

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/JR/2025-26/31372)**

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

**Wealth Factor
(Proprietor – Mr. Snehil Sharma)
PAN: DKIPS8184J**

In the matter of inspection of Wealth Factor

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted inspection of SEBI registered Investment Advisor, M/s Wealth Factor (Proprietor: Snehil Sharma) (hereinafter referred to as "**Noticee**") for the period April 01, 2020 till July 18, 2022 (hereinafter also referred as '**inspection period**') to look into the compliance with regulatory requirements stipulated under SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and circulars and guidelines framed thereunder.

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon being satisfied that there were sufficient grounds to inquire into and adjudicate upon the violations of provisions of SEBI Act, PFUTP Regulations and IA Regulations by the Noticee, SEBI, in exercise of powers u/s 19 r/w sub-section (1)

of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) appointed Shri Amar Navlani as Adjudicating Officer (hereinafter referred to as “**AO**”), vide order dated June 14, 2023, to inquire into and adjudge the alleged violations by the Noticee. Upon transfer of the matter, the undersigned was appointed as the Adjudicating Officer, vide order dated November 22, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice Ref. No. SEBI/EAD5/P/OW/2023/48147/1 dated November 30, 2023 (hereafter referred to as “**SCN**”) was issued to the Noticee in terms of rule 4(1) of the Adjudication Rules r/w Section 15-I of SEBI Act requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provision of Sections 15A(a), 15B, 15EB and 15HA of SEBI Act for the alleged violation stated in the SCN.
4. A brief of alleged violations by the Noticee as per the SCN is given hereunder;
 - 4.1 All 22 employees of the Noticee providing investment advisory services to clients do not possess requisite certifications.
 - 4.2 Noticee submitted inconsistent and incorrect data to the Inspection team regarding number of employees and risk profiling and suitability assessment of clients
 - 4.3 In 277 instances, Noticee has not provided details of service start date and service end date and in 3 instances, Noticee has mentioned end date of service being earlier than start date of service.
 - 4.4 Noticee received fee for providing advisory services without executing agreement with all of its clients since grant of registration - 393 instances to 133 clients.
 - 4.5 Noticee provided services to clients without entering into agreement, without Invoices, without carrying out proper KYC process and Risk Profiling and suitability assessment of clients and also without maintaining all call recording records of all its clients and completely disregarded the risk taking capacity and suitability assessment while providing services to clients

- 4.6 Noticee does not have an Anti-Money Laundering (AML) policy; never appointed Principal Officer and Designated Director and accordingly the same has not been intimated to FIU; no training related to PMLA has been provided to employees, till date from date of registration
 - 4.7 Noticee sold same products to clients for the same service period with the sole objective of extracting maximum amount of fees from the clients
 - 4.8 Noticee provided free trials to its prospective clients in 1761 instances
 - 4.9 Noticee provided same service to clients irrespective of their risk profile. Also a service type provided is not mentioned in the pricing list available on its website and pricing details submitted and Not ensured that investment advice rendered is appropriate to the risk profile and financial situation of the clients
 - 4.10 Noticee followed unfair and fraudulent practices to lure the client and maximize its revenue by promising guaranteed/ unrealistic return and profits to the clients, creating an impression that investment advice is risk-free, is not susceptible to market risks and providing wrong information to clients
 - 4.11 Noticee submitted false experience details at the time of making application for grant of registration as an IA, and not meeting the eligibility criteria of experience prescribed for an IA and has not intimated SEBI about change of principal office address.
5. The Noticee, vide email dated February 1, 2024, submitted its reply to the SCN the relevant portion of the reply is reproduced as under:

5.1 All 22 employees providing investment advisory services to clients do not possess requisite certifications: The Noticee would like to clarify that he is registered as an individual investment adviser and possess necessary NISM certifications. The Noticee's employees, however, are not involved in any aspect of investment advice for clients. Their sole responsibility was onboarding new clients. All other activities pertaining to investment advice, including risk profiling and rendering investment advice, were exclusively performed by the Noticee himself.

5.2 Submission of inconsistent and incorrect data to the Inspection team regarding number of employees and risk profiling and suitability assessment of clients:

In response to the allegation concerning employee data, the Noticee submits the following:

- The initial submission included data of current employees only due to an unintentional misunderstanding.*
- Upon realizing the error, the Noticee duly submitted a complete list of all employees employed during the inspection period, which was also acknowledged by SEBI.*

Further, while acknowledging the discrepancy between the heading and description of Allegation 14.2 in the Show Cause Notice, the Noticee, assuming this to be a clerical error, offers the following clarification:

- The Noticee has consistently conducted KYC, risk profiling, and suitability assessments for all clients before providing any services.*
- During the inspection, however, due to the stressful atmosphere created by the inspecting officers, certain client records were temporarily unavailable.*

If the Noticee's intention was to maximize revenue instead of providing best services to the clients then in that scenario, many of clients would have filed complaint against the Noticee, whereas none of the complaints had stated the same and at the time of inspection not a single complaint was pending against the Noticee. Also, the allegation regarding a non-existent table linking annual income with investment proposals is entirely spurious and irrelevant to the Noticee's practices.

5.3 WFIA has not provided details of service start date and end date: *The Noticee acknowledges its inability to retrieve the service dates for certain clients due to technical issues. However, the Noticee categorically reiterates that the relevant services were in fact duly delivered to all clients in question.*

5.4 Received fee for providing advisory services without executing agreement with all of its clients: *The Noticee further states that he misinterpreted the applicability of the requirement, mistakenly believing it applied at a later date of April 1, 2022. Therefore, the Noticee failed to enter into agreements with his clients as mandated.*

5.5 Provided services to clients without entering into agreement, without Invoices, without carrying out proper KYC process and Risk Profiling and suitability assessment of clients and also without maintaining all call recording records of all its clients.

Completely disregarded the risk taking capacity and suitability assessment while providing services to clients.: The Noticee affirms that it has complied with all relevant regulations by:

- *Performing KYC, risk profiling, and suitability assessments for every client before offering any services.*
- *Selling services only after completing these assessments.*
- *Furthermore, the Noticee had duly obtained registration from CVL KRA for fetching KYC of the clients, details of which is: POS Code: 2500010317; Sample of Invoice raised by CVL does evidences that the Noticee was fetching the KYC data from the KRA in the manner as specified by the SEBI.*
- *Maintaining call recordings as evidence of client interactions, submitting them to the inspecting authority.*

The Noticee acknowledges that call recordings for three clients (10% of the sample) were unavailable during the inspection.

5.6 Not having Anti-Money Laundering Policy: *The Noticee would like to state that the Noticee had duly abided by the said provision and had framed the Anti-Money Laundering Policy. Moreover, the Noticee being a sole proprietor was only the Principal Officer. The Noticee didn't had registered himself on FIU Portal as the Noticee was providing services just to retail clients and never a need arose to report any suspicious transactions to FIU.*

5.7 Selling same products to clients for the same service period with the sole objective of extracting maximum amount of fees from the clients: *The Noticee clarifies that clients sometimes opt to pay service fees in installments for the same service period. This does not constitute selling services for overlapping periods, but rather reflects a flexible payment approach.*

5.8 Provided free trials to the prospective clients: *The Noticee acknowledges the heading of clause 1(i) as "Restriction on free trial" but argues that a literal interpretation does not translate to an absolute prohibition. Noticee contends that offering free trials after completing risk profiling and ensuring product suitability falls within the permitted boundaries of the restriction. Further, the Noticee recognizes the Circular's observation of instances where IAs provided advice on free trials without risk profiling. This*

observation, according to Noticee, supports their interpretation that free trials after proper due diligence remain permissible. Noticee asserts that their practice of offering free trials only after fulfilling risk profiling and suitability requirements aligns with the proposed interpretation and, therefore, complies with the Circular.

5.9 Provided same service to clients irrespective of their risk profile and has also not ensured that investment advice rendered is appropriate to the risk profile and financial situation of the clients: *The Noticee has consistently conducted KYC, risk profiling, and suitability assessments for all clients before providing any services. During the inspection, however, due to the stressful atmosphere created by the inspecting officers, certain client records were temporarily unavailable. Importantly, no client has ever disputed the completeness or accuracy of their KYC or risk profiling conducted by the Noticee.*

5.10 Following unfair and fraudulent practices to lure the client and maximize its revenue by promising guaranteed/ unrealistic return and profits to the clients, creating an impression that investment advice is risk-free, is not susceptible to market risks and providing wrong information to clients.:

Website: *Noticee's website, the primary onboarding platform for clients, includes prominent disclaimers on various pages stating that investments in securities are subject to market fluctuations and no guarantee of achieving any specific objectives is provided.*

Welcome Email: *All clients receive a Welcome email during onboarding, explicitly stating that Noticee does not guarantee profits or committed returns. This email also warns against any executive offering such services and encourages reporting such occurrences. Regarding the alleged telephonic conversation mentioned in the Notice (paragraph 14.10.2), Noticee emphasizes that:*

- *No concrete evidence, such as a verified voice recording, has been provided to support the claims. Annexure-15 of the Notice only contains an email, not a recording.*
- *SEBI has selectively quoted excerpts from the alleged recording, failing to consider the entire context of the communication.*
- *In the absence of forensic verification, the authenticity and attribution of the alleged recording to Noticee or its employees cannot be established.*

5.11 Submission of false experience details at the time of making application for grant of registration as an IA, and not meeting the eligibility criteria of experience prescribed for an IA and has not intimated SEBI about change of principal office address: Noticee vehemently denies that any submissions made during the inspection were signed under coercion or undue influence of SEBI officers. Noticee asserts that such allegations are entirely false and unsupported by any evidence. Noticee addresses each alleged violation and provides counter-arguments with supporting evidence:

5.11.1 The Noticee ceased accepting new clients in November 2021 and hence had closed his office and was available at his residence address. As there was no change in office address and hence no such intimation was required to be made by the Noticee.

5.11.2 The Noticee had not made any false submission with regard to his working experience, the Noticee affirms employment with Capital Life Market Research from February 1, 2012, to April 23, 2017, evidenced by the enclosed experience letter. Further, SEBI's accusations of false statements lack concrete evidence and appear based on coerced statements, which Noticee refutes.

5.11.3 Networth requirement as on the date of inspection was Rs.1 lakh as the SEBI Circular had granted existing investment advisors a three-year timeframe to meet new net worth criteria. While the bank account balance may have been Rs.80,000, net worth calculation includes other assets like cash, gold, investments, and property. Furthermore, the networth certificate as on 16/12/2021 is enclosed herewith in; which evidences that the Noticee was having sufficient networth during the inspection period.

5.11.4 The Noticee had maintained all the relevant records, viz. KYC, risk profiling, suitability assessment which has been enclosed herewith.

5.11.5 The Noticee had performed KYC, risk profiling, and suitability assessments for every client before offering any services and has sold selling services only after completing these assessments.

5.11.6 The Noticee had worked for a travel company after completion of his advisory activity so there was no conflict of interest and it shall not be questionable on any grounds.

5.12 Violation of PFUTP Regulations: *Based upon the definition, it can be construed that the definition of “fraud” under regulation 2 (c), is very wide and general in nature. The definition of “fraud” alone does not bring an act within the purview of PFUTP Regulations. There has to be “dealing in securities” as defined under regulation 2(1)(c) of PFUTP Regulations. Further, there is no proof to show that the Noticee have committed fraud while “dealing in security” as contemplated under the PFUTP Regulations. Hence, the serious violations of the provisions of Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a) to (d) of the PFUTP Regulations shall be removed upon from the Noticee.*

6. Vide email dated March 4, 2024, it was informed that the Noticee has filed an application under SEBI (Settlement Proceedings) Regulations, 2018 in the matter. Later, vide email dated November 29, 2024, it was informed that the said settlement application has been rejected.
7. An opportunity of personal hearing was granted to the Noticee on February 11, 2025, vide hearing notice dated January 10, 2025. Noticee appeared on the scheduled date and reiterated the submissions made vide its reply dated February 1, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the submissions of the Noticee, facts of the matter and material available on record. The issues that arise for consideration in the present case are as follows:

ISSUE No. I: Whether the Noticee violated various provisions of SEBI Act, PFUTP Regulations, IA Regulations and circulars issued thereunder, as alleged in the SCN?

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s 15A(a), 15EB, 15HA and 15B of SEBI Act, as applicable?

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticee, after taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

9. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticee. The said provisions are reproduced hereunder:

IA Regulations

Qualification and certification requirement.

7. (1) *An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times –*

(a)....

(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

(c)....

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services -

(a)from NISM; or

(b)from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:

Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]

Conditions of certificate.

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;

... ”

CHAPTER III

GENERAL OBLIGATIONS AND RESPONSIBILITIES

General responsibility

15. (1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.

(3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.

Risk profiling.

16. Investment adviser shall ensure that, -

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i) age;

(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment ;

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

(b) it has a process for assessing the risk a client is willing and able to take, including:

(i) assessing a client's capacity for absorbing loss;

(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c) where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii) questionnaire is not structured in a way that it contains leading questions.

(e) risk profile of the client is communicated to the client after risk assessment is done;

(f) information provided by clients and their risk assessment is updated periodically.

Suitability.

17. Investment adviser shall ensure that, -

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

(e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Maintenance of records.

19. (1) An investment adviser shall maintain the following records, -

(a) Know Your Client records of the client;

- (b) Risk profiling and risk assessment of the client;*
- (c) Suitability assessment of the advice being provided;*
- (d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;*
- (e) Investment advice provided, whether written or oral;*
- (f) Rationale for arriving at investment advice, duly signed and dated;*
- (g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.*

Obligation of investment adviser on inspection.

25. (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including 40[partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

... ”.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

2. Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

8. Compliance

An investment adviser including its 85[partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

9. Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

....”

SEBI (INTERMEDIARIES) REGULATIONS, 2008

CHAPTER II

REGISTRATION OF INTERMEDIARIES

“

Disclosure of information.

4.(1)....

(2) Any material change in the information furnished or uploaded under these regulations shall be updated by the intermediary promptly but not later than fifteen days of the occurrence of such change.

**SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES
RELATING TO SECURITIES MARKET) REGULATIONS, 2003**

CHAPTER II

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.— For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

(s) mis-selling of securities or services relating to securities market;

SEBI ACT

CHAPTER VA

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

10. Before moving forward in the matter, I shall deal with the preliminary contention of the Noticee wherein he had submitted that the SEBI officials had threatened the Noticee to sign the statement/ undertaking without allowing him to read the statements. The Noticee contended that due to this, the statements are untrue and unreliable and do not represent his true and voluntary statements. I note that the Noticee is making allegation against the officials of SEBI without any supporting evidence. Had that been the case, Noticee could have brought the same to the notice of appropriate authorities at that time. In absence of any supporting documents, I am inclined to believe that being public servants, SEBI officials carried out their duty in a diligent manner without any ulterior motive. Accordingly, the submissions of the Noticee are devoid of merits.

11. I now proceed to deal with the issues on merit in the following paras;

ISSUE No. I: Whether the Noticee violated various provisions of SEBI Act, PFUTP Regulations, IA Regulations and circulars issued thereunder, as alleged in the SCN?

11.1. In respect of allegation that all 22 employees providing investment advisory services to clients do not possess requisite certifications

11.1.1. I note from the SCN that out of the details provided of the 23 employees, only 1 employee (Snehil Sharma himself) was NISM Investment Adviser Level-1 and Level-2 certified while 3 others were NISM Investment Adviser Level-1 certified and the remaining had no certification. I further note that all

employees were involved in Sales i.e. providing investment advice and thus interacted with client.

11.1.2. The Noticee submitted that it was registered as an individual investment adviser and possess necessary NISM certifications. The employees' sole responsibility was to onboard new clients and were involved in any activities pertaining to investment advice like risk profiling and rendering investment advice.

11.1.3. I observe that any investment adviser is expected to do several activities including risk profiling and suitability assessment, providing appropriate investment advice, regulatory compliances, disclosing relevant information and providing transparency to clients etc. From the documents available on record, I find that post inspection, the Noticee had admitted that he had hired non-qualified employees in sales and service delivery team. In light of this, I find that the 22 employees of the Noticee were involved in various aspects of investment advisory services to clients (from onboarding of clients till procurement of payments from clients) without requisite certification.

11.1.4. In view of the above, I find that the allegation of violation of regulation 15(13) read with regulation 7(2) of IA Regulations and clause 1, 2 and 8 of Code of conduct for Investment Advisers as specified under Third Schedule read with regulation 15(9) of IA Regulations by the Noticee stands established.

11.2. In respect to the allegation of submission of inconsistent and incorrect data regarding number of employees and risk profiling and suitability assessment of clients.

11.2.1. I note from the SCN that during inspection, the Noticee was asked to provide details including KYC, risk profiling, suitability assessment, invoices, client agreement, call recordings, email communication etc. of 33 sample clients. The Noticee had provided incomplete information. Further, it was alleged that the clients were provided with the same service irrespective of their risk profile. It was further alleged that fair and reasonable fees was not charged by the Noticee for its services.

11.2.2. The Noticee submitted that initially incorrect information was provided due to unintentional misunderstanding. On realizing its mistake, complete list was provided by the Noticee. The Noticee also denied that he charged unreasonable fees. However, he did not provide any clarification as to why all clients (excluding 2) were provided with same service.

11.2.3. From the submission of the Noticee, I note that the Noticee has admitted that he had provided incomplete information to the inspection team. However, with regard to the allegation that he had provided same service to most of his clients, the Noticee had no submission. As a SEBI registered intermediary, it was the duty of the Noticee to provide the complete and correct information to SEBI when sought. As the Noticee failed to do so, I find that the allegation of violation of regulation 15(12) and 25(1) of IA Regulations stands established.

11.3. Noticee has not provided details of service start date and end date:

11.3.1. In 277 instances, Noticee has not provided details of service start date and service end date. In 3 instances, Noticee has mentioned end date of service being earlier than start date of service.

11.3.2. It was alleged that the Noticee has taken 1,267 payments from multiple clients during Inspection Period amounting to total of Rs 1,40,41,805/-. Out of 1,267 payments, in 277 instances, Noticee has not provided details of service start date and service end date. Also, in 3 instances, Noticee has mentioned end date of service being earlier than start date of service.

Sample instances where service start date and service end date not mentioned by IA:

| S.N o. | Date Of Payment | Name | PAN | Services | Payment (in Rs) (A) | Service Start Date (B) | Service End Date (C) | no. of days of service D = C - B | Max service charges /per day E = 125000/ 365 | Max Char ges allowe d F=D*E | Extra Char ges G=A-F |
|-----------|--------------------|-------------------------|----------------|----------------------|-----------------------------------|-------------------------------------|-----------------------------------|--|--|--|-----------------------------------|
| 1 | 30/06/2021 | Parwat Singh Sahu | EXHPS5 650G | Equity Derivative | 46500 | Not Available | Not Availab le | | | | |
| 2 | 12/04/2021 | Keshav Gupta | BYSPG6 225J | Equity Derivative | 40000 | Not Available | Not Availab le | | | | |
| 3 | 08/03/2021 | Murahari Ba ndaru | GJYPM0 581H | Equity Derivative | 53000 | Not Available | Not Availab le | | | | |

Instances, IA has mentioned End date of Service is earlier than start date of Service:

| S. No. | Date Of Paymen t | Name | PAN | Services | Payme nt (in Rs) (A) | Service Start Date (B) | Service End Date (C) | no. of days of servic e D = C - B | Max service charge s/ per day E = 125000/ 365 | Max Char ges allowe d F=D*E | Extra Charge s G=A-F |
|-----------|------------------------|-----------------------|----------------|----------------------|-----------------------------------|-------------------------------------|-----------------------------------|---|--|--|-----------------------------------|
| 1 | 31/10/20 20 | Mahesh S Pokharkar | ALBPP047 2D | Equity Derivative | 45000 | 14/10/20 21 | 08/04/20 21 | | | | |
| 2 | 28/10/20 20 | Mahesh S Pokharkar | ALBPP047 2D | Equity Derivative | 15060 | 14/10/20 21 | 08/04/20 21 | | | | |
| 3 | 12/10/20 20 | Mahesh S Pokharkar | ALBPP047 2D | Equity Derivative | 5000 | 14/10/20 21 | 08/04/20 21 | | | | |

11.3.3. The Noticee admitted its inability to retrieve the service dates for certain clients due to technical issues. However, the Noticee emphasized that there were no client complaints or allegations regarding non-delivery of the services.

11.3.4. I note that the Noticee has admitted that the details of service date could not be retrieved. Further, Noticee did not provide any explanation for 3

instances where the end date of service was earlier than the start date. It may be noted that the absence of investor complaints does not absolve the Noticee from complying with regulatory requirements.

11.3.5. In view of the above, I find that the allegation of violation of regulation 19(1)(g) of IA Regulations stands established.

11.4. In respect to the allegation that the Noticee received fee for providing advisory services without executing agreement with all of its clients since grant of registration - 393 instances to 133 clients.

11.4.1. Clause 2(ii)(c) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 states that “*IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client*” and it is applicable from April 1, 2021. It was observed during inspection that from April 1, 2021 till date of commencement of Inspection, Noticee has collected fees and provided his services on 393 instances to 133 number of clients without entering into agreement with any of his clients.

11.4.2. The Noticee submitted that he mistakenly believed that the circular dated September 23, 2020 applied from April 1, 2022, therefore, failed to enter into agreements with his clients.

11.4.3. As the Noticee has already admitted to the allegation, I find that he has violated Clause 2(ii) of Circular SEBI/ HO/IMD/DF1/ CIR/P/2020/182 dated September 23, 2020 and clause 1 and 2 of Code of conduct for Investment Advisers as specified under Third Schedule read with regulation 15(9) of IA Regulations.

11.5. In respect to the allegation that the Noticee provided services to clients without entering into agreement, without Invoices, without carrying out proper KYC process and Risk Profiling and suitability assessment of clients and also without maintaining all call recording records of all its clients and completely disregarded the risk taking capacity and suitability assessment while providing services to clients:

11.5.1. During the inspection, the Noticee was advised to provide details (i.e. copy of agreement, KYC documents, invoices, Risk Profiling, email communications, call recordings etc) of 33 sample clients. From the details submitted by the Noticee, it was noted that:

- a. KYC: Out of 33 sample clients, Noticee submitted that, he has not done KYC for 3 out of 33 clients. Further, he has only PAN number of other 11 out of 33 clients, With respect to remaining 19 out of 33 clients, Noticee has claimed that he has done KYC, however, in respect of these 19 clients, Noticee has provided copy of PAN/ AADHAR only. Also, out of these 19 client, with respect to one of his clients namely Shri Shiv Shankar Kushwaha he has submitted copy of AADHAR and submitted copy of PAN of another person.
- b. Agreement: No agreement has been executed with 33 sample clients.
- c. Risk Profiling: Out of 33 sample clients, Noticee submitted that, he has not done RPM for 5 out of 33 clients. Further, 9 out of 33 clients, where Noticee has claimed to have done RPM no document in support of same has been provided by him.
- d. Invoices: Out of 33 sample clients, Noticee submitted that, he does not have invoices for the service provided to 24 out of 33 clients.
- e. Call Recording: Out of 33 sample clients, Noticee submitted that, he does not have call recordings for 3 (i.e. Birsa Tigga, Venkatesh, Vishwas SH) out of 33 clients. Further, out of other 30 of 33 clients, where Noticee has claimed to have provided call recordings, no call recording was available in respect of one of its client namely Mr Katam Vishnuvardhan Reddy. As per SEBI Circular SEBI/ HO/ IMD/ DF1/ CIR/ P/ 2020/ 182 dated September 23, 2020, Noticee was required to mandatorily maintain call data recordings of all clients from January 1, 2021. All four clients mentioned above had availed the services prior to January 01, 2021 as per client master details submitted by Noticee. Further, from the call recordings of remaining sample clients, it is also observed that, Noticee has provided call recordings of only outgoing calls (i.e. for calls from Noticee to Client) and incoming calls that were received from the clients to Noticee were not available in the sample client's call recording data. As per aforementioned circular, IA should maintain call

recordings from first interaction with the client and shall continue till the completion of advisory services to the client. However, Noticee while submitting data pertaining to sample client has not maintained all call recordings and provided call recording of only outgoing calls.

- 11.5.2. From the submissions of the Noticee I find that Noticee has not given any specific reason as to why KYC was not complete for all his clients. During the inspection, it was also noted that documentation of all his clients were not complete. Although the Noticee submitted that he was fetching the KYC data from KRA, the same was not properly maintained by him.
- 11.5.3. The Noticee gave a sweeping statement that he was performing the risk profiling and suitability assessment for all his clients but no reason was provided by him for his failure to perform risk profiling for 5 out of 33 clients and having no documents for 9 out of 33 clients. Further, it is noted that the Noticee provided investment advice to his clients without entering into any agreement, without proper invoice, improper documentation regarding KYC process and risk profiling.
- 11.5.4. I note that as a SEBI registered intermediary who was providing financial advices to his clients, the Noticee was not thorough with the regulatory compliances and provided no reason for his failure.
- 11.5.5. In view of the above, I find that the allegation of violation of clause 2(vi) of Circular SEBI/ HO/IMD/DF1/ CIR/P/2020/182 dated September 23, 2020, read with regulation 19 (1) of IA Regulations and Regulation 15 (8), 16, 17 of IA Regulations read with clauses 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations by the Noticee stands established.

11.6. In respect to the allegation that Noticee did not have an Anti-Money Laundering (hereinafter referred to as “AML”) policy; never appointed Principal Officer and Designated Director and accordingly the same has not been intimated to FIU; No training related to Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”) has been provided to employees, till date from date of registration.

- 11.6.1. It was alleged in the SCN that the Noticee did not have an AML policy, never appointed a Principal Officer and intimated the same to FIU. Further, it was also alleged that since his registration as an IA, the Noticee did not provide any training to its employees on PMLA.
- 11.6.2. Noticee submitted that he had framed an AML policy but was not registered with the FIU portal. He also submitted a copy of the said policy.
- 11.6.3. I note that Noticee did have an AML policy. However, there was no date to indicate the date from when it was enforced. Further, Noticee never registered himself on the FIU portal. Although the Noticee named himself as the Principal Officer in compliance with the provisions of PMLA, there is no evidence to show that he has taken any action in that role. Also, none of his employees were trained in AML and CFT procedures. SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019 was implemented to discourage and to identify any money laundering or terrorist financing activities. If the employees are not trained adequately, the main purpose of bringing the circular is defeated.
- 11.6.4. In view of above, I find that the allegation of violation of Clauses 2.1, 2.11.1 and 2.11.2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019, clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III read with regulation 15 (9) of IA Regulations by the Noticee stands established.

11.7. In respect to the allegation that the Noticee sold same products to clients for the same period with the sole objective of extracting maximum amount of fees from the clients:

- 11.7.1. It was alleged in the SCN that Noticee sold the same advisory product/ service to the client before expiry of the tenure of the earlier service. This implied that, before the end of the earlier service period, same service has been sold to the client again. Therefore, during such period (overlap period) the client will have two advisory product/service of same nature. It was alleged that Noticee had sold overlapping services to multiple clients on multiple occasions. During such overlap period, the clients shall be receiving same tips/messages which

may be repetitive in nature and therefore may not be of much use to the clients.

11.7.2. Some of the sample clients to whom overlapping services were sold are mentioned below:

| Payment Date | Client Name | PAN | Services | Service End Date | Service Start Date | Service in Days |
|--------------|------------------|------------|-------------------|------------------|--------------------|-----------------|
| 30/05/2020 | Siddharth Netkar | AAFPN3123Q | Equity Derivative | 09/07/2020 | 31/12/2020 | 176 |
| 04/06/2020 | Siddharth Netkar | AAFPN3123Q | Equity Derivative | 09/07/2020 | 31/12/2020 | 176 |
| 23/09/2021 | Mahendra Warule | ACCPW9572G | Equity Derivative | 26/08/2021 | 31/12/2021 | 128 |
| 10/09/2021 | Mahendra Warule | ACCPW9572G | Equity Derivative | 26/08/2021 | 31/12/2021 | 128 |
| 25/08/2021 | Mahendra Warule | ACCPW9572G | Equity Derivative | 26/08/2021 | 31/12/2021 | 128 |
| 27/08/2021 | Mahendra Warule | ACCPW9572G | Equity Derivative | 26/08/2021 | 31/12/2021 | 128 |
| 17/07/2020 | Piush Jain | ACTPJ8251B | Equity Derivative | 17/07/2020 | 17/07/2020 | 1 |
| 22/07/2020 | Piush Jain | ACTPJ8251B | Equity Derivative | 17/07/2020 | 17/07/2020 | 1 |
| 29/07/2020 | Piush Jain | ACTPJ8251B | Equity Derivative | 17/07/2020 | 17/07/2020 | 1 |
| 19/08/2020 | Piush Jain | ACTPJ8251B | Equity Derivative | 17/07/2020 | 17/07/2020 | 1 |
| 30/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 30/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 29/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 18/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 15/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 30/11/2021 | Vasant Tumkar | ADQPT2881F | Equity Derivative | 22/11/2021 | 05/01/2022 | 45 |
| 01/03/2021 | Rajivlal Gupta | AEFPG8225C | Equity Derivative | 12/03/2021 | 09/04/2021 | 29 |
| 04/03/2021 | Rajivlal Gupta | AEFPG8225C | Equity Derivative | 12/03/2021 | 09/04/2021 | 29 |

11.7.3. It was alleged that, same products were sold to clients for the same service period with the sole objective of extracting maximum amount of fees/ commission from the clients. Therefore, it was alleged that the Noticee deceived the clients into buying the same products with concurrent service period which comes under the definition of 'fraud' as mentioned in regulation 2(1)(c) of PFUTP Regulations.

11.7.4. The Noticee submitted that the clients sometimes opt to pay service fees in installments for the same service period. This does not constitute selling services for overlapping periods. The Noticee asserts that accepting instalment payments aligns with ethical practices by catering to clients' financial flexibility. The Noticee further emphasized that charging fees in

installments is a legitimate and common practice and such actions cannot be equated to fraudulent activity under PFUTP Regulations. Further, the Noticee submitted that there has to be “dealing in securities” as defined under regulation 2(1)(c) of PFUTP Regulations for it to be qualified as fraud. As there is no proof to show that the Noticee have committed fraud while “dealing in securities”, the charge cannot be established.

11.7.5. From the submission of the Noticee, I find that he has accepted that he has accepted payments in instalment from the clients. However, in the absence of any agreement between the Noticee and the clients, the terms of payment cannot be checked. In such a situation from the bare reading of the records, it seems that the Noticee sold same products to clients for the same period multiple times with overlapping subscription period. Therefore, I find that the allegation of violation of regulation 15 (1) of IA Regulations, clauses 1, 2 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations stands established.

11.7.6. Further, I note that the Noticee provided advice to his clients for buying or selling securities. Therefore, in effect the Noticee was involved in dealing or securities. Regulation 2(1)(c) of PFUTP Regulations defines “**fraud**” and sub-section (1) further qualifies fraud as “*a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment.*” While the Noticee sold the same advisory product/ service to the client before expiry of the tenure of the earlier service, he was knowingly misrepresenting the truth or was concealing a material fact to the detriment of his clients. This squarely falls under the definition of “fraud”. Therefore, I note that the Noticee committed fraud on his clients and thus violated regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act.

11.8. In respect to the allegation that the Noticee provided free trials to its prospective clients in 1761 instances.

11.8.1. It was alleged in the SCN that the Noticee in order to onboard the clients, provided free trials to prospective clients on 1761 instances.

- 11.8.2. The Noticee submitted that he had offered free trials to his clients only after fulfilling risk profiling and suitability requirements which is in compliance with SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.
- 11.8.3. On perusal of clause 1(i) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, I note that there is restriction on free trial imposed on the Noticee without completing risk profiling and ensuring suitability of the product. Once the Noticee carries out the risk profiling, there is no bar in offering free trials to prospective clients. However, Noticee did not provide the details of the clients' risk profiling to whom it has given free trial. In the absence of any documentary evidence, the submission of the Noticee cannot be accepted.
- 11.8.4. In view of the above, I find that the allegation of violation of Clause 1(i) of Circular SEBI/ HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and clauses 1, 2 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations by the Noticee stands established.
- 11.9. In respect to the allegation that the Noticee provided same service to clients irrespective of their risk profile and a service type provided is not mentioned in the pricing list available on its website and pricing details submitted. Further it was alleged that Noticee did not ensure that investment advice rendered is appropriate to the risk profile and financial situation of the clients.**
- 11.9.1. It was alleged that from the Client Master it was also observed that, all clients (excluding only 2 clients i.e. Prince Kumar Jangra and Mohammed Shoeb) were provided with same service i.e. Equity Derivative. Further it may also be noted that, service type namely Equity Derivative is not mentioned in the pricing list/ service packages available on the website and pricing details/ fee structure submitted by the Noticee. It was further alleged that Noticee had kept its own interest at higher level compared to interest of its clients with having single motive of maximizing revenue instead of providing best services to clients. It was also alleged that the Noticee did not pay any attention to clients risk profiles and suitability. He charged fees many times more than the

total annual income/ proposed investment of the clients. Thus, Noticee had allegedly not ensured that investment advice rendered is appropriate to the risk profile and financial situation of the clients.

- 11.9.2. The Noticee submitted that he conducted KYC, risk profiling and suitability assessments for all clients before providing any service which was never disputed by any client. He also submitted that not advertising all services offered to clients does not constitute a violation. Noticee further denied the allegations of his intention to maximize revenue instead of providing best services to clients and unreasonable charging of fees.
- 11.9.3. It is accepted that not advertising all services offered to clients is not a violation but there is no cogent reason given by the Noticee why after all the clients' risk profiling (except 2), "Equity Derivative" was the only service found suitable which does not even appear on his website. The Noticee even failed to explain the basis of charging fees from his clients. The IA Regulations mandates that an IA shall have a reasonable basis for making investment recommendation to his clients based on the clients' experience and knowledge to understand risks and capacity for absorbing loss.
- 11.9.4. The Noticee failed to substantiate his claims that all investment advice was given subsequent to proper risk profiling. In view of the same, I find that the allegation of violation of regulation 15 (1), 17(b), (d) and (e) of IA Regulations read with clauses 1 and 2 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations by the Noticee stands established.

11.10. In respect to the allegation that he followed unfair and fraudulent practices to lure the client and maximize its revenue by promising guaranteed/ unrealistic return and profits to the clients, creating an impression that investment advice is risk-free, is not susceptible to market risks and providing wrong information to clients.

- 11.10.1. The sample calls records provided were perused and reproduced hereunder:

| Sl no | Name an No. of customer | Unique ID of call | Conversation with Executive | Findings | Call |
|-------|---|---|--|--|--------|
| 1 | Vipul Jadhav 9075169166 Date: 16/12/2019 Time: 10:51:05 | Call recording: out- +919075169 166-7009- 20191216- 105105- 1576473665 .3010 (1) | <u>Call time: 0:21 to 0:30:</u> Executive: Me ek cheez bol raha tha. Me aapke saare doubts ko clear kar dunga lekin sir aapka 15 se 20 min time lunga. Chalega? <u>Call time: 0:48 to 1:01:</u> Client:...Vijay Sir humko kya bole the ke 1 lakh-1.5 lakhs ka package he, wo deke tumko daily ka 10 se upar ka package kar denge Executive: Ha dekhiya wo to milta hi he. Profit to milta hi hai..... | IA is promising guaranteed profit and guaranteed return. As per the Code of Conduct for Investment Adviser [r/w Regulation 15 (9)] of the Third Schedule of SEBI (Investment Advisers) Regulations, 2013, 'an <i>investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.</i> ' However, by promising guaranteed profit and guaranteed return, IA is creating an impression that the investment advice is risk-free, is not susceptible to market risks and is providing an assurance that it can generate guaranteed profits. | Call-1 |
| 2 | Mohd Sadatullah Khan 7702822000 Date: 07/07/2020 Time: 18:28:10 | Call recording: out- 0770282200 0-7016- 20200707- 182811- 1594126690 .9683 Call time: 2:31 to 2:58 | Executive: "hamara jo services he wo aapko 75000 jo ki aapka quarterly services hai...thik he 75,000 charge hai quarterly services ka jisme aapko jo profit milega wo milega sir 6,75,000, 3 months ka...." | IA is promising guaranteed return. As per Code of Conduct for Investment Adviser [r/w Regulation 15 (9)] of the Third Schedule of SEBI (Investment Advisers) Regulations, 2013, an <i>investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.</i> However, by promising guaranteed/unrealistic return, the IA is creating an impression that the investment advice is risk-free, is not susceptible to market risks and is providing an assurance that a guaranteed return can be generated. | Call-2 |
| 3 | Sahil Jain 8486011233 Date: 11/11/2021 Time: 17:01:27 | Call recording: out- 0848601123 3-513- 20211111- 170128- 1636630287 .14084 | Executive: Sir hamari company intraday me level deti aur aapka jo investment rehta he uska 10-12% aapko return nikaal ke deti hai intra day me Customer: Monthly? Executive:..... Intraday sir, intra day, per day Customer: Per day intraday ka 10% wo investment ka 10% kya? | SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, <i>inter alia</i> , states the following: <i>a. 'Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.....</i> <i>c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until</i> | Call-3 |

| | | | | | |
|---|--|--|---|--|--------|
| | | Call time: 2:03 to 02:47 | Executive:..ha 10% आपको return निकाल के देती है..जो भी आप पैसा लगाते हैं जो भी आपको trade लगाने में..जो भी आपका investment रहता है, उसका 10% आपको return निकाल के देती है, minimum level पे..80% accuracy के साथ....जैसे मैं आपको 4 trade देता हूँ तो 3 पे आपको profit होगा, हो सकता है कि 1 में आपको loss भी हो जाये | <p>the client has signed the aforesaid agreement and provided copy of signed agreement to the client.</p> <p>d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.</p> <p>Annexure A:</p> <p>The agreement shall clearly provide for in the first page:</p> <p>(a) the consent of the client on the following understanding:.....</p> <p>(b) Declaration from the Investment Adviser that:</p> <ul style="list-style-type: none"> Investment Adviser shall neither render any investment advice nor charge any fee until the client has signed this agreement..... Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice is riskfree and/or not susceptible to market risks and or that it can generate returns with any level of assurance. <p>Thus, it is clear from the above that the IA shall not give any kind of assured returns/minimum returns/target return or percentage accuracy that gives the impression to the prospective client that it can generate guaranteed returns. However, here the IA is promising guaranteed return.</p> | |
| 4 | Mohammed Shareef 9598559385 Date: 18/09/21 Time: 12:42:41 | Call recording out- 0959855938 5-4008- 20210918- 124212- | <p><u>Call time: 1:07 to 1:29:</u></p> <p>Executive:....Sir hamari company hai na service provide karti hai....hamare client jo rehte hai na unko acche se accha call provide karte hai taaki unko profit accha gain ho.....ek</p> | SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, <i>inter alia</i> , states that the 'Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily | Call-4 |

| | | | | | |
|--|--|---------------------|--|--|--|
| | | 1631949131 .3695 | <p>mauka hume service ka de taaki aap humse jude taaki isse aapko profit ho Sir...</p> <p>Client:....karna kya hoga???</p> <p>Call time: 1:40 to 1:44:</p> <p>Executive:...jaise ki zyada amount use kar sakte ho toh zyada profit use ho sakta hai..zyada profit milta hai...</p> <p>Call time: 2:38 to 2:56:</p> <p>Executive:...jo technology system hai na sir hamara bank nifty aur nifty se connection hai toh sir hamare pass jo call provide hoti hai na wo hamare pass udhar se call provide hoti hai technology fundamaental ki taraf se jisse ki jo hum humare customers hai usko woh call provide karte hai jisse usko profit ho...</p> | <p><i>cover the terms and conditions provided in Annexure-A.....</i></p> <p><i>c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.</i></p> <p><i>d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.</i></p> <p><i>Annexure A:</i></p> <p><i>The agreement shall clearly provide for in the first page:</i></p> <p><i>(a) the consent of the client on the following understanding:.....</i></p> <p><i>(b) Declaration from the Investment Adviser that:</i></p> <ul style="list-style-type: none"> <i>Investment Adviser shall neither render any investment advice nor charge any fee until the client has signed this agreement.....</i> <i>Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice is riskfree and/or not susceptible to market risks and or that it can generate returns with any level of assurance.</i> <p>Thus, it is clear from the above that the IA shall not give any kind of assured returns/minimum returns/target return or percentage accuracy that gives the impression to the prospective client that it can generate guaranteed returns. However, in the instant call, the IA is promising guaranteed profit.</p> | |
|--|--|---------------------|--|--|--|

| | | | | | |
|---|---|---|--|--|--------|
| | | | | <p>Further, as per code of conduct for Investment Adviser [r/w Regulation 15 (9)] of SEBI (Investment Advisers) Regulations, 2013, an <i>investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.</i></p> <p>However, in the instant call, the client is being lured by providing wrong information of having connections with nifty/bank nifty and getting calls from them.</p> | |
| 5 | <p>Sudhir Dahibate 9527350943 Date: 04/03/21 Time: 18:31:36</p> | <p>Call recording: out-0952735094 3-512-20210304-183137-1614862896 .18755 Call time: 2:45 to 3:07</p> | <p>Executive: ...Aap maan lijiye ki 5 me se meri 4 call chalti hai, 4 bhi mat maaniye..maaniye 3 hi call chalti hai sir...toh 15 point profit ke rehte 5 point loss ke rehte hai..to overall end of the week end of the month rehta hai profit position me...toh isi basis pe hamara totally working hota hai aur isi basis pe hum aapko kaam akarte hai.</p> | <p>IA is inducing the client to take advise from him and invest in the market.</p> | Call-5 |

11.10.2. From a perusal of the above recordings of conversation between IA and clients/ prospective clients it was observed that following unfair and fraudulent practices had been adopted by the IA to lure the client and maximize its revenue:

- Promising guaranteed/unrealistic return to the clients.
- Promising guaranteed profit to the clients.
- Creating an impression that investment advice is risk-free, is not susceptible to market risks.
- Luring clients by providing wrong information of having connections with nifty/bank nifty and getting calls from them.

11.10.3. Noticee submitted that it has put very clear disclaimers on various pages of its website that investments in securities are subject to market fluctuations and no guarantee of achieving any specific objective is provided. Further in the welcome email during onboarding, all clients are explicitly informed that the Noticee does not guarantee profits. Further regarding the telephonic

conversation stated in the SCN, no forensic verification was done, therefore, the authenticity of the same is questionable.

11.10.4. I have perused the documents available on record. It is noted that vide email dated July 25, 2022, the Noticee himself sent an email to SEBI stating, “*Please find the sample call recordings in which profit is committed/ guaranteed attached with respect to the ongoing inspection of Wealth Factor Investment Advisor*”. Further, the transcripts mentioned in the SCN was taken from the call recording provided by the Noticee himself. Therefore, it is clear that he accepted that his employees guaranteed profits to clients and cannot question the authenticity of the call recordings at this stage.

11.10.5. It is clear that although Noticee mentions in his website and welcome letter that no profit is guaranteed, his own employees while dealing with the clients do not follow the same and tries to induce the clients promising guaranteed returns. Hence, it is established that the Noticee adopted the following unfair and fraudulent practices to lure clients and maximize revenue:

- a) Promising guaranteed/unrealistic return to the clients.
- b) Promising guaranteed profit to the clients.
- c) Creating an impression that investment advice is risk-free, is not susceptible to market risks.
- d) Luring clients by providing wrong information of having connections with nifty/bank nifty and getting calls from them.

11.10.6. Regulation 2(1)(c) of PFUTP Regulations defines “fraud” and sub-section (1) further qualifies fraud as “*a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment.*” In view of the above, I note that Noticee knowingly misrepresented the truth and followed unfair and fraudulent practices to lure the client and maximize its revenue by promising guaranteed/ unrealistic return and profits to the clients, creating an impression that investment advice is risk-free, is not susceptible to market risks and providing wrong information to clients and therefore, Noticee has violated regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (o), (s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act and Clause 1 of

the Code of Conduct of Investment Advisers specified under Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations.

11.11. In respect to the allegation that Noticee submitted false experience details at the time of making application for grant of registration as an IA, and not meeting the eligibility criteria of experience prescribed for an IA and has not intimated SEBI about change of principal office address.

11.11.1. The following allegations were made against the Noticee subsequent to the inspection:

- i. Noticee is carrying out its activities as an IA in the name of WFIA from his residential address w.e.f. 01/01/2022.
- ii. Noticee informed that at the time of making application for grant of registration as an IA, he indicated to have 05 years of working experience as required under IA Regulations. However, in reality, he has only worked for around 18 months at the time of making aforesaid application.

11.11.2. Noticee submitted that he ceased accepting new clients in November 2021 and hence closed his office and operated from his residence. As there was no change in office address and hence no such intimation was required to be made by the Noticee. Further Noticee affirmed his employment with Capital Life Market Research from February 1, 2012, to April 23, 2017.

11.11.3. As the Noticee ceased accepting new clients in November 2021 and closed his office, he was still operating from his residence. In effect, his residence was the current office of the Noticee. Therefore, as per regulation 13(b) of IA Regulations, he was to submit to SEBI the change of address which he failed to do.

11.11.4. In regard to his work experience, on perusal of the experience letter from his previous employer, Capital Life Market Research, I find that he had an experience of working for 5.2 years on business development like induction programmes, administration, client-employee relation, statutory compliances etc. Vide email dated February 20, 2025 he further submitted a notarized affidavit stating the same. Moreover, the allegation that he had only 18 months

of work experience is not corroborated further or supported by any evidence. Therefore, I am inclined to accept the contention of Noticee that he had sufficient work experience for making application for grant of registration.

11.11.5. In view of the above, I find that the Noticee has violated regulation 13(b) of IA Regulations and Regulation 4(2) of SEBI Intermediaries Regulations.

12. The Noticee also referred to the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of Religare Securities Ltd. v SEBI (order dated June 6, 2011) wherein it was held that the purpose of inspection was not punitive and every minor discrepancy cannot be converted into a violation unless there is a serious lapse. In this regard, I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further Hon'ble SAT in the same order dated June 16, 2011 referred by the Noticee stated *"This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."* In this case, I note that the alleged violations by the Noticee were of the extant applicable provisions of law that were otherwise applicable to that entire category of the intermediary viz., SEBI Registered Investment Advisers and not just about minor procedural aspects specific to the Noticee.

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s Section 15A(a), 15EB, 15HA and 15B of SEBI Act, as applicable?

13. From the foregoing, it is observed that Noticee has violated the following:

- 13.1. Regulation 15(13) read with regulation 7(2) of IA Regulations and clause 1, 2 and 8 of Code of conduct for Investment Advisers as specified under Third Schedule read with regulation 15(9) of IA Regulations
- 13.2. Regulation 15(12) and 25(1) of IA Regulations
- 13.3. Regulation 19(1)(g) of IA Regulations

- 13.4. Clause 2(ii) of Circular SEBI/ HO/IMD/DF1/ CIR/P/2020/182 dated September 23, 2020 and clause 1 and 2 of Code of conduct for Investment Advisers as specified under Third Schedule read with regulation 15(9) of IA Regulations
- 13.5. Clause 2(vi) of Circular SEBI/ HO/IMD/DF1/ CIR/P/2020/182 dated September 23, 2020, read with Regulation 19 (1) of IA Regulations and Regulation 15 (8), 16, 17 of IA Regulations read with clauses 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations
- 13.6. Clauses 2.1, 2.11.1 and 2.11.2 of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2019/113 dated October 15, 2019, clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III read with regulation 15 (9) of IA Regulations
- 13.7. Regulation 15 (1) of IA Regulations, clauses 1, 2 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations and regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act.
- 13.8. Clause 1(i) of Circular SEBI/ HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and clauses 1, 2 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations
- 13.9. Regulation 15 (1), 17(b), (d) and (e) of IA Regulations read with clauses 1 and 2 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations
- 13.10. Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2) (o), (s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act and Clause 1 of the Code of Conduct of Investment Advisers specified under Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations
- 13.11. Regulation 13(b) of IA Regulations and Regulation 4(2) of SEBI Intermediaries Regulations

14. Hence, in view of the findings as given above, I am convinced that the Noticee is liable for monetary penalty under section 15A(a) of SEBI Act for violations as mentioned at para 13.2, section 15EB of SEBI Act for violations at 13.1, 13.3, 13.5,

13.6, 13.7, 13.8, 13.9, 13.11, section 15B of SEBI Act for violations at para 13.4 and section 15HA of SEBI Act for violation at para 13.7 and 13.10 for violation of provisions of Intermediaries Regulations, IA Regulations and circulars thereunder.

15. The provisions of Section 15A(a), 15EB, 15B and 15HA of the SEBI Act read as under:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a 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;

Penalty for failure by any person to enter into agreement with clients.

15B. If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a 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.

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.

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may

extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

16. While determining the quantum of penalty u/s 15A(a), 15EB, 15B and 15HA of SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:-

SEBI Act

“15J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 23-I, 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.”*

17. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its non-compliance nor has it been alleged by SEBI. As regard to the repetitive nature of the default, there is nothing on record to show that the nature of default by the Noticee is repetitive.

18. The role of an IA is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter

wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that he had failed in its fiduciary duties owed to its clients. Noticee being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. From the findings, it is established that the Noticee paid scant regard to the risk profile of the clients before selling products to them and investment advice in the form of various packages was given to the clients without paying any heed to the principles of suitability as envisaged under IA Regulations. Hence, the violations as established above certainly deserve imposition of penalty.

ORDER

19. After taking into consideration the facts and circumstances of the case, including the fact that corrective steps have been taken by the Noticee, in exercise of powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty

| Under section of SEBI Act | Penalty |
|---------------------------|---|
| 15A(a) | Rs.1,00,000/- (Rupees One Lakh only) |
| 15B | Rs.1,00,000/- (Rupees One Lakh only) |
| 15EB | Rs.1,00,000/- (Rupees One Lakh only) |
| 15HA | Rs.5,00,000/- (Rupees Five Lakh only) |
| TOTAL | Rs.8,00,000/- (Rupees Eight Lakh only) |

I find that the said penalty is commensurate with the violations committed by the Noticee in this case.

20. 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

21. 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.

22. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: April 8, 2025

**AMIT KAPOOR
ADJUDICATING OFFICER**