

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

**UNDER SECTION 12(3) OF SEBI ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.**

**In respect of:**

<b>NOTICEE</b>	<b>SEBI REGISTRATION No.</b>
<b>Bonaz Capital Investment Adviser (Proprietor Mr. Rajesh Singh Rathore)</b>	<b>INA000003197 PAN No.AHPPR9284D</b>

**BACKGROUND**

1. Bonaz Capital Investment Adviser, having Rajesh Singh Rathore as its Proprietor, (**'Noticee'**) is registered with Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) as an investment adviser (hereinafter referred to as **'IA'**) having SEBI registration number INA000003197. The registered office of the Noticee is 43-A, Abhinandan Nagar, Indore, Madhya Pradesh-452010.
2. SEBI conducted an inspection of the books of accounts, records and other documents pertaining to registration of the Noticee as an IA, to verify whether the books of accounts, records and other documents were being maintained in the manner specified by the provisions of the Securities and Exchange Board of India Act, 1992 (**'SEBI Act'**), Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (**'IA Regulations'**), circulars made thereunder and whether adequate steps for redressal of grievances of the investors were being taken and the conditions of registration were complied with.

3. During the course of inspection, documents/information pertaining to KYC, risk profiling, change in risk profiling, product list, client master, invoices, SMS logs, employees list, compliance audit report, NISM Certifications, website viz., [www. bonazcapital.com](http://www.bonazcapital.com) and documents/information provided by the complainants on SCORES (SEBI Complaints Redress System), etc., were examined and following irregularities were inter-alia observed:-
- a. Website of the Noticee i.e. [www. bonazcapital.com](http://www.bonazcapital.com) contained statement which was in the nature of promising assured profit/unrealistic return to the clients to induce investors/clients on pretext of high returns and profit assurance;
  - b. The Noticee employed total of 467 employees, out of which 423 were employed in the sales department and 2 were employed in the research department. Out of 423 employees, 28 were qualified till higher secondary, whereas, no details about the NISM qualification of the employees were provided by the Noticee. Employees of the Noticee engaged in the sales department were providing advisory services without possessing requisite qualification or certifications;
  - c. The Noticee failed to comply with stipulated timeline for redressal of investors grievances and filing of Action Taken Report (ATR) as specified under SEBI circular no. CIR/OIAE/2014 dated December 18, 2014;
  - d. Questions in the Risk Profile Questionnaire of the Noticee were leading questions, vague, ambiguous and misleading. The Noticee made trading preference a part of risk profile instead of advising clients based on the outcome of their risk profiling. Risk profiling was done telephonically but the Noticee has not kept any record of the same. The Noticee charged advisory fees prior to risk profiling and KYC process of clients.

- e. The Noticee categorized all clients i.e. senior citizens or pensioners or too young or whose income levels were low in high risk category and offered high risk products to low risk clients. The Noticee failed to assess suitability of the clients based on their income and charged advisory fees which was multiple times to the annual income of clients. Within a short span of time, risky products were offered to clients' multiple times even though the earlier service had not been fully served/completed.
  - f. The Noticee failed to disclose details and risks regarding investment advisory products to clients.
  - g. The Noticee failed to maintain the necessary records.
  - h. Website of the Noticee i.e. [www.bonazcapital.com](http://www.bonazcapital.com) featured various fake testimonials under the banner of "what people say".
  - i. Website of the Noticee was inactive, thus, the Noticee failed to display status of complaints on its website. Subsequently, when the website became active, incorrect status of complaints was displayed.
4. Accordingly, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") and appointed a Designated Authority ("DA") to enquire into and recommend whether the alleged violations by the Noticee warranted cancellation or suspension of the certificate of registration granted by SEBI or any other action provided in Chapter V of the Intermediaries Regulations.
5. On completion of the proceedings, the DA submitted a report dated June 30, 2022 ("**DA's Report**") recommending that certificate of the registration (registration number INA00003197) granted by SEBI to the Noticee be suspended for a period of 3 months. Pursuant to this, a post enquiry SCN dated July 27, 2022 ("**SCN-II**") was issued to the Noticee, under Regulation

27 (1) of Intermediaries Regulations, to show cause as to why action, as recommended by the DA or any other penalty in terms of Regulation 27 of Intermediaries Regulations, should not be taken and/or imposed against the Noticee. A copy of the DA's Report was also forwarded to the Noticee along with an advice to file reply, if any, within 21 days from the date of receipt of the notice. The Noticee vide reply email dated September 05, 2022 submitted that it has already filed detailed reply in its previous submissions to AO and requested exemption from filing reply to SCN-II.

6. It is noted that the Noticee has submitted a detailed reply dated February 22, 2022 in response to pre-enquiry SCN dated November 16, 2021 ("**SCN-I**"). It appears that the Noticee in its aforesaid email dated September 05, 2022 is referring to its reply dated February 22, 2022. Further, as the DA had not recommended cancellation of the certificate of registration of the Noticee and in my *prima facie* view too, the case did not merit cancellation, a personal hearing was dispensed with, in terms of Regulation 27(4) of the Intermediaries Regulations, 2008. The submissions of the Noticee, *inter-alia*, are given below:-

- a. The information published on the website is a marketing gimmick. The features mentioned on the website for each product are for information purpose. The welcome mail given to each client mentioned that we do not provide any profit warranty or guarantee in any way.
- b. Most of its employees were involved in sales department and their objective was on boarding the customer and sales. All advices were given by the Research team members via SMS and were adequately qualified.
- c. Processes such as Risk Profiling, Suitability Assessment, etc., involved software and tools, to limit human intervention and based on the response of the client, the system developed by the Respondent provided accurate risk profiling and suitability assessment.

- d. At organization level there are several functions, which are not directly related to provision of advisory services. It will be against spirit of law if scope of Regulation 7(2) is expanded across all functions.
- e. As per circular dated December 18, 2014, immediate action must be taken by the intermediary to resolve the complaint within 30 days and an Action Taken Report under SCORES must be filed within 30 days, failure of which may be deemed to constitute non-redressal of investor grievance. What is essential is taking cognizance of the matter at hand and filing of the ATR within 30 days and resolution of complaint may take more time due to gathering of information and understanding the issue at hand and arriving at an amicable solution. The Noticee had sought clarification from the client on the same day when the complaint was received by them. The Noticee took immediate cognizance of the matter. The Noticee sought information from the complainant 13 times which he failed to provide. Clause no. 12 of SEBI Circular CIR/OIAE/2014 dated December 18, 2014, mentioned "*12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES.*" Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.
- f. It had developed a system-based Risk Profiling procedure, which involved a questionnaire with several questions having responses carrying equal weightages to assess the ability and willingness of the investor to take risk while investing in securities market.
- g. All risk profiles were made on or before signing date of the client and payment date. The date however, noted as date of creation of risk profile management in SCN-I was merely the date of download of document on the computer system. Any file downloaded to the computer system from email had the date impression same as the date

of download onto that system, therefore, such analysis was not technically correct.

- h. While assessing the risk profiling of a client, the role of the Noticee as an investment adviser was not only assessing the ability of the client to bear the risk but also to assess his willingness to bear the risk. The risk profiling questionnaire based on which risk profile was assessed, consisted of various questions measuring the ability and willingness of a client to absorb risk associated with the securities market. The questions in the questionnaire consisted of response carrying equal weights. Every client answers each and every question by filling in the risk profile form sent to him, and based on the responses of the client a cumulative total score is obtained, which in turn categorizes the client in his appropriate risk profile category. The risk profiling process therefore, does not rely on just one or two factors but on multiple factors addressing both the ability and his willingness of the client to take a risk.
- i. Risk profiling questionnaire was completely redesigned after the inspection of records was conducted by SEBI in November 2017, based on the recommendations of SEBI.
- j. It was an unrealistic expectation that the Noticee was to verify each and every information provided by the client during onboarding process, including information provided in the Risk Profile Form. Every client was assumed to have bonafide intention while onboarding to the services of the Noticee, and it was the duty of client to provide true and fair information. The Noticee as an Investment Adviser was not mandated in the IA Regulations to verify information provided by the client in the Risk Profiling Form. It was assumed that the client was providing true and fair information and therefore no need arises to verify documents. On the contrary, if any client was providing false

information then, the onus of any loss occurring to him should solely be on him and not on the Investment Adviser.

- k. Suitability assessment is the end goal of Risk Assessment. The Noticee had taken conscious decisions to give services deemed fit for the clients based on their risk profiling. The questionnaire in the Risk Profile includes some questions whose responses were quantifiable, while others were not quantifiable. The Noticee had considered other non-quantifiable factors also such as willingness to absorb losses or to choose one asset type over the other, to arrive to a conclusion as to whether a particular investment product is suitable to the client or not. No unsuitable services were sold to any client which were in conflict to the risk profiling of the client and therefore, the said allegations cannot stand.
- l. Prior to the Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations 2020, came into force, there was no restriction on amount of subscription fee to be collected or products to be offered. In the absence of any regulation, multiple subscriptions were offered to the clients. All subscriptions were sold through online mode and at arm's length. None of the subscriptions sold to the clients are under duress and all the clients who subscribed multiple subscriptions had their own free will.
- m. Regulation 19(1) does not mandate to preserve recordings of client communication and hence the recording are not preserved and provided to SEBI.
- n. The testimonials posted on the website were genuine. The Noticee has relied on observations made by the Hon'ble Whole Time Member in paragraph 34 of the Final Order No. WTM/AB/WRO/14833/2021-22 dated February 8, 2022, in matter pertaining to a registered Investment Advisory, M/S GRS Solution (Prop.: Niles Vispute), where in interim

order cum SCN, the Noticee was alleged to have violated provisions of IA Regulations and PFUTP Regulations, the Hon'ble Whole Time Member observed that: *"I note from the Order-cum-SCN that the Noticee, by indulging in the abovementioned violations of the provisions of the IA Regulations, 2013, and by submitting forged and fabricated documents to SEBI had also allegedly violated the provisions of Section 12A(a), (b) & (c) of the SEBI Act, 1992 and Regulations 3(a), (b) & c), 4 (1) and 4 (a)(k), (o) & (S) of the PFUTP Regulations, 2003. However, since it appears to me that the acts of the Noticee were aimed at concealing the various violations under the IA Regulations, 2013 from SEBI rather than defrauding the investors, as required under the PFUTP Regulations, 2003, the abovementioned allegations of violations of provisions of the SEBI Act, 1992 and the PFUTP Regulations, 2003, do not sustain."*

- o. In the matter of Capital Via Limited, the Hon'ble Whole Time Member, in Order No. WTM/GM/IMD/08/JAN/2017 dated January 20, 2017 observed that the Noticee was not charged with violations of PFUTP Regulations. Whereas, in the instant case, the Noticee was alleged to have violated provisions of PFUTP Regulations, which would be against the principles of equality in justice.
- p. The acts of the Noticee during the course of business has been bonafide and there was no intention to defraud clients. The fact that it had resolved 126 of the 128 complaints indicate that it had put adequate efforts to resolve the investor complaints. The lapses observed if any were merely procedural in nature which might have occurred in routine while providing advisory services to its client and not fraudulent and unfair in nature.
- q. The error in status of complaints on its website was clerical error. It had served several thousand clients over the years. Most of its clients have been able to achieve their desired goals while taking advice, compared



to 128 complaints received on SCORES. Only two complaints remained unresolved, one of which was pending with the client for seeking response from the complainant.

7. I have considered the Report submitted by the DA, the allegations in SCN- I and II issued to the Noticee, written submissions dated February 22, 2022 and other material available on record.
8. The scope of the present proceedings before me is restricted to the enquiry initiated against the Noticee under Chapter V of the Intermediaries Regulations to determine whether the following alleged violations by the Noticee warrants cancellation or suspension of the certificate of registration granted by SEBI or any other action provided under Regulation 23 of the Intermediaries Regulation:
9. The irregularities observed during the course of inspection, as stated above, are alleged to be in violation of following provisions: -
  - a. Section 12A(a), (b), (c) of the SEBI Act;
  - b. Regulation 3(a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of the SEBI(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**“PFUTP Regulations”**);
  - c. Regulation 7(1), 7(2), 15(1), 15(13), 16(b)(iii) and 16(d)(i), 16d(ii), 16(e), 17(a), 17 (b), 17 (c), 17 (d), 17 (e), 18(6), 19(1)(e) and 19(1)(f), 19(2), 21 of the IA Regulations and clause 1, 2, 3,4, 6 and 8 of the Code of Conduct as specified under Third Schedule read with Regulation 15(9) of the IA Regulations;
  - d. Circular no. CIR/OIAE/2014 dated December 18, 2014 read with Regulation 21(1) of the IA Regulations;
  - e. Circular no. SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019.
10. Before moving forward, it will be appropriate to refer to the relevant provisions of the Intermediaries Regulations and the SEBI circulars alleged to have been violated by the Noticee:

## **Provisions of the SEBI Act**

**“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;”*

## **Provisions of PFUTP Regulations**

### **“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**

.....

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

.....

(k) *disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;*

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

*Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—*

(i) *knowingly making a false or misleading statement, or*

(ii) *knowingly concealing or omitting material facts, or*

(iii) *knowingly concealing the associated risk, or*

(iv) *not taking reasonable care to ensure suitability of the securities or service to the buyer};”*

#### **Provisions of IARegulations**

#### **Qualification and certification requirement.**

7(1) *An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:*

*(a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or*

*(b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.*

- (2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering 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 India or any recognized stock exchange in India provided that such certification is accredited by NISM:*

*Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:*

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

**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.*

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

.....  
(13) It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.

**Risk profiling.**

16. Investment adviser shall ensure that,-

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

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

.....  
(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;

**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;*
- (c) *It understands the nature and risks of products or assets selected for clients;*
- (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.*

***Disclosures to clients.***

18.(1)*An investment adviser shall .....*

- (6) *An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the product or securities, particularly, performance track record.*

*.....*

**Maintenance of records.**

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

*(e)Investment advice provided, whether written or oral;*

*(f)Rationale for arriving at investment advice, duly signed and dated;*

*(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:*

*Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.*

**Redressal of client grievances.**

21.(1) *An investment adviser shall redress client grievances promptly.*

*(2)An investment adviser shall have adequate procedure for expeditious grievance redressal.*

*(3)Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.*

*(4)Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.*

.....

**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.*

### **3.Capabilities**

*An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.*

### **4.Information about clients**

*An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information*

### **6.Fair and reasonable charges**

*An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

### **8.Compliance**

*An investment adviser including its 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.*



**Circular no. CIR/OIAE/2014 dated December 18, 2014**

9. *All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.*

10. *The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company/SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company/SEBI registered intermediary, for future reference.*

12. *A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.*

**Circular no. SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019.**

1. *Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) provides for code of conduct to be followed by IAs. In order to further strengthen the conduct of IAs, while providing investment advice and to protect the interest of investors seeking their advice, the IAs shall comply with the following:*

(i)Restriction on free trial

*As per SEBI (Investment Advisers) Regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products/services to prospective clients. Further, IAs shall not accept part payments (where some part of the fee is paid in advance) for any product/service.*

(ii)Proper risk profiling and consent of client on risk profiling

*Risk profiling of the client is essential to provide advice on suitable product based on various criteria like income, age, securities market experience etc. RIAs shall provide investment advice only after completing the following steps:*

- a. Complete the risk profile of the client based on information provided by the client.*
- b. Obtain consent of the client on completed risk profile either through registered email or physical document.*

(iii)Receiving fees through banking channel only

*It is observed that investment advisers are receiving advisory fee in the form of cash deposit in their bank accounts or through payment gateways which does not provide proper audit trail of fees received from the clients. To bring transparency in dealing with the clients, IAs shall accept fees strictly by account payee crossed cheques/demand draft or by way of direct credit into their bank account through NEFT/ RTGS/IMPS/UPI. It is clarified that, IAs shall not accept cash deposits.*

(iv) Display of complaints status on website

*In order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, IAs shall display the following information on the homepage (without scrolling) of their website/mobile app. The information should be displayed properly using font size of 12 or above and made available on monthly basis (within 7 days of end of the previous month):*

Number of complaints				
At the beginning of the month	Received during the month	Resolved during the month	Pending at the end of the month	Reasons for pendency

## CONSIDERATION

**Promising assured profit/unrealistic returns to its clients:**

11. In this regard, SCN-I has alleged that the website of the Noticee i.e. (www.bonazcapital.com) made a statement, which was in the nature of promising assured profit/unrealistic returns to the clients, to induce investors/clients on the pretext of high returns and profit assurance, despite the Noticee being fully aware that all the investments in securities market are subject to market risk. The analysis of complaints filed against the Noticee and the call recordings submitted by the complainants revealed that various complaints were in the nature of alleging profit guarantee by the Noticee. In view thereof, it was alleged that the Noticee violated Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act. Further, it was alleged that the Noticee violated Regulations 15(1) of the IA Regulations and Clause 1 of the Code of Conduct specified under Third Schedule read with Regulation 15 (9) of the IA Regulations.

12. In this regard, the Noticee has submitted that information published on its website was a marketing gimmick. The features of the products on website

were only for the information purpose. Welcome email sent by the Noticee to the client clarified that the Noticee had not provided any profit warranty or guarantee to customers and past performance was not an indicator of future returns. Call recordings submitted by Nimesh Bhosle and Dinesh Kumar Mishra were unverified and unauthenticated.

13. I note that the Noticee has not disputed contents of website. The defence put forth by the Noticee is that contents on its website were a marketing gimmick.

The contents alleged against the Noticee reads as follows:-

*“PREMIUM STOCK CASH: Premium Stock Cash service is essentially designed for a unique set of clients, those who want to earn a good profit in the cash market. Minimum stop loss with high target call will be given to our clients. Accuracy of calls is based on intraday calls. It was a chance for traders to earn huge profits because two big targets and one stop loss will be given in one single call.....*

*“Stock Option: This one is considered as most reliable services of our firm. Service provided with tips on call put and put option that is another way to lock profits, reduce overall profit risk, and additional income streams. Again, technical and economical indicators are of higher concerns.”*

14. I find that call recordings have been disputed by the Noticee. Details as to the name of employee or any evidence connecting alleged employee of the Noticee with the Noticee is not available on record. I find that call recordings submitted by the complainant i.e. Nimesh Bhosle and Dinesh Kumar Mishra were not annexed as annexure to SCN-I so as to provide opportunity to the Noticee to admit or deny authenticity of the call records. In view thereof, I find that sufficient evidence is not available on record to decide conclusively whether call recordings alleged against the Noticee pertains to employee of the Noticee or not.

15. From perusal of the contents of the website, I find that it indicates that availing of premium stock cash services or stock option service is claimed to be a way to earn profit. However, no other evidence is available in support of the

allegation that clients were indeed induced by the same or that the clients subscribed to such services shown on the websites, that were owned and operated by the Noticee. I note that the welcome email, for instance email dated 07.09.2019 sent to Atul Pathak, of the Noticee mentioned that the Noticee do not provide any profit warranty or guarantee in any product/service offered to the customers. Further, the email dated 07.09.2019 reads *“You understand and acknowledge that there is high degree of risk involved in trading securities”*. Though I find that promising assured profit in securities market is misleading the public and is to be avoided by an IA. However, in the present case, I am not in a position to give any adverse finding on this account for want of any concrete evidence on record as to whether clients were indeed induced by the same or that the clients subscribed to such services shown on the websites. After looking at the facts in the present case in its entirety, I do not find the allegation that the Noticee had violated the provisions of Regulation 3(a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of the PFUTP Regulations, by publishing on its website about assured profits/unrealistic returns, to be substantiated. Accordingly, allegation of violation of Regulation 15(1) and 15(9) of the IA Regulations read with Clause 1 of the Code of Conduct specified under Third Schedule of the IA Regulations may not lie against the Noticee.

### **Compliance with the qualification requirement**

16. In this regard, it is alleged that employees of the Noticee engaged in the sales department were providing investment advisory services without possessing requisite qualifications or certifications, thereby the Noticee violated Regulation 7, 15(9), 15(13), clause 1, 2, 3 and 8 of the Code of Conduct specified under Third Schedule to the IA Regulations.
17. The Noticee has submitted that most of its employees were involved in sales department, however, they were not involved in providing investment advice. All advices were given by the Research Team members who were adequately qualified.

18. I note that the Noticee had employed 467 employees, out of which, 423 were employed in the sales department and 2 were employed in the research department. Out of 423 employees, 28 were qualified till higher secondary, whereas no details about the NISM qualifications of the employees were provided by the Noticee. It is not a plausible explanation that only 2 employees in research department were handling entire operation of investment advice and 432 employees were involved in sales only. Even for 2 employees, claimed by the Noticee to be employed in research department and providing investment advice, the Noticee has failed to provide document to prove that they possessed the requisite qualification stipulated under Regulation 7 of the IA Regulations. I note that Regulation 7 provides that an individual investment adviser or the principal officer of a non-individual investment adviser, along with 'persons associated with Investment Advice' shall have a certificate on financial planning or fund or assets or portfolio management or investment advisory services from NISM or any other organization or institution, including FPSB or any recognized stock exchange, subject to NISM accreditation. Such certifications have stipulated validity period and before expiry of the same, fresh certification is mandated to ensure continuity. In absence of proof of qualification, I find that the Noticee has made mere bald assertion that its employees were adequately qualified. I find that the Noticee failed to ensure compliance with the certification and qualification requirements specified under Regulation 7 of the IA Regulations. Failure of the Noticee to ensure compliance with stipulated certification and qualification is reflective of lack of diligence and due care on part of the Noticee in performance of its role as an investment adviser. I note that Regulation 15(13) emphasizes that the Investment Adviser shall be responsible to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times. In view thereof, I agree with the findings of the DA that the Noticee violated Regulation 7, 15(9), 15(13), Clause 1, 2, 3 and 8 of the Code of Conduct specified under the Third Schedule to the IA Regulations.

### **Non Redressal of SCORES complaints**

19. In this regard, it is alleged that, as on December 18, 2020, one complaint against the Noticee was pending on SCORES portal for more than one year. In response to this allegation, the Noticee has submitted that one complaint of Dinesh Kumar Mishra was received by it on December 03, 2019. On receiving the complaint, the Noticee sought clarification from complainant on the same day. However, the complainant kept on providing incomplete information. Further, it is submitted that the circular dated December 18, 2014 provided for immediate action to resolve the complaint within thirty days and filing of ATR on SCORES platform within thirty days. The resolution of the complaint might take more time due to gathering of information and understanding of the issue at hand and finally arriving at amicable solution.
20. I note that Regulation 21 of the IA Regulation, inter-alia, provides that an investment adviser shall redress client grievances promptly. SEBI has issued circular dated December 18, 2014 governing redressal of investor grievances through SCORES. Clause 9 of the said circular provides that SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon. Clause 10 of the said circular provides that SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. The proof of dispatch of the reply of SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by SEBI registered intermediary, for future reference. Further, Clause 11 of the said circular provides that action taken by SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.
21. I note that the purpose of SCORES is to provide a platform for aggrieved investors, whose grievances, pertaining to securities market, remain

unresolved by the concerned registered intermediary after a direct approach. SCORES also provides a platform, overseen by SEBI, through which the investors can approach the concerned SEBI registered intermediary in an endeavor towards speedy redressal of grievances of investors in the securities market. Action history submitted by the Noticee shows that the complainant vide response dated December 25, 2019 requested the Noticee to send requirement on mail as the complainant was unable to upload all files through SCORES. On February 2, 2020, the complainant submitted a reminder and mentioned that his issue was not resolved. Subsequently, the complainant had to resort to multiple reminders and request SEBI for intervention but his complaint on SCORES remained pending. I note that the Noticee had the contact details of the complainant as he was the client of the Noticee. However, the Noticee failed to contact and resolve the complaint. In view thereof, Noticee's submission that documents provided by the complainant were inadequate and the Noticee requested for complete documents cannot be accepted. I note that mere seeking of documents without taking any effort to contact the Noticee or to resolve the complaint cannot be treated as an "immediate effort" for resolution of complaint. I note that compliance audit report dated 15.10.2020 mentioned that "complaints pending on SCORES are not resolved within 30 days." Although, ATR in maximum cases has been filed within required timeframe but the complaints were pending for more than 30 days." In view of the above, I agree with the findings of the DA that the Noticee violated Regulation 21 of the IA Regulations and SEBI circular dated December 18, 2014.

### **Improper Risk Profiling of Clients and Sale of Inappropriate Products.**

22. In this regard, it is alleged that the Noticee failed to do proper risk profiling of clients as risk profile of D Sadasivan Nair was neither signed nor dated. Further, in the case of D Sadasivan Nair, Parivesh Dhakad, Dinesh Kumar Mishra and Atul Kumar Pathak, payment for advisory fees was taken prior to risk profiling. In the case of Tapan Kumar Mishra, Anil Garg, Saurabh S.O.



Shiva, Vineet Kumar and Ashif, date of signature on risk profile and date of payment are same. All sample clients viz., Parmeshwari Sharma, Anil Garg, D. Sadasivan Nair, Jegar Hussain Qureshi and Parivesh, who were either senior citizen or too young, had been assigned high risk category clients. Without any supporting document, the Noticee has shown clients of 18 years of age as doing business or employed under an establishment. Despite the fact that income level of some of the clients were below 2 lakh, they have been categorized as falling in high risk. The representatives of the Noticee sought response from the clients telephonically for each question and dictated the clients to complete questionnaire of risk profiling. The trading preference, which should be an outcome of the risk profiling of the client, has been made one of the question of risk profiling questionnaire. The question of trading preference contained 4 options i.e. Intra day, Short term, Long term and Arbitrage with weightage of 4, 3, 2 and 1 respectively. Mostly all 3 options i.e. Intra-day, Short term, Long term have been ticked and weightage score of 9 (i.e. 4 + 3 +2) has been taken by the Noticee to compute total risk score. Further, risk profiling questionnaire of the Noticee contained questions which were leading, vague, ambiguous and misleading. It was therefore alleged that the Noticee violated Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act and Regulation 15(1), 15(9) of the IA Regulations read with clause 1, 2 and 6 of the Code of Conduct specified under Third Schedule of the IA Regulations. Further, it is alleged the Noticee violated Regulation 16(b) (iii), 16(d)(i), 16(d)(ii) and 16(e) of the IA Regulations relating to risk profiling.

23. In this regard, it is also alleged that the Noticee sold high risk products to both senior citizens and young age clients, thereby, the Noticee failed to provide investment advice which is appropriate to the risk profile of the client. It is alleged that the Noticee violated Regulation 17 of the IA Regulations. Sample of such clients is as follows:-

**Table No.-1**

S.N o.	Client name	Age	Risk score	Risk category	Income Level (Rs.)	No. of times advisory services/products sold	Services/products sold	Total fees charged (in Rs.)
(a)	Parmeshwari Sharma	70 yrs	43	High	Below 2 lakhs	7	Stock Cash and Stock Option	21,000
(b)	Anil Garg	61 yrs	42	High	Below 2 lakhs	17	Stock option, Cash premium, Cash platinum, Stock cash, Nifty option, Platinum future, and Option platinum	3,65,622
(c)	D Sadasivan Nair	Above 60 yrs	48	High	2 to 5 Lakhs	23	Stock cash, Stock future circuit call, Option, Platinam future, Option platinum, BTST and STBT calls and Option premium	7,02,601
(d)	Eegar Hussain	18 yrs	46	High	Below 2	2	Stock option	2,900

	Qureshi				lakhs			
(e)	Parivesh Dhakad	18 yrs	46	High	Below 2 lakhs	6	Stock and Cash and Stock Option	30,010

24. In this regard, the Noticee has submitted that all risk profiles were made on or before signing date of the client and payment date. The date noted as date of RPM is date of download of document on the computer system. The risk profiling process involves a questionnaire having several questions and responses carrying equal weightages to assess ability and willingness of the investor to take risk while investing in securities market. Based on response of the client to questions in the questionnaire cumulative total score is obtained which in turn categorizes the client in his appropriate risk profile category. Under the IA Regulations, the Noticee is not mandated to verify information provided by the client in the risk profiling form. It is assumed that client is providing true and fair information, therefore, no need arises to verify documents. If client is providing false information then onus of any loss occurring to him should solely be on him and not on the Noticee. All risk profiles were done at an arm's length and responses were obtained by the client themselves.

25. The Noticee has submitted that other non-quantifiable factors such as willingness to absorb losses or to choose one asset type over the other have been considered to arrive at conclusion as to whether a particular investment product is suitable to the client or not.

26. With regard to allegation of acceptance of advisory fees prior to risk profiling, I note that the Noticee has not specifically denied charging of fees prior to risk profiling. The Noticee has not denied the allegation that risk profile in case of D Sadasivan Nair was neither signed nor dated. In most of the sample cases cited in SCN-I, the date of signature and date of payment is the same. It appears that numerous clients have signed the risk profile as well and made the payment on the same date. I note that Annexure 1(b) of the Noticee's

reply is an email sent by Bonaz Capital welcoming the recipient [dinesh.mishra1@yahoo.co.in](mailto:dinesh.mishra1@yahoo.co.in) attaching therewith the RAF in pdf. The contents of the email shows that “*Your payment received to us for Advisory services. To activate your service you have to complete KYC and Risk-profiling process*”. This shows that payment was in fact received prior to KYC and risk profiling of the clients. I note that the Noticee has not provided any document to prove that clients who were of age of 18 years were employed/doing their business. In this regard, the Noticee has submitted that responses of the clients were presumed to be correct without verifying the response. It shows that the Noticee has not done any due diligence on its part to assess willingness and ability of the client to bear risk. An investment adviser, has a duty to obtain necessary information from the client for the purpose of giving suitable investment advice. He is expected to know his client’s profile properly and periodical updation needs to be done on the basis of information given by the clients. The intention of the IA Regulations in spelling out the minutest details to be considered while doing the risk profiling of a client itself shows that risk profiling cannot be done as a perfunctory exercise; but it has to be a conscious assessment of the level of risk a client can actually take upon himself before taking the IA’s investment advice. I find that as an investment adviser, the Noticee failed in its duty to act fairly and exercise due skill, care and diligence in the best interest of the clients.

27. From the manner in which risk profiling has been done by the Noticee, I note that the Noticee has assessed the willingness of the client to take risk as opposed to the ability of the client to bear the risk. Consequently, both youngsters of age of 18 years and senior citizens have been categorized as high risk, as seen in Table 1 above. It appears that the Noticee has devised a strategy whereby most of the clients have been categorized as high risk so that they can avail high risk products. I find that such mechanism has been adopted deliberately by the Noticee so that more number of products of high risk products can be sold to the clients to generate high amount of advisory fees. I find that the Noticee has not assessed ability of the clients to take risk. In view thereof, I find that the Noticee has failed to have a process for

assessing the risk a client is willing and able to take, and thereby, the Noticee has violated Regulation 16(b)(iii) of the IA Regulations.

28. From questions in the risk profiling questionnaire, I note that question no. 7i.e. investment/trading contain 4 options i.e. intraday, short term, long term and arbitrage which contain weightage of 4, 3, 2 and 1 respectively. The clients can fill all 3 option which will give score of 9 (i.e. 4+3+2), which is sufficient enough to tilt the overall score in favour of high risk. Thus, I find that equal weightage has not been given to all questions rather inappropriate weight has been assigned to the question no.17 so that most of the clients can be categorized in high risk and offered high risk products. I note that question no.13 reads *"When market is volatile, would you like to invest in more risky investment instead of less risky investment to earn high return"* and question no.14 reads *"High risk is associated with high return, medium risk is associated with medium return and low risk is associated with low return"*. I find that question no.13 is misleading in nature. I find that expression "High risk is associated with high return" would inevitably lead the client to respond that he can bear high risk as it is associated with high return. I find that question no.13 is misleading and question no.14 is again a leading question as it directs the client to adopt high risk as it is associated with high return. In view of the above, I find that the Noticee has violated Regulation 16(d)(i) and 16(d)(ii) of the IA Regulations.

29. With regard to the allegation that the Noticee had not maintained record of communications with clients related to risk profiling and rendering of investment advice, the Noticee has not furnished any justification or explanation.

30. I find from the welcome email of the Noticee that risk profile of the client is communicated to the client after risk assessment is done. In view thereof, I find that the Noticee has not violated Regulation 16(e) of the IA Regulation.

31. I note that the Noticee adopted the strategy of categorizing even low risk clients as high risk to generate high advisory fees. The Noticee further failed to do proper risk profiling and assigned undue weightage to certain questions in the questionnaire and thereby has failed to act honestly, fairly and in interest of client. Further, I find that the Noticee has failed to exercise due skill, care and diligence in assessing ability and willingness of the client to take risk. Further, I find that the Noticee has charged unreasonable advisory fees by offering high risk products to clients on basis of faulty and improper risk profiling. In view thereof, I find that the Noticee has violated Regulation 15(1), 15(9) read with clause 1, 2 and 6 of the code of conduct specified in Third Schedule of the IA Regulations.
32. In view of the above findings, I note that the Noticee has failed to do proper risk profiling of clients. Consequently, the Noticee has failed to provide investment advice appropriate to suit the risk profile of the client. The Noticee has sold risky products to both senior citizens and young people around the age of 18 years with low income. Thus, I find that the Noticee has violated Regulation 17 of the IA Regulations.
33. I note that the Noticee has been alleged to have violated Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations, read with Sections 12A(a), (b) and (c) of the SEBI Act for not obtaining documentary evidence for risk assessment of clients, not keeping telephonic records relating to risk profiling of clients and for forcing the clients to sign the risk profile forms with a back date so as to make it appear that the risk profile assessment was done prior to accepting the advisory fees. In this regard, I note that the aforesaid allegations by themselves cannot constitute 'fraud' for the purposes of the PFUTP Regulations, unless supported by evidence. As regards the failure to do proper risk profiling and not maintaining records relating to clients' risk profile activity, I have already found the Noticee liable under the relevant provisions of the IA Regulations. I note that IA should have been more careful and diligent in doing risk profiling of the clients. In view of material on record, I find that allegation of violation of Regulation 3(a), (b), (c) and (d) of the PFUTP

Regulations read with Section 12A(a), (b) and (c) of the SEBI Act against the Noticee is not substantiated.

**Selling Multiple Services and collecting unreasonably high advisory fees/service charges**

34. In this regard, it is alleged that the Noticee had sold multiple products i.e. Stock Cash, Stock Future Circuit Call, Option Platinum, etc., to D Sadasivan Nair during the month June-October 2019 even though old service had not been fully served/completed. Tabular summary of advisory fee charged by the Noticee from D Sadasivan is as follows:

**Table No. 2**

s. no.	Date Of Payment	Advisory Services/ products	Start Date of Service	End Date of Service	Fees collected from the client (in Rs.)
1.	15-Jun-19	STOCK CASH	19-Jun-19	01-Jul-19	3540
2.	18-Jun-19	STOCK CASH	02-Jul-19	23-Aug-19	13570
3.	19-Jun-19	Stock Future Circuit Call	24-Jun-19	27-Jun-19	30000
4.	21-Jun-19	Stock Future Circuit Call	28-Jun-19	05-Jul-19	19824
5.	25-Jun-19	Stock Future Circuit Call	08-Jul-19	01-Aug-19	30090
6.	26-Jun-19	Stock Future Circuit Call	02-Aug-19	23-Aug-19	48380
7.	27-Jun-19	Stock Future Circuit Call	23-Sep-19	22-Nov-19	135000
8.	27-Jun-19	Stock Future Circuit Call	26-Aug-19	20-Sep-19	48970
9.	28-Jun-19	OPTION	01-Jul-19	27-Dec-19	34998
10.	28-Jun-19	OPTION	30-Dec-19	21-Feb-20	14986
11.	29-Jun-19	OPTION	02-Jul-19	05-Jul-19	39884

		PLATINAM			
12.	29-Jun-19	PLATINAM FUTURE	02- Jul-19	15-Jul-19	10009
13.	30-Jun-19	OPTION PLATINAM	07-Aug-19	23-Aug-19	37996
14.	30-Jun-19	OPTION PLATINAM	08-Jul-19	06-Aug-19	11800
15.	08-Jul-19	OPTION PLATINAM	26-Aug-19	13-Sep-19	39990
16.	10-Jul-19	BTST And STBT Calls	15-Jul-19	22-Jul-19	6018
17.	16-July	BTST And STBT Calls	23-Jul-19	10-Sep-19	49914
18.	16-Jul-19	BTST And STBT Calls	11 -Sep- 19	16-Oct-19	32556
19.	06-Aug-19	BTST& STBT CALLS	17-Oct-19	08-Nov-19	21830
20.	09-Aug-19	OPTION PLATINUM	16-Sep-19	23-Sep-19	10030
21.	10-Aug-19	OPTION PLATINUM	24-Sep-19	14-Oct-19	42229
22.	05-Oct-19	Option	24-Feb-20	02-Mar-20	2478
23.	24-Oct-19	OPTION PREMIUM	05-Nov-19	29-Nov-19	18509
Total					7,02,601

35. Tabular Summary of fees collected by the Noticee from Vineet Kumar is as follows:-

**Table No. 3**

<b>S.No.</b>	<b>Date Of Payment</b>	<b>Advisory Service/ products</b>	<b>Start Date of Service</b>	<b>End Date of Service</b>	<b>Fees collected from the client in</b>
1.	28-Jun-	CASH	04-Jul-19	12-Ju1-19	3,540



	19	PREMIUM			
2.	29-Jun-19	OPTION PREMIUM	04-Jul-19	16-Au -19	30,090
3.	2-Jul-19	OPTION PREMIUM	19-Aug -19	04-Oct-19	37,760
4.	5-Ju1-19	OPTION PREMIUM	07-Oct-19	20-Nov-19	295,00
5.	7-Ju1-19	STOCK CASH CIRCUIT CALL	15-Ju1-19	11-Nov-19	105551
6.	8-Jul-19	STOCK CASH CIRCUIT CALL	15-Ju1-19	11-Nov-19	17,820
7.	8-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	17,820
8.	9-Ju1-19	STOCK CASH CIRCUIT CALL	15-Ju1-19	11-Nov-19	208000
9.	10-Jul-19	STOCK CASH CIRCUIT CALL	15-Ju1-19	11-Nov-19	100000
10.	11-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	102000
11.	12-Jul-19	STOCK CASH CIRCUIT CALL	12-Nov-19	18-Nov-19	29,000
12.	27-Jul-19	STOCK CASH CIRCUIT CALL	19-Nov-19	22-Nov-19	12,500
13.	29-Ju1-19	STOCK CASH CIRCUIT CALL	25-Nov-19	29-Nov-19	12,500
14.	19-Aug-19	STOCK CASH CIRCUIT CALL	02-Dec-19	09-Dec-19	25,000
15.	19-Aug-19	STOCK CASH CIRCUIT CALL	10-Dec-19	17-Dec-19	25,000
16.	3-Nov-19	BULLION COMBO	11-Nov-19	26-Nov-19	7,000
17.	4-Nov-19	BULLION	27-Nov-	08-May-20	53,000

		COMBO	19		
18.	14-Nov-19	MCX	20-Nov-19	20-Dec-19	33,040
19.	14-Nov-19	BULLION COMBO	11-May - 20	31-Jul-20	33,040
20.	14-Nov-19	BULLION corvB0	03-Aug - 20	16-Oct-20	33,920
21.	28-Nov-19	BULLION COMBO	17-Aug-20	10-sep -20	5,000
22.	28-Nov-19	BULLION COMBO	17-Aug - 20	10-Sep - 20	5,000
23.	30-Nov-19	BULLION COMBO	11-sep - 20	30-sep -20	8,000
	Total				<b>9,34,081</b>

It was alleged that same service for same duration was like giving same investment advice to the same client for same duration multiple times, which was of no use to the client. The above activity of the Noticee prima facie indicates that the Noticee had allegedly defrauded the client by charging advisory fees multiple times by selling the same product.

36. Similarly, in the case of Lokeshwar Bag, the Noticee sold new service before the completion of the earlier service. Tabular summary of advisory fees charged from Lokeshwar Bag is as follows:-

**Table No. 4.**

Sl. no.	Date Of Payment	Advisory Services/ products	Start Date of Service	End Date of Service	Fees collected from the client (in Rs.)
1.	01 -Apr19	OPTION PREMIUM	02-Apr-19	09-May-19	23600

2.	01 -Apr19	OPTION PREMIUM	10-May-19	27-Jun-19	34220
3.	01 -Apr19	OPTION PREMIUM	28-Jun-19	03-Jul-19	5782
4.	19-Apr19	OPTION PREMIUM	04-Jul-19	19-Jul-19	11800
5.	19-Apr19	OPTION PREMIUM	22-Jul-19	12-Aug-19	13216
6.	30-Apr19	Stock Future Circuit Call	03-May-19	13-May-19	50150
7.	30-Apr19	Stock Future Circuit Call	14-May-19	17-May-19	24780
8.	02-May19	Stock Future Circuit Call	20-May-19	30-May-19	50150
9.	03-May19	Stock Future Circuit Call	03-Jun-19	17-Jun-19	56640
10.	20-May19	Stock Future Circuit Call	18-Jun-19	02-Jul-19	74340
11.	20-May19	Stock Future Circuit Call	03-Jul-19	23-Jul-19	100300
12.	20-May19	Stock Future Circuit Call	24-Jul-19	05-Aug-19	70481
13.	28-May19	Stock Future Circuit Call	06-Aug-19	12-Aug-19	25724
14.	29-May19	Stock Future Circuit Call	13-Aug-19	16-Aug-19	15340
15.	08-Jun19	Stock Future Circuit Call	19-Aug-19	26-Aug-19	41890
16.	08-Jun19	Stock Future Circuit Call	27-Aug-19	09-Sep-19	71980
17.	10-Jun19	Stock Future	10-Sep-19	17-Sep-19	35400

		Circuit Call			
18.	12-Jun19	PLATINAM FUTURE	21-Oct-19	17-Apr-20	42786
19.	25-Oct19	STOCK FUTURE CIRCUIT	05-Nov-19	12-Nov-19	21000
Total					<b>7,69,579</b>

37. Analysis of risk profiles of the clients, services issued and advisory fees charged to the clients revealed that the service fees charged from the clients are multiple times of the annual income. Tabular summary of some of the clients is as follows:-

**Table No. 5**

<b>S. No.</b>	<b>Client Name</b>	<b>Income</b>	<b>Time duration</b>	<b>Services Provided</b>	<b>Fees charged in Rs.</b>
1.	Ranjit Das ABZPD8220D	Between 5-10 lac p.a.	1.5 months	Stock cash circuit call Cash platinum	9,81,089
2.	Birbal Singh CPWPS6785P	Between 2-5 lakhs p.a.	3 months	Stock cash, stock cash Hni, cash platinum, stock cash circuit call, platinum future	8,08,680
3.	Sunil Agrawal	Between 2-5 lakhs p.a.	During 04 months	stock cash, stock cash circuit  option premium, option platinum, premium index, option, nifty option, option, stock future circuit equity super 50	10, 16,863

4.	Das Gupta ACNPD7238E	Below 2 lakhs p.a.	1 week	stock option option premium option premium mcx hni	5,19,760
5.	Shoma Gupta	Between 2-5 lakhs p.a.	2.5	stock future premium stock future HNI platinum future	5,40,381

38. It was alleged that the Noticee had not done the suitability analysis of the clients considering the income level of the client and has charged huge amount of advisory fees only to satisfy its own interest. The above sample analysis revealed that the Noticee had not been fair and transparent in its dealing with the clients regarding the fees charged to the client. Prima facie, the Noticee had adopted unethical business practices to deceive clients into buying/subscribing multiple packages. The Noticee acted in the above manner with an objective to maximize its fees and kept its own interest ahead of the clients' interest. The Noticee had sold newer products to its clients even though the subscription period for products earlier sold was not yet over so as to receive more fees from the clients. In most of the cases, it was observed that the amount of advisory fees charged is multiple times of the annual income of such clients. By virtue of such strategy, the clients were left with no scope to earn any returns on their investment as they were charged huge amount of advisory fees. The aforesaid acts of the Noticee were prima facie in complete disregard to the responsibility entrusted on him under the provisions of the IA Regulations to act in a fiduciary capacity and in the best interest of its clients.

39. It was also alleged that most of the clients who possessed beginner level knowledge of financial market, as mentioned in the risk profiles, had been sold risk products in risky products as option and derivatives. The Noticee had not considered clients' experience and knowledge while selecting product for the client and therefore the clients' investment objectives have been impaired.

The Noticee had not done 'Suitability' as mentioned in Regulation 17 of the IA Regulations and had charged unreasonable fees from its clients.

40. In view of the above, it was further alleged that the Noticee failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon it under Regulation 15 (1) of the IA Regulations, and thereby, the Noticee failed to comply with Regulation 17(a),(b),(c),(d) and (e) of the IA Regulations and Clause 1, 2 and 6 of the Code of Conduct specified under the Third Schedule of the IA Regulations read with Regulation 15(9) thereof.
41. In this regard, the Noticee has submitted that prior to the SEBI (Investment Advisers) (Amendment) Regulations, 2020, there was no restriction on amount of subscription fee to be collected or products to be offered. In the absence of any regulation, multiple subscriptions were offered to the clients. All subscriptions were sold through online mode and at arm's length. None of the clients were sold unsuitable services. None of the subscriptions sold to the clients were under duress and all the clients subscribed to multiple subscriptions out of their own free will.
42. It is noted that the Noticee has not disputed the above stated facts or the facts stated in para 46 to 55 of SCN-I. I note that clause 6 of the Code of Conduct specified in Third Schedule of the IA Regulations prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020 read *"An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the client is fair and reasonable."* Vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, which came into effect from September 30, 2020, Regulation 15A was inserted in IA Regulations which provided that an investment adviser shall be entitled to charge fees for providing investment advice from a client in the manner specified by the Board. Accordingly, SEBI vide circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 issued guidelines for investment advisers which inter-alia provided for the manner of charging of fees. In view thereof, I find that prior to SEBI

(Investment Advisers) (Amendment) Regulations, 2020, ceiling on fees was not specifically provided. However, Clause 6 of the Code of Conduct laid down in the Third Schedule of the IA Regulations, even prior to September 23, 2020, mandated investment adviser to levy *“fair and reasonable charges”*. In view thereof, the contention of the Noticee to the effect that there was no restriction on fees prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, cannot be accepted. I find that even prior to the 2020 Amendment, the investment adviser, especially having been engaged by the client in a fiduciary capacity, was mandated to charge a fees which is fair and reasonable. In view of the above finding, the contention of the Noticee that, as there was no regulation with respect to fees he was free to sell multiple subscriptions to the clients and none of the subscriptions were sold to the clients under duress, etc. cannot be accepted.

43. I note from Table No. 5 hereinabove that the Noticee has charged fees equal to or more than the annual income of the client. I find that charging of fees equal to or more than annual income of the client cannot be said to be fair. I thus find that the Noticee has failed to fulfill the mandate of charging fair and reasonable fees from the client.

44. I note that the IA Regulations mandate that an investment adviser shall act in a fiduciary capacity towards its clients and is required to abide by the Code of Conduct which requires him to (i) act honestly, fairly and in the best interests of its clients and in the integrity of the market, (ii) act with due skill, care and diligence in the best interests of its clients and (iii) ensure that its advice is offered after thorough analysis and taking into account available alternatives. Further, the IA Regulations also mandate that the fees charged by the investment adviser shall be fair and reasonable. I find that the Noticee in order to maximize its advisory fees sold multiple services to the clients before the completion of earlier service without having any regard for the interest of the client or suitability of product. Thus the Noticee has violated Regulation 15(1) and 15(9), Regulations 17(a), (b), (c), (d) and (e) of the IA Regulations read

with Clauses 1, 2 and 6 of the Code of Conduct specified in Third Schedule of the IA Regulations.

### **Disclosures to Clients**

45. In this regard, it is alleged that the Noticee has failed to disclose to the clients about details of the investment advisory services/products, and thereby, the Noticee is alleged to have violated Regulation 18(6) and Clauses 1 and 2 of the Code of Conduct specified under Third Schedule read with Regulation 15(9) of the IA Regulations.
46. The Noticee has submitted that clients were sent welcome mail covering all disclosures with regard to the investment advisory to be provided to the client. All subscriptions were sold online and through website which contained all relevant information regarding services. Its client onboarding process included a verification call to check if the client was aware of the services and risk involved. Terms and conditions, invoices and its website disclosed all material facts.
47. I note that Regulation 18(6) of the IA Regulations require that IA shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record. I note that Clauses 1 and 2 of the Code of Conduct specified under Third Schedule of the IA Regulations requires that an IA shall act honestly, fairly and in the best interests of its clients and in the integrity of the market. Further, an IA is required to act with due skill, care and diligence in the best interests of its clients and ensure that its advice is offered after thorough analysis and taking into account available alternatives. I note that welcome email contained general terms and conditions regarding investment in securities market and availing services of the Noticee. The welcome email did not provide details or disclosures related to the material facts and key features of the products or securities. I find that the Noticee has failed to provide any evidence to show that it made adequate disclosures to the client of all material facts relating to key features of the products or



securities, particularly, the performance track record. I find that the Noticee by providing investment advice to the clients without informing them of the key features and risks associated with the products has failed to act honestly, fairly and in the best interest of its clients or with due skill, care and diligence in the best interest of its clients. Thus, I find that the Noticee has violated Regulation 18(6), clause 1 and 2 of the Code of Conduct prescribed in Third Schedule of the IA Regulations.

### **Maintenance of Records**

48. In this regard, it is alleged that risk profiling, analysis of clients financial position, financial objective and rendering of investment advice were done telephonically. The Noticee was advised to submit proof of all the telecommunication done with the client. However, the Noticee failed to make any response. In response to the advise to provide the sample notes for showing the rationale for arriving at the decision for recommending a particular advice to a client, the Noticee provided unsigned copy of the rationale. In view thereof, it is alleged that the Noticee violated Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations.
49. The Noticee has submitted that Regulation 19(1) of the IA Regulations does not mandate to preserve recordings of client communications and hence recordings were not preserved and provided to SEBI.
50. I note that Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations require an investment adviser to maintain record, either in physical or electronic form, of investment advice provided (written or oral), rationale for arriving at investment advice, duly signed and dated, for minimum period of 5 years. Further, Regulation 19(2) require that where records are required to be duly signed and maintained in electronic form, such record shall be digitally signed. I find that the Noticee has failed to provide record of investment advice provided to the clients and signed rationale for arriving at investment advice. From a reading of Regulation 19(1)(e) and 19(2), I note that record of oral communication is required to be maintained where investment advice is

provided orally. In present case, investment advice was being provided telephonically and therefore, the Noticee should have maintained telephonic records of investment advice. In view thereof, I find that the Noticee has violated Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations.

### **Misrepresentation and mis-selling**

51. In this regard, it is alleged that website of the Noticee i.e. [www.bonazcapital.com](http://www.bonazcapital.com) available on the web.archive.org/web/https://www.bonazcapital.com featured various testimonials under the banner of "What People Say". Some of those testimonials read as follows:

*"(i) "I, T. S. RAO put on record that the services offered by bonaz capital are very good. The executive vishavjit and manager Rupesh Raj have put their best efforts and at times i felt their services are very much personal and beyond their job preview. ....At times Ifelt they are more worried about client money than the client. ....By -Mr. T.S. Rao,,*

*(ii) " would like to thank BonazCapital to suggest me on HNI services. Also I would like to given special thanks you for your valuable recommendations for my investment. BONAZ CAPITAL Investment Advisor has superb knowledge on Stock Market & I am totally satisfied with your support & recommendation.... „MR.PRIYESH"*

52. The inspection team vide email dated December 17, 2020 had sought the details of those clients. However, no information was provided by the Noticee. In view thereof, it was alleged that fake testimonials were used by the Noticee on the home page of its website to lure and induce clients to subscribe its services. Such false testimonials were used to create confidence amongst prospective clients and impair their decision making. By way of the said testimonials, the Noticee had misrepresented and made false claims about its performance and accuracy of the services with the objective to lure clients. It was alleged that the Noticee failed in its responsibility to act in fiduciary capacity to its clients which is entrusted upon it under Regulation 15 (1) of the

IA Regulations and the Noticee failed to abide by Clause 1 of Code of Conduct as specified under Third Schedule of the IA Regulations read with Regulation 15(9) of the IA Regulations. Further, it was alleged that the said act of the Noticee was, prima facie, fraudulent and covered within the definition of "fraud" as defined in Regulation 2(1)(c) of PFUTP Regulations, thus, the Noticee was alleged to have violated Regulation 3 (a), (b), (c), (d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(a), (b) and(c) of SEBI Act.

53. In this regard, the Noticee has submitted that the said testimonials were genuine, however, the copies of communications received from clients were lost, therefore, the said testimonials were taken down from the website. The Noticee placed reliance on order no. WTM/AB/WRO/14833/2021-22 dated February 08, 2022 in the matter of GRS Solution (Prop:Nilesh Vispute). Further, the Noticee placed reliance on Order no. WTM/GM/IMD/08/JAN/2017 dated January 20, 2017 to contend that the noticee in the said order was not charged with violation of PFUTP Regulations, whereas, in the present case, the Noticee has been charged with violation of PFUTP Regulations which would be against principles of equality in justice.

54. I note that the Noticee has failed to provide documents in support of testimonials made on its website. This shows that the said testimonials making bold claims of very good services and they "being more worried about the client's money than the client" are spurious and not actually given by any person. In view thereof, I find that the Noticee by posting fake testimonials on its website has acted dishonestly, unfairly, negligently and against the interest of the investors and the integrity of the securities market, thereby, the Noticee has violated Regulation 15 (1) and Regulation 15(9) of the IA Regulations read with Clause 1 of Code of Conduct as specified under Third Schedule to the IA Regulations.

55. I note that the Noticee has also placed reliance on two Orders passed by the WTM's (Whole Time Members) of SEBI passed against investment advisers,

to claim that there is no finding of violation of PFUTP Regulations against the noticees therein. However, I do not find it relevant to get into the applicability of the said decisions in view of the facts in the instant case.

56. In light of the allegations in SCN-I, the primary question that arises for consideration is whether such display of fake testimonials on the website is enough to hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations or not. In this regard, I find that, apart from the display of the testimonials, no other evidence is available in support of the allegation that clients were indeed induced by the same or that the clients subscribed to the services of the Noticee solely based on such testimonials. Even though I find that the display of fake testimonials on the website is misleading the public and is to be avoided by an IA, I am not in a position to give any adverse finding on this account in the absence of any evidence. In this connection, I would like to place reliance on the order of Hon'ble Securities Appellate Tribunal dated January 04, 2022 in the matter of Ms. Suhanika Chourey, wherein the findings of PFUTP violations against an unregistered IA were set aside as there was no evidence brought out on record. In view thereof, I find that allegation of violation of Regulations 3 (a), (b), (c), (d), 4(2)(k) and (s) of the PFUTP Regulations read with Section 12A(a), (b) and(c) of SEBI Act is not substantiated.

**Compliance with SEBI circular no. SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019**

57. In this regard, it is alleged that the Noticee submitted details of disclosures being provided by it to the clients which stated “..... We provide free trials to ensure our clients with the type of services provided by us.....”. In view thereof, it was alleged that the Noticee was providing free trials to its clients. It was also alleged that homepage of the website of the Noticee (<https://www.bonazcapital.com/>) was suspended. Vide email dated December 16, 2020, the Noticee was advised to provide reason of the suspension of the account and to clarify the compliance with SEBI circular no. SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019. The Noticee,

vide email dated December 17, 2020 informed that its website was not active since the renewal was not done. On December 21, 2020, the website of the Noticee was found active. The homepage of the website provides the status of the complaints as under:

**Table No. 6**

At the beginning of the month	Received during the month	Resolved during the month	Pending at the end of the month	Reasons for pendency
127	0		1	In discussion with client to resolve the complaint.

In view of the above, it was alleged that the Noticee violated clause 1(i) and 1(iv) of SEBI circular no. SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019.

58. In this regard, the Noticee has submitted that the above act was during the course of business and there was no intention of the Noticee to defraud its clients. Further, it has been submitted that the Noticee has resolved 126 out of the 128 complaints and put adequate efforts to resolve the remaining two complaints.

59. I note that Clause (i) of SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019 reads *“As per SEBI (Investment Advisers) Regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products/services to prospective clients. Further, IAs shall not accept part payments (where some part of the fee is paid in advance) for any product/service”*. Clause(iv) of the said circular provides that in order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services,

investment adviser shall display information, mentioned herein below, on the home page (without scrolling) of their website/mobile app.

**Table No. 7**

Number of complaints				
At the beginning of the month	Received during the month	Resolved during the month	Pending at the end of the month	Reasons for pendency

60. I note that the Noticee has not made any submissions to refute the allegation regarding providing of free trial to potential clients. I find that the Noticee has resolved majority of the complaints and only two complaints remained pending. This shows that the Noticee has put in efforts to resolve the complaints. However, I find that status of complaints shown by the Noticee on the website was wrong. Further, in view of absence of denial of allegation of providing of free trial, I find that the said allegation has been admitted by the Noticee. Thus, I find that the Noticee has violated clause 1(i) and 1(iv) of the SEBI/HO/IMD/DF-1/CIR/P/2019/169 dated December 27, 2019.

61. I have examined the facts of the case and the charges alleged in SCN-I against the Noticee. Broadly, I find that the Noticee was carrying out the investment adviser activity in violation of several provisions of IA Regulations relating to risk profiling of clients, suitability analysis of products, charging of excessive advisory fees, providing multiple services for the same period to one client, non-disclosure of specific product details to clients, offering free trials, not possessing the requisite qualifications, non-maintenance of records and non-resolution of complaints on SCORES. Thus, the Noticee failed to understand and appreciate the importance of compliances with the requirements laid down under the IA Regulations and related circulars, as mentioned above.

62. I am thus convinced that it is a fit case for passing appropriate order against the Noticee as contemplated under the Intermediaries Regulations, 2008.

**ORDER–**

63. In view of the above, I, in exercise of powers conferred on me under Section 12(3) read with Section 19 of the SEBI Act and Regulation 27(5) of the Intermediaries Regulations, do hereby order that the certificate of the registration bearing number INA00003197 granted by SEBI to the Noticee to conduct the business of an investment adviser be suspended for a period of three months from the date of this order.

**Date: November 30, 2022**

**Place: Mumbai**

**GEETHA G  
CHIEF GENERAL MANAGER  
SECURITIES AND EXCHANGE BOARD OF INDIA**