Regulations, 2013. ...”.

- 10.2.5. In this regard, I note that Noticee as part of its submissions as reply to the SCN has inter alia contended that the inspection officials have asked to provide the response to pre inspection questionnaire, which was responded with complete information and data. I also note from material available on record that SEBI as part its post inspection

analysis had inter alia noted the response of Noticee to the findings of the inspection wherein Noticee had inter alia responded stating, ‘ ... *the details regarding clients, including but not limited to KYC information, risk profiling, suitability assessments, and client agreements, were submitted to BASL as part of our PIQ response ...*’ and that ‘ ... *We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. ...*’.

- 10.2.6. As regards list of registered clients, I note SEBI has itself inter alia also observed that Noticee had on boarded 1928 clients, out of which 823 were unique clients. In my opinion unless there is list of registered clients available, one cannot arrive at the number of unique clients. Further in this regard I note that there is nothing on record to demonstrate that the Noticee had not submitted required details as part of its response to the PIQ or that Noticee was subsequently advised to provide required details and which it failed to provide. In this regard, I note that Noticee as part of its reply to SEBI earlier and also as reply to the SCN during instant proceedings has inter alia contended that during onsite visit as part of the inspection of the Noticee, being a surprise inspection carried out on August 18, 2023, the office of the Noticee was undergoing renovation, which had not been refuted by SEBI.
- 10.2.7. In view thereof I am inclined to allow benefit of doubt to the Noticee in this regard. Accordingly, I hold that the allegation in this regard in respect of the Noticee does not stand established.

10.3. Client on-boarding process

- 10.3.1. In this regard, it was inter alia observed and alleged by SEBI that, IA-Manoj Jethanand Varyani had failed to provide the details for KRA process at the time of onsite inspection. Therefore, it was inter alia

alleged that Noticee had violated provisions of Regulation 15 (8) of SEBI (IA) Regulations, 2013.

- 10.3.2. In this regard, from material on record I note that Noticee as part of its reply to the findings of the inspection by SEBI had inter alia responded stating that, *'during the office renovations, our data files were temporarily relocated for safekeeping, causing a temporary inaccessibility. In light of the unanticipated inspection, we promptly assured the inspecting team that all necessary data would be made available. In response to their request, we reverted to the Pre-Inspection Questionnaire (PIQ) with comprehensive data and information. It is important to highlight that the details regarding clients, including but not limited to list of clientele details and client agreement, were submitted to BASL as part of our PIQ response. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. Client details are enclosed herewith as Annexure H for your ready reference. Agreement copy has been enclosed as part of Annexure G.'*
- 10.3.3. However, SEBI inter alia observed and alleged that from the information submitted by the IA, it was seen that the IA had failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data.
- 10.3.4. In this regard, Noticee as part of its submissions as reply to the SCN has inter alia submitted that, *'... Please note that the details for KRA process is submitted to BASL vide our response to Question no 28 of the PIQ.... Further, a part of the same is also reproduced under post inspection analysis as enclosed with the SCN. The same clearly provides for the explanation that the requisite details were submitted. Reason of not able to provide the data at the time of onsite inspection*

is explained as part of response to observation number 2. ... It is important to note that a temporary inability to provide data during an onsite inspection due to unforeseen circumstances does not constitute a breach of Regulation 15(8), especially since the KYC procedures were appropriately followed. The inspection team has not raised any concerns or objections regarding the KYC procedures implemented. ...'

10.3.5. In this regard, as regards allegation that Noticee had failed to provide the details for KRA process at the time of onsite inspection, I note that similar allegation was made under title, 'Maintenance of Books of Accounts, Records etc.', which has already been dealt with in detail in the foregoing. Accordingly, the same is not being repeated here, for brevity. As regards Noticee having failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data, I note that no clear details pertaining to clients chosen as samples or as regards follow up have been outlined evidently in the PIA or under the para referenced.

10.3.6. In view thereof I find that the material available on record has not brought out the allegation clearly. Accordingly, I am inclined to allow benefit of doubt to the Noticee in this regard. I hold that the allegation in this regard in respect of the Noticee i.e., the Noticee had failed to provide the details for KRA process at the time of onsite inspection, does not stand established.

10.4. Risk profiling and Suitability

10.4.1. In this regard, it was inter alia observed and alleged that Noticee failed to provide documented process and the detailed questionnaire for risk

profiling which was required to ascertain the risk category under which financial product may be advised to the clients based on risk score. Therefore, it was alleged that Noticee has violated Regulation 16 of SEBI (IA) Regulations, 2013.

Further, it was inter alia observed and alleged that Noticee also failed to provide the documented process which was undertaken in respect of the clients to understand the nature and risks of products or assets selected for clients. Therefore, it was inter alia alleged that Noticee has violated Regulation 17 of SEBI (IA) Regulations, 2013.

- 10.4.2. In this regard, from material on record, I note that Noticee as part of its reply to the findings of the inspection by SEBI had inter alia responded to stating that, “*..The documented process flow and the detailed questionnaire for risk profiling was submitted to BASL vide our response to Question no 28 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly. Screenshot of the PIQ response has been furnished for reference. Copy of sample risk profiling has been enclosed as part of Annexure G for ready reference...*”
- 10.4.3. However, SEBI inter alia observed that, ‘*from the information submitted by the IA, it is seen that the IA has failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data..*’
- 10.4.4. In this regard, Noticee, as part of its submissions as reply to the SCN, has inter alia submitted that “*Please note that the documented process flow for investment product suitability based on risk score and the risk*

profile of the client is submitted to BASL vide our response to Question no 28 of the PIQ... Copy of sample suitability assessment was also enclosed as part of Pre-inspection questionnaire.”

10.4.5. In this regard, as regards allegation that Noticee had failed to provide documented process and the detailed questionnaire for risk profiling, I note that similar allegation was made under title, ‘Maintenance of Books of Accounts, Records etc.’, which has already been dealt with in detail in the foregoing. Accordingly, the same is not repeated here, for brevity. As regards Noticee having failed to furnish the requisite documents, sought by the inspection team in respect of the clients chosen as samples, at the time of inspection as well as after subsequent follow-ups even after being provided extension for submission of data, I note that no clear details pertaining to clients chosen as samples or as regards follow up have been outlined evidently in the PIA or under the para referenced.

10.4.6. In view thereof, I find that the material available on record has not brought out the allegation clearly. Accordingly, I am inclined to allow benefit of doubt to the Noticee in this regard. I hold that the allegation in this regard in respect of the Noticee does not stand established.

10.5. Disclosures to Clients

10.5.1. In this regard, it was inter alia observed and alleged that the Noticee did not have an active website as of date and had failed to provide material information about himself including his business, to his prospective clients and that from the information submitted by the Noticee during inspection and subsequently, it was seen that the Noticee had no system in place to disclose to the prospective clients, all material information about itself including its business, etc. Accordingly, it was

inter alia alleged that Noticee had violated provisions of Regulation 18 of SEBI (IA) Regulations, 2013.

- 10.5.2. In this regard, from material available on record, I note that Noticee as part of its response to SEBI earlier on the findings of the inspection had inter alia replied that, details and data related to process followed in disclosures about himself to his clients, is submitted to BASL vide our response with respect to Regulation 18 under Question 20 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly.
- 10.5.3. Further in this regard, I note that Noticee, as part of its submissions as reply to the SCN, has inter alia submitted that, ‘ ... *Active website is not a mandatory requirement under SEBI IA regulation. Additionally, please note that details and data related to process followed in disclosures of myself and business information to my clients was submitted to BASL vide our response wrt Regulation 18 under Question 20 of the PIQ. ... I was disclosing all the requisite information as part of agreement with the clients. Mere absence of website does not amount to the violation of any clause under IA regulation.*
- 10.5.4. In this regard, I note that as part of its post inspection analysis, it was inter alia noted by SEBI that Noticee had earlier responded that details and data related to process followed in disclosures about himself to his clients was submitted to BASL vide our response with respect to Regulation 18 under Question 20 of the PIQ. We invite verification of the provided data, and should additional information be needed, we are fully prepared to furnish it promptly.
- 10.5.5. In this regard, I note that given the response submitted by the Noticee to SEBI as part of its reply to the findings of the inspection, material on record does not bring out clearly with specific details as to how the Noticee had failed to provide material information about himself

including his business to his prospective clients. In view thereof, I am inclined to allow benefit of doubt to the Noticee in this regard. Accordingly, I hold that the allegation in this regard in respect of the Noticee does not stand established.

10.6. Number of clients

10.6.1. In this regard it was inter alia observed and alleged that IA had on boarded 1928 clients, out of which 823 were unique clients. Further, it was observed that the IA was unable to provide details of account opening procedure and client summary as well as agreements entered into with the clients sought by the inspection team in respect of the clients chosen as samples. There was no means available to ascertain the number of active clients as on a particular date. Therefore, it was inter alia alleged that Noticee had violated Regulation 13 (e) of SEBI (IA) Regulations, 2013.

10.6.2. In this regard I note that Noticee as part of its response, on the findings of the inspection, to SEBI earlier had inter alia submitted that, '*... note that at any point during the financial year, IA has not crossed the total active client number of 150 at any time. Total number of clients served during the time was 823 however, at any point of time not more than 150 clients were active clients. ...*'.

10.6.3. However, SEBI inter alia observed that, '*... it was seen from the data that the IA had on-boarded 1928 out of which 823 were unique clients at the time of onsite inspection. The IA was unable to provide details of account opening procedure and client summary as well as agreements entered into with the clients sought by the inspection team in respect of the clients chosen as samples. There was no means available to ascertain the number of active clients as on a particular date.*'

10.6.4. In this regard Noticee as part of its submissions as reply to the SCN has inter alia submitted that, ‘ ... *Regarding the concern about the lack of means to ascertain the number of active clients as of a specific date, I wish to clarify that at no point was any resubmission with respect to the client data demanded by the inspecting team. ... It has also been noted that the account opening procedure, client summary, and client agreements were not provided. I would like to reiterate that the account opening procedure was detailed in our response to Question No. 28 of the PIQ, which is addressed in our response to Observation 3. Additionally, the client summary, including agreement dates, was included in the Excel sheets referenced above and submitted as Annexure ... with the PIQ response. ...*’.

10.6.5. In this regard, I note that given the response submitted by the Noticee to SEBI as part of its reply to the findings of the inspection, material on record does not bring out clearly with specific details as to how the Noticee had failed to provide details of account opening procedure and client summary as well as agreements entered into with the clients sought by the inspection team in respect of the clients chosen as samples. In view thereof, I am inclined to allow benefit of doubt to the Noticee in this regard. Accordingly, I hold that the allegation in this regard in respect of the Noticee does not stand established.

10.7. Non-Cooperation with regulators

10.7.1. It was inter alia observed by SEBI that the IA had failed to cooperate with the joint inspection team of SEBI and BASL by not providing the documents sought for both at the time of inspection and during subsequent follow ups and therefore, it was inter alia alleged that Noticee had violated Clause 1,2,8 and 9 of Schedule III as specified in

Regulation 15(9) of SEBI (IA) Regulations, 2013 read with Regulation 25 (1) and 25 (2) of SEBI (IA) Regulations, 2013.

- 10.7.2. In this regard from material available on record I note that it had inter alia been observed and alleged so owing to the inability of the IA to provide the requisite documents at the time of onsite inspection and during subsequent follow ups which extended for over a month
- 10.7.3. In this regard I note that Noticee as part of its submissions as reply to the SCN has inter alia submitted that, ‘...I would like to clarify that as of April 1, 2023, I had ceased Investment Advisory (IA) activities under Smart Financial. At the time of the visit, the office was undergoing renovation, a fact which was personally verified by the inspecting officials during their visit. ... It may also be noted that no communication is referenced by the inspecting team which was not responded by me...’.
- 10.7.4. In this regard, I note that the alleged violation was not part of the findings of the inspection shared by SEBI with Noticee inter alia seeking response of the Noticee upon the findings of its inspection. Further in this regard, given the submissions of the Noticee, in particular about undergoing renovation during on site inspection, no referencing of the communication which was not responded etc., I also note that material on record does not bring out clearly with specific details and chronology about seeking of information and subsequent follow ups done, if any.
- 10.7.5. In view thereof, I am inclined to allow benefit of doubt to the Noticee in this regard. Accordingly, I hold that the allegation in this regard in respect of the Noticee does not stand established.

10.8. Fees and charges during the inspection period

- 10.8.1. In this regard it was inter alia observed and alleged that on the verification of data submitted by the Noticee, it was observed that Noticee had charged more than Rs.1,25,000/- per annum from 1 client - AxTxx xAxlxx - xxZPxx6xxP.
- 10.8.2. In this regard from material available on record I note that Noticee as part of its response on the findings of the inspection had inter alia replied to SEBI earlier that ‘ ... *our service charge in the amount received is only INR 1,14,407/-, which is well within the statutory limits of INR 1,25,000/-. The same may be validated using the invoice issued. Invoice ... is enclosed herewith as Annexure Agreement copies has been enclosed herewith as part of Annexure*’
- 10.8.3. However, in this regard, SEBI observed on scrutiny of the data furnished by the IA that ‘.. it is seen that he has not charged more than Rs. 125000/- from any client except one client inter alia alleged that there was no means available to ascertain the number of active clients as on a particular date and hence, the amount ... collected from 823 clients during the inspection period, i.e. from April 01, 2022 to July 31, 2023 doesn't appear to have been collected in the manner in which advisory fee has to be collected as stipulated by SEBI..’
- 10.8.4. In this regard, I note that Noticee as part of its submissions as reply to the SCN has inter alia contended that, ‘ ... *The inspecting team themselves have verified and observed that IA had not charged more than INR 1,25,000/- to any of the clients. For one client they had raised a concern during inspection, which was responded and ... the same was also less than INR 1,25,000/-. ...*’
- 10.8.5. In this regard, from material on record I note that the observation of SEBI is apparently incoherent in so far as while on one hand it has been observed that on scrutiny of the data furnished by the IA, it is seen that

he has not charged more than Rs. 125000/- from any client except one client, on the other hand it has been observed and alleged that the amount collected from 823 clients during the inspection period, was not collected in the manner in which advisory fee has to be collected as stipulated by SEBI.

10.8.6. In view thereof, given the submissions of the Noticee, I note that material on record does not clearly bring out with specific details as to how the amount collected from the clients during the inspection period, was not collected in the manner in which advisory fee had to be collected as stipulated by SEBI. In view thereof, I am inclined to allow benefit of doubt to the Noticee in this regard. Accordingly, I hold that the allegation in this regard in respect of the Noticee does not stand established.

Issue No. II: If yes, whether the violations on the part of the Noticee would attract monetary penalty under Section 15 EB of the SEBI Act, 1992?

11. As it has been established that the Noticee has violated the provisions of Regulation 13 (b) of SEBI (Investment Advisers) Regulations, 2013, as alleged in the SCN, the Noticee is liable for payment of a monetary penalty in terms of Section 15 EB of the SEBI Act, 1992.

12. In this regard, it is also noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia held that:

“... In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established”

13. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that the Noticee is liable for monetary penalty under Section 15EB of the SEBI Act, 1992, which reads as under:

‘ ...

Securities and Exchange Board of India Act, 1992
⁶²CHAPTER VIA
PENALTIES AND ADJUDICATION

...

Penalty for default in case of investment adviser and research analyst.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst 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.]

...”

(Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.)

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

14. While determining the quantum of penalty, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act

“ ...

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.

...”

15. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investor or group of investors as a result of the violations committed by the Noticee. As regards repetitive nature of default, I note that Noticee was also director and principal officer of Bestway Smart Financial Private Limited, SEBI registered IA, in respect of which an Adjudication Order dated March 28, 2025 had been passed imposing monetary penalty. I note that compliance with extant applicable provisions of SEBI (Investment Advisers) Regulations, 2013, as cited, in the instant matter, was obligatory upon the Noticee being a SEBI registered intermediary, which Noticee had failed to comply with, as brought out and dealt with in the foregoing and which SEBI is duty-bound to enforce compliance of. I am of the view that such non-compliance accordingly need to be dealt with suitable penalty.

E. ORDER

16. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose penalty as per details in table below for the aforementioned violation, as discussed in this order. In my view, the said penalty will be commensurate with the violation committed by the Noticee in this case.

NAME OF NOTICEE	PENALTY UNDER PROVISIONS	PENALTY AMOUNT (Rs.)
Manoj Jethanand Varyani Proprietor of Smart Financial	Section 15EB of SEBI Act, 1992	2,00,000/- (Rupees Two Lakhs Only)

17. The Noticee shall remit /pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
19. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

PLACE: MUMBAI
DATE: MAY 30, 2025

AMAR NAVLANI
ADJUDICATING OFFICER