

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11 (4), 114A, 11B (1) AND 11 B (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ALONG WITH REGULATION 35 OF THE INTERMEDIARIES REGULATIONS READ WITH REGULATION 28 OF IA REGULATIONS

In respect of

Sr. No.	Name of the Entity	Registration No.	PAN
1.	M/s Market Captains Investment Advisor (Proprietor: Mr. Amit Soni)	INA00008358	BSHPS7756M

BRIEF BACKGROUND

- SEBI conducted an inspection into the activities of Market Captains Investment Advisor (hereinafter referred to as “**Noticee/Market Captains/IA**”), registered with SEBI as an Investment Advisor having SEBI registration number INA00008358, for the period April 01, 2019 till September 22, 2020 (hereinafter referred to as **Inspection period**). During examination, certain *prima facie* violations of SEBI Investment Advisers Regulations, 2013 (hereinafter referred to as **IA Regulations**), SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **Intermediaries Regulations**), SEBI (PFUTP) Regulations, 2003 read with section 12A(a),(b)and(c) of SEBI Act,1992 were observed.
- Based on the findings of the inspection / information provided and submission made by the Noticee, SEBI *prima facie* found the following:
 - The Noticee has not complied with SEBI directions with respect to Inspection.

- 2.2 The Noticee has failed to inform filing of FIR against Proprietor- Mr.Amit Soni by Indore police.
- 2.3 The Noticee has failed to act as “fit and proper person”.
- 2.4 The Noticee has committed Irregularities regarding Risk Profiling and suitability Assessment.
- 2.5 The Noticee failed to act responsibly in fiduciary capacity.
- 2.6 The Noticee has failed to resolve investor grievances and to submit ATR in a time bound manner.
- 2.7 The Noticee failed to display the complaints status on its website.
- 2.8 The Noticee handled trading/demat account of clients and incurred losses.
- 2.9 The Noticee provided investment advice on free trial basis to clients.
- 2.10 The Noticee Promised high returns to clients on their investment.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Consequent to the inspection, a Show Cause Notice dated May 27, 2022 (“**SCN**”) was issued to the Noticee calling upon it to show cause as to why suitable directions be not issued and/or penalty be not imposed, as deemed fit under Sections 11(1), 11(4), 114A, 11B (1) and 11B (2) read with Section 15HA, 15HB (for violations prior to March 08, 2019), Section 15EB (for violations subsequent to March 08, 2019) and 15C of the SEBI Act read with Regulation 35 of Intermediaries Regulations read with Regulation 28 of IA Regulations.
4. The SCN was issued through registered post to the Noticee, at the addresses available on record and was duly delivered to the Noticee on June 01, 2022 at the address viz. 38, barfani nagar, MR-9 Indore, Madhya Pradesh - 452010.
5. The SCN alleged that the Noticee has violated the following provisions of law during the Inspection Period from April 01, 2019 to September 22, 2020:

- 5.1.** Regulations 13(a), 15(12), 25(1) and (2) read with 24(3) and Clause 8 of Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of the IA Regulations;
 - 5.2.** 'Fit and proper' criteria as provided in Schedule II of Intermediaries Regulations read with regulation 7(2) (e) of Intermediaries Regulations and Regulations 6(f) and 13(a) of IA Regulations.
 - 5.3.** Regulation 13(b) of the IA Regulations;
 - 5.4.** Regulation 16(b) (iii) and 16(d) (ii) of the IA Regulations;
 - 5.5.** Regulation 15(1), 17(a) of the IA Regulations; Clauses 1, 2, 6 and 8 of Code of Conduct as mentioned in Third Schedule read with regulation 15(9) of the IA Regulations;
 - 5.6.** SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21(1) of IA Regulations;
 - 5.7.** SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019;
 - 5.8.** Regulations 15(3) and 22(b) of the IA Regulations; Regulation 15(1) of the IA Regulations; Clause 1 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations and;
 - 5.9.** SEBI Circular SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 and Clause 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations;
 - 5.10.** Regulation 15(1) of the IA Regulations; Clauses 1, 2, 5 and 8 of Code Of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations; Regulation 3(a), (b), (c), (d) and 4(2)(k) and (s) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.
- 6.** The Noticee, vide email dated July 01, 2022, while acknowledging the receipt of the SCN dated May 27, 2022, requested for time till July 31, 2022 to file its reply to the same. As no reply was received from the Noticee, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on September 06,

2022. I note that the hearing notice was duly delivered to the Noticee on August 25, 2022 at the address mentioned in para 4 above. Meanwhile, the Noticee, vide email dated September 03, 2022, while attaching a reply dated September 02, 2022 to the SCN, requested for inspection of documents and adjournment of hearing scheduled on September 06, 2022. The request of the Noticee with respect to Inspection of Documents was acceded to and an opportunity of inspection was granted to the Noticee on September 15, 2022. Thereafter, the Noticee requested for adjournment for Inspection of Documents scheduled on September 15, 2022 and same was rescheduled on September 19, 2022 and the personal hearing scheduled on September 06, 2022 was adjourned to October 06, 2022. I note that the hearing notice was duly delivered to the Noticee on September 22, 2022. Meanwhile, vide letter dated October 03, 2022, the Noticee requested for an opportunity of personal hearing after October 15, 2022. Accordingly, an opportunity of personal hearing was granted to the Noticee on October 18, 2022. Vide letter dated October 14, 2022 (received on October 17, 2022), the Noticee submitted a detailed reply to the SCN.

7. In its reply dated October 14, 2022, the Noticee has made the following submissions:
 - i. In the SCN, it is mentioned that SEBI had conducted inspection of the Noticee during January 06, 2020 to January 09, 2020 for the period from April 01, 2019 till the date of Inspection. The Noticee had submitted that, no such inspection was conducted by SEBI during the said dates. Pertinently, in respect of the aforesaid, the Noticee had sought clarification from SEBI by letters dated September 02, 2022 and September 27, 2022. However, no response was received for the said clarification requested by the Noticee.
 - ii. With respect to present status of their business, the Noticee had submitted that:
 - a) It has not taken any new clients w.e.f. March 2020. In fact, since March 2020 their business has come to a standstill.
 - b) It had closed their Bank accounts maintained with HDFC Bank and Axis Bank.

c) On perusal of the website i.e. www.marketcaptains.com as on date, it is submitted that the domain name [marketcaptains.com](http://www.marketcaptains.com) has expired which inter alia indicates that the website is not operational.

iii. In view of the aforesaid, the Noticee has decided to close their business. Vide letter dated September 28, 2022, the Noticee has submitted the application for surrender of registration to the Investment Management Department, SEBI. The Noticee has provided a copy of said letter dated September 28, 2022 as Annexure-1 to its reply.

Preliminary Objections raised by the Noticee:

- i. It is the case of the Noticee that the SCN has been issued on the basis of incomplete consideration of facts / information and rationale for issuance of direction of refund has not been provided during the course of Inspection and / or in the SCN. The Noticee vide its letter dated September 02, 2022 had requested SEBI to provide the basis of calculation of amount of Rs 8,20,39,745/- as mentioned in the SCN given under the proposed directions and the rationale behind considering the date (on or after) July 23, 2018. However, no response / clarification / document was received from SEBI.
- ii. No clarification was provided in respect of fact that no inspection of the Noticee was conducted during January 06, 2020 to January 09, 2020 in the SCN.

Preliminary submissions made by the Noticee:

- i. The Noticee has stated that activities of Investment Advisory were carried out in due compliance with all the statutory provisions of law including registration as Investment Advisor with SEBI under IA Regulation.
- ii. At the time of getting registration, the Noticee had disclosed all the facts about the nature of activities and after proper scrutiny of all the documents and on consideration of business profile, it was granted certificate of registration as an Investment Advisor.

- iii. The Noticee had rendered the services to thousands of clients and most of them appreciated the Advisory services provided by them and had been benefited on implementing and executing transactions on the said advisory.
- iv. They had a proper system and control to ensure that the services rendered by them are in fulfilment of rules/regulations and guidelines as prescribed by SEBI.

Business Model adopted by the Noticee:

- i. The Noticee focusses on their business model very deliberately and each and every department has its own Focus, Framework and role under which it has to function and operate.
- ii. Their business is spread into the below mentioned processes and departments:
 - a. Research Department
 - b. Risk Analysis Department
 - c. Sales Department
 - d. Feedback and client acquisition Department
 - e. Book Keeping Department
 - f. HR, Admin and IT Department
 - g. KYC Department
 - h. Customer Service Desk
 - i. Training
- iii. Their IT team emphasises on various strategies to generate traffic on their website through various campaigns.

iv. Risk Profiling:

- a) Basis on which service is offered based on Risk Profiling:

The Risk profiling process comprised of 21 Questionnaire for ready reference. The Noticee had provided the copy of risk profiling form of one of their client Ms. Sunita Deshpande. On the basis of the answers of the aforesaid and personal discussion

with the clients, the Noticee assigned Risk category to the clients. The Risk categories are Low, Medium and High Risk.

b) Out of the 21 questions, 14 questions pertain to the weights on which the basis of products offered is provided to the client.

c) Basis on which service is offered based on Suitability Assessment / Basis of classification:

- To ensure that the advice given to the client is suitable for the clients, the Noticee ensured that all investments on which investment advice is provided is appropriate to the risk profile of the client by categorizing client as low risk appetite, medium risk appetite and high risk appetite.
- A similar classification is done for products after considering the risk and reward of the services offered and various SEBI guidelines in this regard. Client with Medium risk appetite is recommended to subscribe medium risk services only and client with high risk appetite is recommended to subscribe either to low, medium or high risk services.
- Risk profile of the client is communicated to the client after risk assessment is done and the information provided by clients and their risk assessment is updated periodically. They had a comprehensive Risk Tolerance Questionnaire form which has to be filled before doing any investment so that we can access the client risk tolerance category.

d) The Noticee has provided the details in respect of the risk based classification of the services and the basis of classification as Annexure – 3.

e) In view of the aforesaid, the Noticee has submitted that they have a proper process of doing business which is in the best interest of the clients and as per the provision and the provisions of law. The Noticee has provided a

copy of the proposed Business model of Market Captains as submitted to SEBI at the time of registration as Annexure – 4.

- v. The Noticee has stated that as a SEBI registered Investment Advisor w.e.f 01.09.2017 bearing no. INA000008358, they have been carrying out the activities of Investment advisory Services in due compliance within the Rules, Regulations and statutory provisions as applicable to them.
 - vi. The Noticee has stated that proper disclaimer of their policies are made to the clients which is also evident from their website (disabled presently). Hence, it is submitted that the Noticee had always kept the client informed about their policies.
 - vii. The Noticee has stated that on reviewing couple of other orders against investment advisors from Indore wherein, the firms (sole proprietors), are saddled with grave complaints from clients and operated either without IA registration or submitted false information when obtaining registration, the Noticee strongly feels that the allegation in SCN are excessively harsh in light of their findings when compared with the grave negligence and findings of other investment advisors. The Noticee also stated that there may be other factors that may be a basis for the order that are unknown to them, but in light of the findings mentioned in the SCN, the Noticee honestly feel they had been subjected to a much higher alleged proposed restrictions/ punishment compared to orders where findings are more grave in nature.
 - viii. The Noticee has denied all the allegations made in the SCN point-wise which have been dealt in detail in the paragraphs below.
8. Thereafter, on the scheduled date of hearing i.e. on October 18, 2022, the Authorized Representative (hereinafter referred to as 'AR') of the Noticee, Adv. Kushal Shah appeared on behalf of the Noticee. He reiterated the submissions made by the Noticee vide letter dated October 14, 2022 and sought time till October 31, 2022 for filing

additional submissions. During the hearing, the AR of the Noticee submitted that the basis for arriving at the amount to be refunded as per the SCN (Rs.8,20,39,745/-) is not known to him. SEBI, vide email dated October 20, 2022, provided the bank statements with respect to the aforesaid amount to be refunded by the Noticee. Vide email dated October 25, 2022, the Noticee requested for 2 weeks' time to file his submissions in the light of the bank statements provided to him. The request of the Noticee was acceded to and time till November 06, 2022 was granted to the Noticee to file additional written submissions. Further, vide email dated November 06, 2022, the Noticee requested for 2 weeks' time to file the written submissions and also requested for personal hearing, which was also accepted. Accordingly, an opportunity of personal hearing was granted to the Noticee on November 22, 2022. Meanwhile, vide email dated November 21, 2022, a day prior to the hearing, the Noticee again requested for 2 weeks' time to file his reply and sought adjournment of hearing. Considering the series of adjournments granted in the past, a short adjournments for 2 days was granted and the hearing date fixed for November 25, 2022 was communicated to the Noticee on the same day. The ARs of the Noticee, Adv. Prakash and CA. Kushal Shah appeared on behalf of the Noticee. The ARs reiterated the submissions made by the Noticee, vide its letter dated November 24, 2022. Post the personal hearing, on request, the AR was given additional time till November 28, 2022 to make written submissions in the present matter. Accordingly, vide email dated November 28, 2022, the Noticee has submitted additional reply.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the SCN served on the Noticee, the replies submitted by the Noticee and other relevant material available on record. After considering the allegation levelled against the Noticee in the instant matter as spelt out in the SCN, the following issues arise for my consideration.

Issue no. 1: Whether the Noticee failed to comply with SEBI directions with respect to Inspection and therefore, violated Regulations 13(a), 15(12), 25(1) and (2) read with

Regulation 24(3) and Clause 8 of Code of Conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations?

Issue no. II: Whether the Noticee failed to inform about filing of FIR, a material information, against Mr.Amit Soni by Indore Police to SEBI and failed to act as a fit and proper person and therefore, violated Regulation 13(b) of IA Regulations and ‘fit and proper’ criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2) (e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations?

Issue no. III: Whether the Noticee committed Irregularities regarding Risk Profiling and Suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b)(iii), 16(d)(ii) of IA Regulations and Regulation 15(1), 17(a) of IA Regulations & Clauses 1, 2, 6 and 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations ?

Issue No. IV: Whether the Noticee failed to resolve investor grievances as per prescribed timelines and failed to display the complaints’ status on its website in violation of the provisions of SEBI circular No. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of the IA Regulations and SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019?

Issue no. V: Whether the Noticee handled trading / demat account of clients and incurred losses thereby failed to act in a fiduciary capacity and therefore, violated Regulation 15(3) and 22(b) of IA Regulations read with Regulation 15(1) of IA Regulation and Clause 1 of the Code of Conduct as specified in Third Schedule read with Regulation 15(9) of IA Regulations?

Issue no. VI: Whether the Noticee has provided investment advice on free trials to its clients in violation of SEBI Circular No. SEBI/HO/IMD//CIR/P/2019/169 dated December

27, 2019 and Clause 8 of the Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations?

Issue no. VII: Whether the Noticee promised high returns to its clients on their investment and failed to act in a fiduciary capacity and therefore, violated Regulation 15(1) of IA Regulations, clauses 1, 2, 5 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3(a), (b), (c), (d), 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act?

10. I shall now proceed to deal with the issues:-

Issue no. I: Whether the Noticee failed to comply with SEBI directions with respect to Inspection and therefore, violated Regulations 13(a), 15(12), 25(1) and (2) read with Regulation 24(3) and Clause 8 of Code of Conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013?

11. The SCN has alleged that SEBI, vide letter dated September 22, 2020, had informed the Noticee that an inspection of its books of accounts / records and other documents pertaining to its registration as an investment adviser will be carried out by SEBI. Accordingly, the Noticee was advised to send its reply to the pre-inspection questionnaire (PIQ) latest by October 06, 2020. The aforesaid letter and PIQ was also sent to the Noticee vide email dated September 22, 2020. Subsequently, proprietor Mr. Amit Soni visited the office of SEBI on September 30, 2020 wherein he enquired as to what documents are required to be submitted, how it is to be submitted, etc. Mr. Amit Soni was informed about the same in detail. I note that the Noticee, vide email dated October 06, 2020, had informed that it was unable to compile the data as required within the time allotted since it is for the first time its inspection has been scheduled and that it has no proper experience of inspection and also due to limited working of CA's office under COVID-19 situation had requested further extension of 10-15 days' time for furnishing the information. Accordingly, vide SEBI email dated October 07, 2020, the Noticee was granted extension till October

16, 2020 for filing its reply in the said matter. The Noticee was also informed that no further extension would be provided. As Noticee did not submit any reply to the PIQ, vide email dated October 22, 2020, the Noticee was once again requested to file its reply by October 23, 2020. However, no reply was received from the Noticee.

12. Based on the above, it was alleged in the SCN that the Noticee has violated the provisions of Regulation 13(a), 15(12), 25(1) and (2) read with Regulation 24(3) and Clause 8 of the Code of Conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

13. In this context, the Noticee in its reply dated October 14, 2022 has submitted as below:-

- (a) The Noticee submitted that vide SEBI letter dated September 22, 2020, the Noticee was informed that an inspection of books of account will be carried out by SEBI. Further, he was also provided with a list of PIQ. Furthermore, by email dated October 06, 2020, the Noticee informed SEBI that he was unable to compile data and information within the limited timeline due to various reasons. Additionally, by email dated October 22, 2020, the Noticee was granted time till October 23, 2020 to file a reply. The Noticee has submitted that its proprietor, Mr. Amit Soni, tested COVID Positive on October 18, 2020 and was hospitalized on October 20, 2020. He was discharged on October 24, 2020. Pertinently, post discharge, he was advised to rest as he was still recovering from COVID-19. In the meanwhile, the Noticee informed the SEBI officials telephonically about the said facts however there was no communication received from SEBI w.r.t inspection of Books of accounts. In this regard, the Noticee has provided a copy of Covid-19 report and discharge summary to prove his claim as 'Annexure-6' to its reply.
- (b) With respect to non-response to the PIQ, the Noticee has further submitted that a Special Investigation Team (SIT) incorporated by Police Department in Indore had conducted raids at various Investment Advisors offices/business including their

office. The raid was conducted at their principal place of business in August 2019 after complaint by one of their clients Mr. Amit Patel. In fact, the Noticee has stated that at the time of the raid by the SIT Team, all their database, servers etc. were seized by the police officers and the same are still in their custody. In view of the same, they were unable to access to the database to file a response to the PIQ.

(c) The Noticee, vide email dated October 22, 2019, informed SEBI that the documents and other data have been seized by the Madhya Pradesh, Police Department and therefore, they were unable to provide the data as required by SEBI. The Noticee reiterated the said submissions before me vide its reply dated October 14, 2022 wherein a copy of email dated September 17, 2020 stating that the documents and other data is in the custody of the authorities and therefore, the Noticee was unable to produce the requisite documents during inspection has been placed as Annexure 8.

(d) The Noticee in its preliminary submissions mentioned in para 7(i) above has even stated that no such inspection was conducted by SEBI during the said dates.

14. The relevant provisions are reproduced below for reference :-

SEBI (Investment Advisers) Regulations, 2013

“13(a) the investment adviser shall abide by the provisions of the Act and these regulations.

15(12) Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.

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 representative of investment adviser, 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.

25(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

24(3) During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.

15(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

Third Schedule
Code of Conduct for IA

8. An investment adviser including its representative(s) 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.”

15. I note that the Noticee has in its reply dated October 14, 2022 submitted that he does not have the documents and the data as the same have been seized by the SIT incorporated by the Police Department in Indore in the month of August, 2019 after receiving a complaint from one of the Noticee's client viz. Mr. Amit Patel. The Noticee has even submitted that the database, servers, etc. are still in Police custody. However, I note that the Noticee, voluntarily had undertaken to provide the data / information w.r.t PIQs within 20 - 25 days in each of the email communications available in the file during the period of examination. Also, in one of the email communications dated October 22, 2019, the Noticee had stated that it will be seeking the data from the concerned judicial authorities for submitting the same to SEBI and had sought for 20-25 days to submit the requisite data. Vide email dated September 17, 2020 i.e. after almost one year from the last communication date, again the Noticee sought time to submit the requisite data. However, no data was provided by the Noticee. The same displays inconsistency in the

approach adopted by the Noticee and contradicts its own submissions in the reply dated October 14, 2022. Further, the Noticee has not produced any proof before me to show that its proprietor or any employee had made efforts to obtain the documents from the authorities as sought by SEBI which failed. I note that till date, the Noticee has not furnished the information as sought by SEBI.

16. The Noticee has submitted that no inspection was conducted during the dates mentioned as SEBI did not respond to its letters seeking clarification. I note that vide letter dated September 22, 2020 the Noticee was informed that inspection of its books would be carried out by SEBI for the period from April 01, 2019 till date i.e. September 22, 2020. The same establishes that the Noticee was very well informed about the period of inspection. Further, I find that sufficient opportunities have been given to the Noticee to provide the information sought by SEBI for the purpose of inspecting the Noticee's books of accounts. The Noticee not furnishing the requisite data w.r.t the PIQ does not necessarily mean that no inspection was conducted by SEBI during the period under examination. Documents such as the bank account statements furnished by the Banks, website screenshots, data received from the complainants, complaints on SCORES, etc. were examined by SEBI to conduct the inspection. It is only the Noticee who has not provided the documents sought from it during the inspection period. Further, it has been submitted by the Noticee that its proprietor was tested COVID Positive on October 18, 2020 and was hospitalized on October 20, 2020. In support of the said submission, the Noticee has provided the copy of the COVID-19 test report dated October 18, 2020 showing positive result and the Discharge Summary of the hospital dated October 24, 2020. Upon perusal of the discharge summary as annexed to the reply, it is noted that the said discharge documents have not been signed by either the Doctor In-charge or the Patient getting discharged i.e. Mr. Amit Soni. Therefore, the same cannot be considered as valid documents in support of the said claim. Even if the said submission of the Noticee is taken to be true, if the Noticee intended to provide SEBI with the requisite documents, the said exercise could have been undertaken by any of the employees of the Noticee in the absence of the proprietor due to his medical condition.

Further, I also note that it is only during the post enquiry stage before the Competent Authority that the Noticee is making this submission. The fact on record clearly establishes that the Noticee did not make any effort to provide SEBI with the requisite documents despite reminders.

17. In view of the same, I find that the Noticee has clearly not provided any cogent response in support of his case and therefore, by failing to produce the relevant documents / material with respect to inspection as requested by SEBI, the Noticee has violated the provisions of Regulations 13(a), 15(12), 25(1) & (2) read with 24(3) & Clause 8 of Code of Conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

Issue no. II: Whether the Noticee failed to inform about filing of FIR, a material information, against Mr.Amit Soni by Indore Police to SEBI and failed to act as a fit and proper person and therefore, violated Regulation 13(b) of IA Regulations and ‘fit and proper’ criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2) (e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations?

18. The SCN has alleged that SEBI, vide letter dated July 28, 2020, requested Crime Branch, Indore to provide the copies of the FIRs registered against Investment Advisers including the Noticee. In this regard, the Crime Branch had, *inter-alia*, provided a copy of the FIR dated July 27, 2019 against Proprietor of the Noticee (Mr. Amit Soni) & others. It was observed that the Noticee did not inform SEBI about the aforesaid FIR filed against it, which is a material information.
19. As per the aforesaid FIR registered against Mr. Amit Soni & others under Section 154 of Cr.P.C., charges under Section 420 (Cheating and dishonestly inducing delivery of property), 406 (Punishment for criminal breach of trust) and 34 (Acts done by several persons in furtherance of common intention) of IPC have been leveled against the

Proprietor of the Noticee (Mr. Amit Soni), Mr. Puneet Tomar, Head of Quality Team and Accounts department. The said FIR, *inter alia*, alleges the following:

- a. Mr. Amit Vinodbhai Patel got engaged as a client with the Noticee with a small amount on July 23, 2018.
- b. Thereafter, they took from him a sum of Rs. 16,94,966/- by promising him high returns of which receipt of only Rs. 13,94,766/- was provided to him.
- c. They gave him receipt of Rs. 6,79,766/- in his name and Rs. 7,15,000/- in the name of his wife. The rationale provided by them for giving two receipts is that due to SEBI audit they cannot give him a single receipt of such huge amount.
- d. Further, they also handled his demat account and executed trades on which they made him suffer a loss of Rs. 7,44,000/-.

20. It is noted that Indore Police has levelled serious charges in the FIR against Proprietor of the Noticee (Mr. Amit Soni). Further, during examination, SEBI also observed fraudulent activities by the Noticee and its Proprietor Mr. Amit Soni, which are discussed at length in the subsequent paragraphs.

21. In view of the above, it was alleged in the SCN that the Noticee was in violation of Regulation 13(b) of IA Regulations and 'fit and proper' criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations.

22. With respect to the above, the Noticee in its reply dated October 14, 2022, has submitted as under-

- a. As per the FIR, Mr. Amit Patel was the Noticee's client and lured him to make payment of Rs. 16.94 Lakhs (Approx.) in return of promise for higher returns. Further, the Noticee handled his DEMAT accounts and executed trades on which he suffered a loss of Rs 7.44 Lakhs. Out of the total amount of Rs 16.94 Lakhs (Approx.) paid by him, the Noticee only gave him receipts worth Rs. 13.94 Lakhs (Receipt of Rs 6.79 Lakhs in his name and receipt of Rs 7.15 Lakhs in his wife's name).

- b. The Noticee has stated that the first service as provided to Mr. Amit Patel was from July 26, 2018. The following were the services that were provided to him:

Table No. 01

Date of Invoice	Service provided	Amount	From	To
26-07-2018	BASIC CASH	51,100	24/07/2018	31-07-2018
28/07/2018	BASIC CASH	1,02,000	01/08/2018	31-12-2018
30/07/2018	HNI OPTION	66,666	01/08/2018	31/12/2018
31/07/2018	BTST OPTION	60,000	31/07/2018	29/10/2018
30/07/2018	HNI OPTION	1,00,000	01/08/2018	31/10/2018
31/07/2018	HNI OPTION	2,00,000	31/07/2018	31/12/2018
31/07/2018	BTST OPTION	30,000	31/07/2018	29/10/2018
02/08/2018	NIFTY OPTION	30,000	02/08/2018	31/10/2018
01/08/2018	BTST FUTURE	40,000	01/08/2018	30/10/2018
Total		6,79,766		

- c. The Noticee has submitted that the services provided to Mr. Amit Patel were of Rs 6,79,766/- and not of Rs.13.94 Lakhs or Rs.16.94 Lakhs. Further, with respect to the discrepancies in services sold to Mr. Amit Patel and his wife Mrs. Swati Patel, the Noticee has stated that the clubbing of invoices of Mr. Amit Patel and his wife Mrs. Swati Patel is untenable. Mrs. Swati Patel paid the Noticee using the online payment gateway and also provided them with the KYC and other details. The Noticee provided services on her number which was registered in her KYC. The KYC, risk profile, welcome mail was all provided by/ to Mrs. Swati Patel. In fact separate records of Mrs. Swati Patel were maintained. The services provided to her were different than that of Mr. Amit Patel. The Noticee has provided copy of risk profiling done of Mrs. Swati Patel as Annexure-14 and KYC verification snapshot of Mrs. Swati Patel as Annexure-15 to its reply.
- d. The Noticee has stated that there was no mechanism in place to state that a client is the family member or relative of another client. Further, there was also no regulation in place to state that such clients cannot be accepted/ tagged along with

the family member. The KYC and other details were separately maintained. As Payment gateways do not share the account through which they have received payment, the Noticee is unable to comment on the same. Pertinently, after verifying the KYC details, it can be seen that she is actively involved in trading since 2017. Her Contact number is 9879727998, which is provided in the KYC and Payment Gateway information while the contact number of Mr. Amit is 9727742219 as also verified from his KYC and the Welcome Email. In fact, the addresses of both these clients are different in their KYC Form as mentioned herein under:

Address of Amit V Patel

A/32 Chaitanya Park, Anand Borsad Road Jiyoctiya, Anand, Gujarat

Address of Swati Naginben Patel

B 157, Kamla Park Society, Near Cadila Lab, Ghodasar, Ahmedabad, Gujarat

- e. The Noticee has stated that the services provided to Swati are separate and cannot be tagged along with the present matter. In the entire FIR, there are no allegations/role of whatsoever nature assigned/mentioned to Mr. Amit Soni. In fact, the only role is mentioned of Mr. Punit Tomar who was the Head of the Quality and Accounts team. Further, there is no proof provided by Mr. Amit Patel as to in what manner the Noticee promised him high return or traded on his behalf.
- f. The Noticee has stated that a SIT incorporated by Police Department in Indore conducted raids at various investment advisors firms including Noticee's firm in August 2019 in respect of a complaint of Mr. Amit Patel. In fact, an FIR was registered and a few employees were arrested while Mr. Amit Soni, proprietor of the Noticee was not arrested. Mr. Amit Soni then applied for anticipatory bail and was granted bail at the lower court. In fact, the matter is still under investigation and no charge sheet has been filed against any employee or proprietor i.e. Mr Amit Soni. Pertinently, there is no specific allegation in the FIR about Mr. Amit Soni.

g. Further, in the FIR, Mr. Amit Patel has referred to SEBI SCORES complaint bearing reference no. SEBIE/MP19/0000035/I. In this regard, the Noticee has stated that in its reply dated September 11, 2019 to the said complaint on SCORES they have, *inter alia*, stated that "*the client has initiated legal proceedings against us*". Further, by their reply dated September 30, 2022 they had, *inter alia*, stated that "*Dear Sir, Please find the required attachment of this complaint. He already filed a case against the company in the Court and Case is under Judicial proceedings for further resolution of his complaint. We request you to please close this complaint on your behalf. You can verify this from the client. We are attach related documents*". After considering the same, the complaint was closed from the SEBI SCORES Portal considering that the matter is sub- judice. Thus, the aforesaid facts indicate that the Noticee informed SEBI about the FIR and also provided the relevant documents.

h. Vide email dated October 22, 2019, the Noticee informed SEBI that the documents and other data have been seized by the Madhya Pradesh, Police Department, thus indicating that there was no intention of hiding this information from the SEBI Officials.

23. The relevant provisions of law, as existed at the relevant period of time, are reproduced below for reference:

***Investment Advisers Regulations, 2013:
Consideration of application and eligibility criteria.***

6. *For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely,*

(f) *Whether the applicant, its representatives and partners, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

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

(a) *the investment adviser shall abide by the provisions of the Act and these regulations;*
(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;

**Intermediaries Regulations:
Consideration of application.**

7(2) Any application for grant of certificate:-

.....

(e) Where the applicant is not a 'fit and proper person' as stated in Schedule II;

.....

Shall be rejected by the Board for reasons to be recorded by the Board in writing.

**SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008
Schedule II
[See Regulation 7]**

"Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a "fit and proper person" the board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter and the key management persons by whatever name called-

- (a)** Integrity, reputation and character
- (b)** Absence of convictions and restraint orders
- (c)** Competence including financial solvency and networth
- (d)** Absence of categorization as a willful defaulter

24. I note that the Noticee has admitted the fact that an FIR has been filed against it by one Mr. Amit Patel who was the client of the Noticee. However, it has been disputed by the Noticee that the amount which was received by the Noticee from the said client was only Rs. 6,79,766/- and not of Rs.13.94 Lakhs or Rs.16.94 Lakhs. The Noticee has emphatically stated that clubbing of the amounts received from Mr. Amit Patel and his wife Mrs. Swati Patel could not be done as the fact of their being husband and wife was unknown to the Noticee and that the Noticee has treated the said entities separately. In this regard, I note that the said submissions are irrelevant for the charge of failure to

disclose the existence of an FIR by the Noticee and therefore, are not taken into consideration.

25. The Noticee has further stated that the name of the proprietor has not been mentioned in the FIR and in fact the name of one Mr. Puneet Tomar, who was the Head of the Quality and Accounts team is mentioned in the FIR against the Noticee. Here, it is pertinent to note that in case of a proprietorship concern, only the proprietor can be held liable for the actions undertaken on behalf of the proprietorship firm as there is no separate legal entity created. The proprietor of the firm has unlimited personal liability as there is no distinction between the owner and the business. The Hon'ble Supreme Court in the case of **Raghu Lakshminarayan Vs. M/s Fine Tubes (2007) 5 SCC 103**, while examining the liability of a proprietor in a proprietorship concern, held that,

“The proprietary concern is not a juristic person so as to attract the concept of vicarious liability. The concept of vicarious liability is attracted only in the case of juristic person, such as the company registered under the provisions of the Companies Act, 1956 or the partnership firm registered under the provisions of Partnership Act, 1932 or association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. The proprietary concern stands absolutely on different footing. A person may carry on a business in the name of the business concern being proprietor of such proprietary concern. In such case the proprietor of proprietary concern alone can be held responsible for the conduct of business carried in the name of such proprietary concern”.

26. From the foregoing, I note that Mr. Amit Soni being the proprietor of the Noticee cannot escape from the liability and the charges levelled against the Noticee in the FIR only on the ground that his name is not appearing in the FIR. The said submissions of the Noticee cannot be accepted in the light of the settled principles of law. It is abundantly clear that the client of the Noticee has filed an FIR against the Noticee with charges under section 420 (Cheating and dishonestly inducing delivery of property), 406 (Punishment for criminal breach of trust) and 34 (Acts done by several persons in furtherance of common intention) of IPC. The said charges are very serious in nature and even though a charge sheet has not been filed in the said case as of now, the fact that such charges have been

levelled against the Noticee cannot be ignored as the same would have an impact on the integrity, reputation and character of the Noticee which are amongst the criteria for determining whether a person is 'fit and proper' under the Intermediaries Regulations.

27. I note that a SEBI registered investment advisor has the responsibility of providing financial advice to the investors at large so as to guide them to deal in the securities in a better manner. The investment advice provided by such intermediary has financial implications and therefore, any blot on the character or reputation of such intermediaries impacts the decision of the investors at large to deal with them. Considering the fact that an FIR with the charges of cheating, dishonesty, criminal breach of trust, intention to defraud investors, etc. has been filed against the Noticee, non-disclosure of the same to SEBI would disqualify the Noticee as a 'fit and proper' person.

28. Further, I note from the submissions of the Noticee that the FIR had a reference to a certain SCORES complaint and that the Noticee in reply to the same had mentioned that the said client has initiated legal proceedings against the Noticee. Further, it was submitted that the complaint was attached with their reply on the SCORES platform and that the case is in the Court and judicial proceedings for further resolution of the complaint are ongoing was also mentioned. Upon perusal of the Action Taken History in SCORES platform, it is noted that the Noticee has stated on September 30, 2019 that the client has filed a complaint against the company in the Court and case is under Judicial Resolution. Also, vide response dated October 10, 2019, the Noticee has stated that the complainant has filed a petition in Indore Court and therefore, the matter is sub-judice. From the available material on record, I note that the Noticee has nowhere stated that an FIR is filed by Mr. Amit Patel against the Noticee with the Indore Police and that serious charges of cheating, criminal breach of trust and fraud have been levelled against it in the said FIR. The filing of an FIR in addition to the court proceedings before Indore Court was a material information which the Noticee should have submitted to SEBI, disclosure of which is crucial for evaluation of the Noticee in regard to "fit and proper person" criteria, the Noticee being a SEBI Registered Intermediary.

29. Therefore, I note that the Noticee, by not disclosing the information to SEBI relating to an FIR being filed against it for serious charges under IPC, which is a material information, has violated the provision of Regulation 13(b) of IA Regulations. Further, I find that in order to determine whether an intermediary is a fit and proper person, the intermediary, amongst other criteria, has to be a person with integrity, reputation and character. Thus, by not disclosing the material information of an FIR being filed against it alleging serious charges of cheating, dishonesty, breach of trust, etc., the Noticee is in violation of the provisions as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations.

Issue no. III: Whether the Noticee committed Irregularities regarding Risk Profiling and Suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b)(iii), 16(d)(ii) of IA Regulations and Regulation 15(1), 17(a) of IA Regulations, Clauses 1, 2, 6 and 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations ?

30. The SCN has made the following observations on perusal of the Risk Profiling Form (hereinafter referred as 'RPF') of the Noticee during the examination.

31. Question on investment goal in the risk profile, features 03 answer options, 1) Capital Appreciation, 2) Regular Income and 3) Capital Appreciation and Regular Income. The weights assigned to such answers are 0, 2 and 1, respectively. No weights or 0 weights are assigned if a client is interested in capital appreciation. Regular Income is generally associated with debt products. Any risk averse investor would choose regular income, as it is generally associated with debt products. However, as per the risk profile methodology adopted by the Noticee, if a particular investor opts for 'Regular Income', he would be assigned 2 points. Assigning higher points to an investor would enable the Noticee to categorize such a client in 'High Risk' category. Further, as per the product

list for high risk clients, the Noticee can sell advices in all products including Futures & Options segments. This leads to an inference that the Noticee has misrepresented to clients that products in the Futures & Options segment give regular income.

32. Risk profile of the Noticee included the following 03 questions to ascertain the risk appetite of the clients:

- i. What is your preference w.r.t. securities with low risk, low return over high risk, high return?
- ii. When market is not performing well do you prefer to buy risky investments and sell less risky investments?
- iii. What is your risk tolerance?

33. The total weights assigned to the aforesaid 3 such questions are 6 out of 24 i.e. 25% of total weights. Regulation 16(b)(iii) of the IA Regulations provides that the process of assessing the risk of a client appropriately interpret clients' responses to questions and should not attribute inappropriate weights to certain answers.

34. The question mentioned at para 32(i) above is a leading question. The expression "securities with low risk, low return over high risk, high return" would inevitably lead the client to respond that he can bear high risk as it is associated with high return. Instead of stating "high risk, high return", the correct question should have been "high risk involves greater chances of large amount of losses". Had the IA made the client aware that taking high risk would mean chances of large amount of losses in the investment, it would have allowed the client to better understand the risks associated with a high risk product.

35. I note that as per the RPF, clients were classified only in three categories i.e. low risk, medium risk and high risk clients with respective scores up to 8, 9 – 16, 17 – 24, respectively and accordingly product was recommended. Risk based classification of the services is as under –

Table No: - 02

Sr. No.	Product / Term	Risk Classification
1.	Stocks Cash Tips	Medium
2.	Nifty and Bank Nifty	High
3.	Stock Futures	High
4.	Stock Future Power	High
5.	Bullion Tips	High
6.	Option Power	High
7.	Energy Tips	High
8.	Stock Cash Power	Medium
9.	Base Metal Tips	High
10.	Index Option Power	High
11.	Option HNI	High
12.	Nifty	High
13.	Agri Power Tips	High
14.	Agri Services	High
15.	Stock Option	High
16.	Option Tips	High
17.	Index Options	High
18.	Bullion Power Tips	High
19.	Premium Stocks Tips	High
20.	HNI Cash	Medium
21.	HNI Future Tips	High
22.	HNI Bullion Pack	High
23.	Financial Plan	Low
24.	Mutual Fund Advise	Low
25.	Periodicals Subscriptions	Low

36. Upon analysis of services offered to clients by the Noticee vis-à-vis risk profile of these client, it was observed that the Noticee offered 'high risk' services to clients who have been rated as 'medium risk'. It was also observed that the IA failed to carry out the due diligence expected of it while doing risk profiling and suitability assessment. For illustration, cases of two clients are detailed below:

37. Client Name: Ms. Sunita Madhukar Deshpande: It was observed from RPF of Ms. Deshpande that she was assessed as 'medium risk' client. RPF of Ms. Deshpande was provided to the Noticee as Annexure-6 to the SCN. The documents submitted by Ms. Deshpande in support of her complaint was provided to the Noticee as Annexure-7 to the SCN. The following table shows the services sold to Ms. Deshpande for the service period from February 1, 2019 to June 28, 2021.

Table No: - 03

Sr. No.	Invoice Date	Invoice No.	Product name	Duration of service	Amount (Rs.)
1.	31.01.2019	INV 3556	Cash Basic	01.02.2019 – 20.02.2019	5,000
2.	04.02.2019	INV 3580	Cash Basic	21.02.2019 – 28.03.2019	11,000
3.	06.02.2019	INV 3601	Cash HNI	07.02.2019 – 08.03.2019	48,420
4.	26.02.2019	INV 3884	Cash HNI	11.03.2019 – 05.04.2019	40,000
5.	23.05.2019	INV 4707	Option HNI	15.07.2019 – 28.06.2021	2,40,500
TOTAL					3,44,920

38. As per the risk based classification of services, 'Option HNI' service has been categorized as 'high risk'. As such, the Noticee initially sold Ms. Deshpande 'Cash' services only since she was categorized as 'medium risk' client. However, she was subsequently sold 'high risk' services viz. 'Option HNI' which was not suitable to her (basis her risk categorization) and the IA charged fees of Rs. 2,40,500/- for the said services, the duration of which was for the period from July 15, 2019 to June 28, 2021 i.e. a period of 2 years. Whereas products in Futures & Options segment are highly leveraged products and are generally not meant for investors having 'medium risk' appetite.

39. From the above table, it is seen that 'Option HNI' service were sold with extended duration of two years extending up to June, 2021. It can also be seen from the above table that IA sold multiple services with overlapping period to Ms. Deshpande. For instance, for the period from February 07, 2019 to March 28, 2019 'Cash Basic' and

'Cash HNI' services which appear to be services of similar nature that were active for the client at the same time.

40. From the risk profile of Ms. Deshpande, it was observed that even though the proposed investment amount of the client was below Rs. 1 lakh and gross annual income was Rs.1 – 5 lakh, fees of Rs. 3.44 lakh was charged from the client in four months i.e. from January 31, 2019 to May 23, 2019.

41. Client Name: Mr. Amit V. Patel: It was observed from RPF of Mr. Patel that he has been assessed as 'high risk' client. RPF of Mr. Patel was provided to the Noticee as Annexure-8 of the SCN. The following table shows the services sold to Mr. Patel for the service period from July 26, 2018 to August 31, 2018:

Table No: - 04

Sr. No.	Invoice Date	Invoice No.	Product name	Duration service	of	Amount (Rs.)
1.	26.07.2018	DAFS/18-19/5593	Basic Cash	24.07.2018 31.07.2018	–	51,100
2.	28.07.2018	DAFS/18-19/5534	Basic Cash	01.08.2018 31.12.2018	–	1,02,000
3.	30.07.2018	DAFS/18-19/5518	HNI Option	01.08.2018 31.10.2018	–	1,00,000
4.	30.07.2018	DAFS/18-19/5529	HNI Option	01.08.2018 31.12.2018	–	66,666
5.	31.07.2018	DAFS/18-19/5478	HNI Option	31.07.2018 31.12.2018	–	2,00,000
6.	31.07.2018	DAFS/18-19/5468	BTST Option	31.07.2018 29.10.2018	–	30,000
7.	31.07.2018	DAFS/18-19/5483	BTST Option	31.07.2018 29.10.2018	–	60,000
8.	01.08.2018	DAFS/18-19/5455	BTST Future	01.08.2018 30.10.2018	–	40,000
9.	02.08.2018	DAFS/18-19/5450	Nifty Option	02.08.2018 31.10.2018	–	30,000
10.	14.08.2018	DAFS/18-19/5361	BTST Option	14.08.2018 08.02.2019	–	1,00,000
11.	14.08.2018	DAFS/18-19/5365	HNI Option	14.08.2018 13.08.2019	–	2,75,000
12.	31.08.2018	DAFS/18-19/5183	HNI Future	31.08.2018 31.08.2020	–	3,40,000
TOTAL						13,94,766

- 42.** From the above table, it is observed that the client has been sold 12 services with a period of around one month. Further, IA has sold multiple services over the same (i.e. the period of the period services are overlapping). For instance, at Sr. no. 4 and 5, for the period August 1, 2018 to December 31, 2018, two 'Option HNI' services were active for the client at the same time. Similarly for the period July 31, 2018 to October 29, 2018 two 'BTST Option' were active at the same time (refer Sr. no. 6 and 7 of table no. 4 above).
- 43.** Further, it was observed that the Noticee charged arbitrary/ disproportionate amount for similar service and for similar duration i.e. at Sr. no. 4 and 5, the IA has charged Rs. 66,000 and Rs. 2 lakh for 'HNI Option' service having similar duration of three months. Similar instances can be observed at Sr. no. 6 and 7 wherein the Noticee has charged Rs. 30,000 and Rs. 60,000 for 'BTST Option' service having similar duration i.e. July 31, 2018 to October 29, 2018.
- 44.** In the risk profile of Mr. Patel, it is observed that even though the proposed investment amount of the client is Rs. 2 - 5 lakh and gross annual income is Rs.1 – 5 lakh, fees of Rs. 13.94 lakh was charged from the client in around one month i.e. from July 26, 2018 to August 31, 2018.
- 45.** It is noted that if advisory fees itself is more than the proposed investment amount, then client would not earn any returns on his investments. These acts of the Noticee are in complete disregard to the responsibility entrusted on it under the provisions of IA Regulations to act in a fiduciary capacity and in the best interest of its clients.
- 46.** The Noticee did not sell products to clients as per the risk category and tolerance level of the clients. Even if the risk category of the client was medium, products from high risk categories were sold to the client. IA has not considered the clients experience and knowledge while selecting products for the clients. Further, the service charged is multiple times that of the proposed investment amounts and therefore, the client's

investment objectives were impaired. Therefore, by paying such high advisory fees, which are multiple times that of the proposed investment amount, clients may not be able to generate any profit or accomplish its financial objective.

47. In view of the above, the SCN alleged that by framing questions in the risk profile form in vague, ambiguous and misleading manner, the Noticee was in violation of Regulation 16(b)(iii) and 16(d)(ii) of the IA Regulations. Further, IA has not ensured 'Suitability' and by acting in the said manner is in violation of Regulation 15(1), 17(a) of the IA Regulations, Clauses 1, 2, 6 and 8 of the Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of the IA Regulations.

48. The Noticee in its reply submitted that in the risk profiling questionnaire form, it is clearly stated that all products are high risk products except Cash Basic, BTST Cash, Cash Power and Cash Premium. On perusal of the same, it is submitted that all the products have been classified on the basis of the following:

Basis of classification:-

Low	Medium	High
Mutual Fund	Equity market	Future, Options and Commodity
Periodicals		
Financial plan		

49. The Noticee further submitted that on perusal of the questionnaire (RPQ), it is seen that the weights assigned to the question of investment goals is as under:

- Capital Appreciation-0
- Regular Income-2
- Capital appreciation and Regular Income-1

50. The rationale for the said weights was that Capital appreciation requires long term investment which is less risky than intraday.

- 51.** According to the Noticee, the SCN infers that "Regular Income is generally associated with debt products". However, while issuing the SCN, SEBI has not taken into cognizance the fact that from the list of services offered by them none of the services pertain to the debt products (Mutual fund advice may remotely pertain to debt products). In fact, when no services that pertains to Debt Products is provided by the Noticee, it is untenable to allege that the Noticee has tried to associate Regular Income with Debt Products. Additionally, in the RPQ it is clearly mentioned that all the F&O related services belong to high risk category. Regular income here indicates intraday trading/ trading in F&O. Hence, they are more risker and hence the weight has been assigned as 2. However, capital appreciation indicates long term investment which is generally equity market related and less risky. Hence, weight has been assigned as 0.
- 52.** The Noticee has submitted that on perusal of screenshots/snapshots of their website provided by SEBI in the SCN and during the course of inspection and prices of proposed services as mentioned by them at the time of application of registration made to SEBI, it is submitted that the pricing range of high risk services are same as medium risk services. Hence, there is no plausible objective for escalating any client or potential client to high risk category. The Noticee has stated that the price for cash and option basis is same.
- 53.** It is pertinent to mention that before introducing the risk profiling questionnaire for clients, the Noticee has submitted the same to SEBI along with Form A dated 28.11.2016. The Noticee assumed the same as correct in fact and in law, as no response was received from SEBI regarding the same. Pertinently, even at that point in time no discrepancies were raised by SEBI for the same.
- 54.** The bifurcation of the types of Risk Profiles are in the following three categories:
- High
 - Medium
 - Low

The Noticee submitted that they used the risk profile mechanism which is commonly used by many good brands in the advisory as well as financial market segment including brokers and banks.

- 55.** Further, with respect to questions mentioned above, the Noticee has submitted that these 3 questions are very important to check the mind -set of the investor and his risk appetite, risk tolerance capacity and his way of thinking towards equity markets or financial markets. Subsequently, in all three questions if a conservative person ticks all low category answers, then he will get only 0 mark. In fact, the score of the question is just in the right side to that of the question. In case, he would have incorrectly selected the same, it could have been cross verified from the scores obtained by them.
- 56.** In fact, all the three questions are direct questions which have been allotted weightage according to the rationale associated with them. The SEBI regulations require them to formulate simple and direct questions, which has been done and approved by SEBI. Despite of direct questions they have not decided the risk profile based on one answer of the client e.g. if the client selects high risk, high return services over low risk, low return services, he has not been directly offered high risk services but only allotted a higher weightage, thus giving them an opportunity to measure his/ her actual risk appetite.
- 57.** As per risk profiling of clients, Ms. Sunita Madhukar Deshpande obtained score of 12 and accordingly rated as 'Medium Risk' client and Mr. Amit V Patel obtained a score of 17.5 and was rated as 'High Risk' client. The Noticee has produced an email dated May 05, 2019 showing that the risk profiling done by the Noticee for Mrs. Sunita Deshpande was duly accepted by her. The Noticee has further submitted that the services provided to Ms. Sunita Deshpande were not overlapping and different services were provided to her during the relevant time.
- 58.** The relevant legal provisions are reproduced below for reference:

SEBI Investment Advisers Regulations, 2013

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

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.

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

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.

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.

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 if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

8. Compliance

An investment adviser including its representative 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.

59. I note that Regulation 16 and 17 of the IA Regulations state the obligations of the IA for ensuring proper risk profiling of the clients. The Noticee in its reply has stated that in the SCN it has been inferred that *Regular Income is generally associated with debt products*. It is the case of the Noticee that no services pertaining to debt products were offered by it. However, the Noticee itself has further stated that the Mutual Fund advice may remotely pertain to debt products. Further, with respect to the RPQ, it is submitted that all the F & O related services belong to high risk category and Regular Income here indicates intraday trading / trading in F & O. Hence, more risker and the weight has been assigned as 2.

60. With respect to such methodology of risk profiling adopted by the Noticee, I note that while assigning weights to questions in risk profile, the Noticee has assigned weight of 2 to clients who wanted Regular Income, 1 to those who were looking for Capital Appreciation and Regular Income and 0 to the clients looking for Capital Appreciation. Thus, higher risk weights were given to those who were looking for medium or lower risk. Even though the Noticee was not offering any debt product services, the clarification provided by the Noticee with respect to risk profiling is not tenable. It is clearly seen from

the RPQ that the Noticee while giving weights to the services was not assigning higher weights to higher risks.

- 61.** Upon perusal of the RPF of Ms. Sunita Madhukar Deshpande, I note that at question no. 2 of the RPF, the regular income option in the Investment Goal section is given the weightage of 2 points which is the highest in the section, contrary to the fact that the investment goal oriented towards regular income is a low risk investment viewpoint. Further, in question no.16, the phrase “securities with low risk, low return over high risk, high return” may lead the client responding to RPF to state that he can bear high risk as it is associated with high return. The link between high risk and high loss is concealed, due to the manner in which the question is formulated. Such leading questions may influence a low risk client to choose a high risk option while answering the questions of the RPF.
- 62.** The Noticee initially categorized Ms. Sunita Madhukar Deshpande as ‘medium risk’ client. However, she was subsequently sold ‘high risk’ services viz. ‘Option HNI’ which was not suitable to her (basis her risk categorization). I note that the Noticee has provided the RPF of Ms. Sunita Madhukar Deshpande as an annexure to its reply. However, the Noticee has not provided any documentary evidence showing the risk assessment parameters adopted by it to do the profiling of the said client in a particular way. I note that despite the Noticee denying that multiple services with overlapping period were provided to its client, I note that from February 07, 2019 to March 28, 2019 ‘Cash Basic’ and ‘Cash HNI’ services were active for the said client at the same time. Therefore, it is clearly established that the Noticee has sold multiple services with overlapping period to Ms. Sunita Madhukar Deshpande. Further, from the risk profile of Ms. Sunita Madhukar Deshpande, I note that even though the proposed investment amount of the client was below Rs. 1 lakh and gross annual income was Rs.1 – 5 lakh, fees of Rs. 3.44 lakh was charged from the client in four months i.e. from January 31, 2019 to May 23, 2019. I note that the Noticee has not made any submissions with respect to the charges collected

from the said client in four months and therefore, I find that the Noticee by not refuting the said amount collected has admitted the same.

63. Also, I note from the email dated May 05, 2019 produced by the Noticee, stating that the risk profiling was accepted by Mrs. Sunita Deshpande, that the email was drafted and sent from the email id support@marketcaptains.com to the client stating that *“Myself (Mr. Sunita Madhukar Deshpande) registered with the initials as details mentioned below.....I am willing to acknowledge you that I am compensated and gratified by the services, support, guidance and assistance which I inherited from your company’s end and I am acquainted very well about all risk appetites and suitability assessment....”*. As a reply to the said email, I note that Mrs. Sunita Deshpande from her email id has stated *“I accepted the acknowledge”*. The said email produced before me further establishes the careless way in which the Noticee has undertaken the risk profiling and the way in which the client was accepting the same without even knowing anything with regards to the high risk categorization as nothing has been mentioned in the said email. Further, the email has been sent to the client by the Noticee from its own email id as a proforma to be just accepted by her. The said email shows the misconduct of the Noticee in handling the profiles of its clients.

64. In the case of client, Mr. Amit V. Patel, I note that even though the proposed investment amount of the client is Rs. 2 - 5 lakh and gross annual income is Rs.1 – 5 lakh, fees of Rs. 13.94 lakh was charged from the client within a period of one month i.e. from July 26, 2018 to August 31, 2018. The client was sold 12 services within a period of around one month, with the period of multiple services overlapping. I further note that the Noticee has arbitrarily / disproportionately charges fees for similar service and for similar duration i.e. Rs. 66,000/- and Rs. 2 lakh for ‘HNI Option’ service having similar duration of five months. Similarly, Rs. 30,000 and Rs. 60,000 for ‘BTST Option’ service having similar duration i.e. July 31, 2018 to October 29, 2018.

65. I note that the Black’s Law Dictionary defines “fiduciary relationship” as under:

“A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships –such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client –require an unusually high degree of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”

66. Furthermore, the Hon’ble Supreme Court in **Central Board of Secondary Education and Anr. v. Adiyya Bandopadhyay and Ors. (2011) 8 SCC 497** observed as under:

“21. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary....”

67. From the above, I note that an investment advisor has a duty to act for the benefit of his clients. However, in the instant case, the high advisory fees charged, when seen against the annual income and proposed investment amount and the multiple services given by the Noticee to its clients involving arbitrary and varying process for same products shows that suitability of products for its clients was completely disregarded by the Noticee. The Noticee’s contention that overlapping services are different services, no same services were sold/offered to the client in overlapping period is incorrect. Rather, these instances show the careless approach of the Noticee in providing services to the clients based on the incorrect risk profiling done for the clients.

68. Regulations 16 and 17 of the IA Regulations envisage that Risk profiling should be communicated to the client so that the client can assess his risk profile before agreeing to accept the advice. Further the purpose of risk profiling can be meaningful only when the Investment adviser verifies the information necessary for risk profiling. I find that the Noticee has not been fair and transparent in its dealing with clients regarding the fees charged to the client. It has adopted unethical business practices to deceive the clients into buying/ subscribing multiple packages. By acting in the above manner with an objective to maximize its fees and with an objective of keeping its own interest ahead of its client's interest, the Noticee has completely disregarded the responsibility entrusted on it under the provision of the IA Regulations to act in fiduciary capacity and in the best interest of its clients.

69. In view of the above, I find that the Noticee committed Irregularities regarding Risk Profiling and suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b) (iii) and 16(d) (ii) of IA Regulations and Regulation 15(1), 17(a) of IA Regulations, clauses 1, 2, 6 & 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations.

Issue no. IV: Whether the Noticee failed to resolve investor grievances as per prescribed timelines and failed to display the complaints' status on its website in violation of the provisions of SEBI circular No. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of the IA Regulations and SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019?

70. The SCN observed that 9 complaints were pending against the Noticee as on November 30, 2020. Out of these complaints, it was seen that in 5 complaints, the Noticee had failed to file ATR within prescribed timeline of 30 days, thereby violating the directions given in the SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014.

71. The details of pending complaints in which the Noticee had filed ATR after 30 days and complaints in which the Noticee had not yet filed ATR (as on November 30, 2020), are given below:

Table No: - 05

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding complaint to IA (X)	Date of Reminders	Date of Final ATR (Y)	Excessive time above 30 days
1	SEBIE/MP20/0000226/1	Raviraj Chaitanya	21.01.2020	28.01.2020	01.06.2020 10.08.2020 31.08.2020	30.10.2020	262
2	SEBIE/MP20/0000412/1	Sunanda Roy Chowdhury	13.02.2020	17.02.2020	01.06.2020 04.08.2020 31.08.2020 10/09.2020	N.A.	261
3	SEBIE/MP20/0000537/1	Mohan Vishwanath Bapat	22.02.2020	03.03.2020	10.06.2020 10.08.2020 11.09.2020	N.A.	252
4	SEBIE/MP20/0000636/1	Narasappa Hosamani	09.03.2020	09.04.2020	10.08.2020 31.08.2020 29.09.2020 12.10.2020	N.A.	236
5	SEBIE/MP20/0001750/1	Anilkumar Banda	14.09.2020	29.09.2020	N.A.	N.A.	293

72. The Noticee and its proprietor Mr.Amit Soni had not submitted the ATR in a time bound manner as prescribed by SEBI. Therefore, the Noticee by failing to resolve the investor grievances and submit ATR in a time bound manner was alleged to be in non-compliance with the SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of the IA Regulations in the SCN.

73. Further, as on October 31, 2020, the total number of pending complaints against the Noticee were 08. However, the website of the Noticee as on November 30, 2020 displayed the following information on its website:-

Table No:-06

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
3	0	2		1 customer ATR submit/2 clients in follow up

74. Thus, the Noticee allegedly did not display the correct number of pending SCORES complaints on its website and therefore, the Noticee was alleged to have violated SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

75. The Noticee in its reply has submitted that as on December 19, 2019, it had initiated a campaign named "Rapid Complaints Redressal Mission" ("RCRM"). The Noticee has provided the copy of snapshot of website page as on December 21, 2019 along with the pop up of RCRM content. The said RCRM campaign was initiated on December 19, 2019 to January 15, 2020. The objective of this campaign was to resolve the complaints as soon as they were received and to seek information from investors if they had any grievance. The contents/ extract of RCRM is as under:

"With the rapidly changing compliance environment it becomes incumbent for us to adopt to this new ecosystem of complaint resolution. To further our commitment of ethical business practices we hereby introduce Rapid Complaints Redressal Mission (RCRM). Under this mission our agenda is not only to solve the client's complaints pending with SEBI/ Scores or internal complaints but also identify and remove the causes of such complaints.

Also we wish to identify and make good any issues faced by client while dealing with any team member of Market Captains.

Our approach: All pending complaints new or old will be actively resolved within 15 days or earlier. The complaints will be resolved to the satisfaction of the clients where the client's need will be identified and specific arrangements will be made for the client.

To share your complaint
Please call us at: 9691273568
Write to us at: support@marketcaptains.com"

- 76.** The Noticee informed that as on December 19, 2019, there were 5 complaints as per SEBI SCORES pending in all, within the range of 90 days and ATRs were filed within a couple of days. Pertinently, on January 13, 2020, there were only 3 complaints pending for which all ATRs were filed. Further, it is pertinent to mention that on December 19, 2019 complaint of one Mr. Aman Shrivastav ("Aman") was appearing on their SEBI SCORES dashboard with pending days as 39 days. Subsequently on January 13, 2020, Mr. Aman's complaint was not appearing on their SEBI SCORES dashboard while on February 04, 2020, his complaint appears on their dashboard with already 86 days passed. Such errors were frequent, and hence they should not be held responsible for such errors.
- 77.** With respect to allegation in the SCN that the Noticee did not display correct number of complaints on its website, the Noticee in its reply has submitted that SEBI has relied on a website called www.archive.org which takes screenshot at different intervals. In case of its website, the said website has taken the screen shot on February 24, 2020 and then in October 2021 (when the site was not active as claimed by the Noticee). It is pertinent to mention that since March 2020, the Noticee has not operated business or website, thus the requirement to display the complaint status on website as mandated was not applicable since there was no website in use. It can also be verified from the website www.archive.org that there were no snapshots from March 2020 to October 2021 (which also shows site not active). The last status displayed pertains to January 2020 (to be displayed since 07.02.2020, as mandated by circular) which is as mandated and correct to last details. The Noticee has provided the snapshot of their website page as on February 24, 2020 and October 2021 as downloaded from www.archive.org to prove his claim.

78. Further, in respect of the alleged 5 complaints mentioned above for which delayed ATR was filed, it is submitted as under:

Table No:-07

Sr.No.	Name of Complainant	Excessive time above 30 days	Clarification
1.	Raviraj Chaitanya ("Raviraj")	262	<ol style="list-style-type: none"> 1. The original complaint was filed by Mr.Raviraj on 05.09.2019.The reason for complaint was for losses incurred by him. 2. We mutually accepted a resolution where we were required to pay Rs 2, 55,000 in trenches. It was also agreed that after payment of first tranche the client would send an agreement stating the resolution. The First installment of Rs 80,000 was paid within the decided time frame. The client provided the acknowledgment for the same based on which the complaint was closed on SCORES Portal on 26.12.2019. 3. Subsequently, he did not provide us with the agreement and rather asked us to pay second installment after which he would provide us with the settlement agreement. We paid installment also amounting to Rs.40, 000/-. After receipt of this amount the client did not provide us with the settlement agreement. 4. Since the client is not willing to provide this agreement we tried reaching him on email to which he replied that he will provide the agreement only after receipt of full amount as agreed. We have therefore not paid the amount. We are still willing to refund the amount as discussed but only after receipt of the agreement from him. 5. Further, w.r.t the complaint dated 21.01.2022 we humbly submit that we have filed the ATR in a timely manner and the said complaint was merely re- opening of previous complaint. In fact, in the Action taken Mr. Raviraj was informed that "Dear client, As you updated that company had made forceful settlement for the complaint

			<p>raised by you. As it was mutual concern over phone and mail about the settlement of the complaint. We had already transferred two installments into the bank account provided Now we only looking for the agreement for the complaint closure. Kindly follow the procedure of the company so that we will also close the complaint as soon as possible". A copy of Action History of RaviraJ Chaitanya is provided as Annexure-24.</p>
2.	Sunanda Roy chowdhury	261	<ol style="list-style-type: none"> 1. The complaint was received by us on 17.02.2020. We tiled ATR on 18.02.2020. Various resolutions were tried but the client was adamant on refund or the fees and the losses she claimed incurred due to services. A copy of Action history of Sunanda Roy Chowdhury is provided as Annexure - 25. 2. Her complaint was about not receiving advice on time and the accuracy or the services. She than issued us a legal notice and we have replied to the same accordingly. The matter was closed by SEBI.
3.	Mohan Vishwanath Bapat	252	<ol style="list-style-type: none"> 1. The complaint was received on 22.02.2020. In fact prior to the aforesaid we had received direct complaint from the client which was responded on 05.02.2020. A copy of complaint details is provided as Annexure - 26. 2. Even pursuant to the receipt of complaint on SEBI SCORES timely ATR was tiled. A copy of Action History of Mohan Vishwanath Bapat is provided as Annexure-27.
4.	Narasappa Hosamani ("Narasappa")	236	<ol style="list-style-type: none"> 1. On 03.03.2020, Mr. Narasappa filed the complaint which was relied on 04.03.2020. Mr. Narasappa and our Organization had reached an amicable solution for his complaint, where we were required to refund some money in tranches. 2. He was then adamant to take the entire amount in lump sum only. We stated that due to COVID-19 affecting the business we are unable to provide this amount.

			<p>3. We then tried to reach another resolution with Mr. Narassappa but to no avail. We requested Mr. Narasappa to provide evidences for the allegations made by him. He did not provide even single evidence however, only demanded refund of money.</p> <p>4. We were then left with no alternate but the recourse of law. On 23.08.2021. We raised the complaint in the court of law, where the client has not provided any evidence or even replied till elate. A copy of Order passed by the Lei. Civi I Judge, Indore is enclosed hereto provided as Annexure - 28.</p>
5.	Anilkumar Banda	293	<p>1. The complaint was raised on 11.09.2020, the complaint was forwarded to us on 29.09.2020.</p> <p>2. The allegation made in the complaint pertains to high fees paid by the client. No allegation regarding high returns promised or losses incurred due to services was made by the client.</p> <p>3. The client simultaneously filed a complaint with Cyber Crime, Indore on 23.09.2020. We discussed with Mr. Banda and an amicable solution was worked out, the client and our organization reached a resolution. We were continuously in touch with client.</p> <p>4. We mutually decided to resolve the complaint and finally on 06.10.2021, the agreement was signed by both the parties. Since we did not notice the complaint on SEBI, we did not file the ATR at SCORES Portal but the complaint was resolved and the same was taken up with the complainant.</p> <p>5. We updated the same on SCORES on 16.09.2022, which is almost 1 year after the complaint was actually resolved. The agreement is provided as Annexure – 29.</p>

79. The Noticee has provided the copy of SEBI SCORES dashboard as on October 13, 2022 and submitted that as on said date, there were 6 complaints pending out of which one is a duplicate complaint.

80. In respect of abovementioned complaints, the action taken and status as on date i.e. October 13, 2022 as submitted by the Noticee is as under:

Table No:-08

Registration No	Complainant Name	Clarification
SEBIIE/MP20/0000226/1	Raviraj Chaitanya	<ol style="list-style-type: none">1. The original complaint was filed by Mr.Raviraj on 05.09.2019.The reason for complaint was for losses incurred by him.2. We mutually accepted a resolution where we were required to pay Rs 2, 55,000 in trenches. It was also agreed that after payment of first tranche the client would send an agreement stating the resolution. The First installment of Rs 80,000 was paid within the decided time frame. The client provided the acknowledgment for the same based on which the complaint was closed on SCORES Portal on 26.12.2019.3. Subsequently, he did not provide us with the agreement and rather asked us to pay second installment after which he would provide us with the settlement agreement. We paid installment also amounting to Rs.40, 000/

		<p>-. After receipt of this amount the client did not provide us with the settlement agreement.</p> <p>4. Since the client is not willing to provide this agreement we tried reaching him on email to which he replied that he will provide the agreement only after receipt of full amount as agreed. We have therefore not paid the amount. We are still willing to refund the amount as discussed but only after receipt of the agreement from him. Agreement from him.</p>
SEBIE/MP21/0000189/1	Rushikesh kalokhe	We are in the process of settling the same.
SEBIE/MP21/0000801/1	Rudra Chaitanya	We have sent an Emailed the client for an amicable Resolution.
SEBIE/MP21/0000917/1	Sombar	<p>1. Initially Mr.sombar raised complaint directly to us and not through SCORES.</p> <p>2. Pursuant thereto, we then entered into a settlement agreement to refund Rs 120618/- in parts. First instalment of Rs 30000 was paid.</p> <p>3. We have emailed client on 11.10.2022 to resolve the issue amicably.</p>
SEBIE/MP21/0001230/1	Vivek Survase	We are in the process of settling the same.
SEBIE/MP21/0001756/1	Vivek Survase	The said complaint is a duplicate complaint of complaint bearing No. SEBIE/MP21/0001230/1. In fact, in the said complaint there is nothing mentioned in respect of the complaint details.

81. The relevant portions of the provisions of law are reproduced as under for reference:

IA Regulations, 2013

Redressal of client grievances

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

Liability for action in case of default.

28. *An investment adviser who –*

(a).....

(b).....

.....

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

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

SEBI Circular dated 18.12.2014

https://www.sebi.gov.in/web/?file=/sebi_data/attachdocs/1418897075639.pdf#page=3&zoom=page-width,-16,487

(relevant portions)

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.....*

11. *Action taken by the listed companies and 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.*

13. *Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.*

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

Measures to strengthen the conduct of Investment Advisers (IA)

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)
- (ii)
- (iii)
- (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

82. I note that as on November 30, 2020, 05 complaints out of the 09 complaints were pending against the Noticee in SCORES Portal and the Noticee was observed to have failed to file ATR in respect of 04 complaints and did not file the ATR within the prescribed timeline of 30 days for 1 complaint. The Noticee has submitted that it had initiated a campaign named RCRM with an objective to resolve the complaints as soon as they were received and to seek information from investors if they had any grievance. The said submission of the Noticee has no relevance to the fact that 05 out of the 09 complaints were pending with the Noticee for more than 30 days and that there was a failure on the part of the Noticee to file ATR in case of 04 complaints out of the said 05 complaints and delayed filing of ATR in case of 01 complaint.

83. In addition to above, I note from the table no. (8) above, that the Noticee has made efforts to resolve the grievances of the complainants/investors, however, even as on date the

complaints of the investors/clients remain unresolved. Therefore, I note that the Noticee has failed to resolve the investor grievances.

84. Based on the evidence on record, I find that the Noticee has not actually redressed the client's grievances within the prescribed timelines. I also note that the Noticee has not produced any documentary evidence on record to show that the Noticee had resolved the grievances of the complainants within the stipulated timelines. Also, the submissions of the Noticee for not filing the ATR within the stipulated timeline for the 05 complaints as mentioned at para 78 and 80 above cannot be taken into consideration as the material on record clearly establishes the delay is running into 262, 261, 252, 236 and 293 days on the part of the Noticee. The said delay cannot be treated leniently and condoned on the basis of the submissions of the Noticee.

85. I note that there were 08 complaints pending against the Noticee as on October 30, 2020. However, I note from the screenshots of the website that the Noticee has displayed only 02 complaints pending as on November 30, 2020. The submissions of the Noticee that as the website was inoperational and that it had stopped carrying out its business as an investment advisor does not absolve it from complying with the statutory obligations cast on it being a SEBI registered intermediary. Rather, from the material available on record, I note that the screenshots of the website of the Noticee as on April 12, 2020 showed that the said website was still active. In terms of the SEBI Circular dated December 27, 2019, in order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, the Investment Advisers are mandated to display the number of complaints at the beginning of the month, received during the month, resolved during the month, pending at the end of the month and the reason for pendency. Therefore, for the month of November 2020, the total number of complaints pending at the beginning of the month should have displayed as 09 complaints instead of 03 complaints.

86. In view of the aforesaid, I find that the Noticee has not complied with SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 read with Regulation 21(1) read with Regulation 28(f) of the IA Regulations by not resolving the complaints in a time bound manner and failing to submit the ATR within the prescribed timelines and also violated the provisions of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 by failing to display the correct information regarding number of pending complaints on its website.

Issue no. V: Whether the Noticee handled trading/demat account of clients and incurred losses and failed to act in a fiduciary capacity and therefore, violated Regulation 15(3) & 22(b) of IA Regulations read with Regulation 15(1) of IA Regulation and Clause 1 of the Code of Conduct as specified in Third Schedule read with Regulation 15(9) of IA Regulations?

87. It is observed from the SCN that Mr. Aman Srivastava in his SCORES complaint (Regn. no. SEBI/MP19/0002600/1), *inter alia*, alleged that the Noticee operated his demat account and accordingly incurred losses in almost all trades.

88. In this regard, during inspection, to substantiate the allegations made by Mr. Srivastava, trade details, including IP addresses from which trades were executed in the client's account were sought from Angel Broking Pvt. Ltd. ('Angel') for the period from September 01, 2019 till November 24, 2020. From the trade details received from Angel, it was observed that from October 04, 2019 to October 18, 2019, the trades were executed from IP addresses - 27.62.229.201, 27.56.198.169, 27.56.202.103, 171.61.29.232, 27.56.206.81 and 27.56.204.245 through mobile application. The IP address location was found out from the website "IP Locator" and it is observed that most of the trades were executed from Indore, Madhya Pradesh where the Noticee's office is located whereas Mr. Srivastava's location as per the KYC received from Angel is Rewa (Madhya Pradesh) which is 670 kms (approx.) from Indore. The trade details obtained from Angel and few IP Locator screenshots were provided to the Noticee.

- 89.** In view of the above actions, it was alleged in the SCN that the Noticee, by providing execution services to its clients has violated the provisions of Regulation 15(3) and 22(b) of the IA Regulations. Further, it was also concluded that by failing in its responsibility to act in fiduciary capacity which is entrusted upon the IA under Regulation 15(1) of the IA Regulations, the Noticee has violated the provisions of Clause 1 of the Code of Conduct for the IA as provided in Third Schedule read with Regulation 15(9) of the IA Regulations.
- 90.** The Noticee in its reply has submitted that the complaint was received on November 10, 2019 and in response to the same Reply / ATR was filed. After discussing with Mr. Aman and resolving his queries on August 20, 2020, the Noticee replied that *“.....we agreed for closure by offering you a refund is because we wanted to expedite the process of resolution of complaint. Another objective was to ensure that satisfaction of client. Please also note that this settlement is no way means that we were at fault because to determine fault will require detailed study and analysis of all the evidences and circumstances prevailing at the time of incident.....”*
- 91.** The client i.e. Mr. Aman replied to their aforesaid reply which, *inter alia*, stated that he was willing to accept and close on the condition that no legal action shall be taken by them post refund of amount. They agreed to the terms and the matter was amicably resolved. The complaint was closed from SEBI SCORES portal on October 01, 2020. The Noticee has provided the copy of Action History of Mr. Aman as downloaded from the SEBI SCORES portal.
- 92.** With regard to the finding that as per the IP address in respect of trades executed by Mr. Aman were from Indore, Madhya Pradesh i.e. where the Noticee's office is located, the Noticee has submitted that the client i.e. Mr. Aman was residing in Indore / Dewas as he is from Madhya Pradesh. The Noticee is aware of the same as the client visited their office premises and informed the same to the Noticee. The Noticee has clarified that Dewas is only 39 kilometres away from Indore. Thus, the trades ought to have been entered by the client himself and not by any of the Noticee's executives. The Noticee

further has stated that it is not registered as a sub-broker or broker hence, does not have access to the terminals or any broker. The ID and password of client's trading or demat account were never demanded by the Noticee. As general work ethics, the Noticee stated that it used to inform each and every client to not share their demat account or bank account IDs and password.

93. The relevant provisions of law are reproduced below for reference:-

IA Regulations, 2013

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

Segregation of execution services.

22 Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:

Provided that such distribution or execution services can only be offered subject to the following:

(b) The investment adviser shall maintain arm's length relationship between its activities as investment adviser and distribution or execution services.

94. I note that the Noticee has not adduced any evidence to show that the client, Mr. Aman stayed in Dewas. Also, the KYC details with the broker i.e. Angel show that the location of the client was Rewa, Madhya Pradesh. However, I find that there is no material available on record to establish that the trades were executed by the Noticee on behalf of the client. The IP address locator only states that the IP addresses from which the trades were executed were located in Indore, Madhya Pradesh but does not specify whether the said IP addresses were that of the Noticee's address or of the address of the Broker i.e. Angel. There is nothing available on record to establish that the Noticee, in addition to providing investment advice was even executing trades in the demat account of Mr. Aman Srivastava. The IP addresses location shown as Indore, Madhya Pradesh alone cannot be an evidence to conclude that the trades were executed by the Noticee on behalf of its client without knowing the accurate location of the terminal from

which the trades were executed and / or without having any evidence to show that the user ID and password of the complainant was shared with the Noticee.

- 95.** In view of the material available on record, I am constrained to conclude that the acts of the Noticee of providing execution services to its clients are not established due to insufficient facts and documentary evidence available on the same and therefore, the Noticee cannot be said to be in violation of the Regulation 15(3) and 22(b) of the IA Regulations and Clause 1 of the Code of Conduct for the IA as provided in Third Schedule read with Regulation 15(9) of the IA Regulations.

Issue no. VI: Whether the Noticee has provided investment advice on free trials to its clients in violation of SEBI Circular No. SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 and Clause 8 of the Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations?

- 96.** The SCN has alleged that the Noticee continued to give free trials for any products/ services to prospective clients in violation of SEBI Circular no. SEBI / HO / IMD / DF1 / CIR /P /2019/ 169 dated December 27, 2019. However, on perusal of the website of the Noticee i.e. www.marketcaptains.com as on November 27, 2020, it is observed that the Noticee was still continuing to offer advice on free trial basis.
- 97.** The Noticee in its reply submitted that screen shot of the website as provided by SEBI to them during the course of investigation pertains to dates ranging from February 17, 2019 to September 22, 2019. These snapshots relate to the period prior to the circular issued by SEBI. The Noticee has submitted that the SEBI Circular restricting Investment Advisors to provide free trial was dated December 27, 2019. In this regard, the Noticee stated that as per the snapshot of their website of December 20, 2019, Free Trial Tab was available to the clients. However, pursuant to this circular dated December 27, 2019, the Noticee has removed the said tab of free trial from their website. Further, the Noticee has stated that as on November 27, 2020, the Noticee's business was non-operational since the Noticee had stopped taking new clients w.e.f March 2020.

98. It is pertinent to reproduce the relevant portion of the SEBI circular titled “*Measures to strengthen the conduct of Investment Advisers (IA)*” dated December 27, 2019 which is as under:

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”.

99. I note from the material available on record that the screenshots of the website of the Noticee as on April 12, 2020 provided the following links on its website:

“Usefull Links

- *KYC & Risk Profile*
- *Refund Policy*
- *Performance*
- ***Free Trial***
- *Payment*
- *Blog*
- *Career*
- *Privacy policy*
- *Terms and Conditions*
- *Disclaimer”*

100. I note that upon clicking 'Free Trial' link mentioned above, the link is directed to the web which directs the user to 'Free Trial' page. Thus, the submissions of the Noticee that it had removed the tab of 'Free Trial' after the issuance of the SEBI Circular dated December 27, 2019 is not tenable and is incorrect considering that even as on April 12, 2020, the 'Free Trial' tab was active on the Noticee's website. I also note that the Noticee in his submissions has stated that its website has been inoperative since March 2020. However, from the material available on record, it has been clearly brought out that the Noticee's website was operational even on April 12, 2020. Therefore, the Noticee's claim is incorrect.

101. The SEBI Circular dated December 27, 2019 directs the IAs not to provide free trial for any product/ services to prospective clients. Thus, the Noticee, despite the said restriction provided under the said Circular continued to provide free trials to its clients which is in violation of the said circular and the IA Regulations.

102. In view of the above, I find that that Noticee has provided free trials to its clients in violation of the SEBI Circular SEBI/HO/IMD/DF/CIR/P/2019/169 dated December 27, 2019 and Clause 8 of the Code of Conduct for the IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations.

Issue no. VII: Whether the Noticee promised high returns to clients on their investment and failed to act in a fiduciary capacity and therefore, violated Regulation 15(1) of IA Regulations and clauses 1, 2, 5 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3(a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) & (c) of SEBI Act?

103. The SCN has alleged that on perusal of the website of the Noticee viz. www.marketcaptains.com, it was noticed that the Noticee had lured clients by using following phrases on its website which signify high returns on investments:

- a) **Option Premium:** *This service is specially designed for those traders who want to trade in a day with Big Target for Big Profit with Calculated Risk.*
- b) **Premium Pack** *is having such type of calls which are having their first target double of the basic calls.*
- c) **MCX Premium:** *This services is specially created for those who wish to earn high return on their investment in commodities market. In this segment we usually provide trading recommendations with bigger targets in bullion, base metal & energy. Traders are suggested to trade in multiple lots as accuracy is high in this segment.*

- 104.** It was observed that such statements are in the nature of promising assured returns. The Noticee has been promising accuracy of its recommendations and thus, promising high returns to its clients, despite fully knowing that all the investments in securities market are subject to market risk and that accuracy of recommendations and high returns cannot be assured. Therefore, it was alleged that the Noticee has made, false and misleading representation to its clients.
- 105.** The Noticee in its reply has submitted that the phrases as extracted by SEBI in respect of luring clients is that "*Option Premium: This service is specifically designed for those traders who want to trade in a day with Big Target for Big profit with Calculated Risk*". Pertinently, while SEBI has tried to specify on *Big Target for Big profit*, it is the case of the Noticee that SEBI has failed to take cognizance of the fact that it is mentioned with Calculated Risk. Hence, the clients were made aware about the potential risk.
- 106.** The Noticee has submitted that all the examples/phrases as extracted pertains to the premium segment of the services. The Noticee has contended that the services in the premium segment were different from services in basic segment, for instance, in the basic segment, the Noticee offered 3 targets while in the premium call the Noticee offered 1 target where the risk to reward ratio would be better than the basic call. The Noticee

has provided the snap shot of its website in respect of information about cash basic and cash premium.

107. The relevant legal provisions are reproduced below for reference:

PFUTP REGULATIONS, 2003

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.

SEBI Act, 1992

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;

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(s) mis-selling of units of a mutual fund scheme;

Explanation- For the purpose of this clause, “mis-selling” means sale of the 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*

108. The material available on record has been examined. I note that from the screenshot of the Noticee’s website wherein screenshot of the details of the MCX Basic product have been mentioned that the said product was advertised as a package in which the client could earn maximum profit with the Noticee’s high accurate calls with good percentage of accuracy. The Noticee stated therein that *“In commodity MCX segment we provide tips on Bullion Metals and Analytics with a high profit margin for client.”* Similarly, page 37 of the screenshots of the Noticee’s website states the details of the AGRI POWER TIPS. I note that under the said section, the Noticee advertised and stated as— *“In this service, we provide less number of recommendations but of very high quality with high returns.... Our predictions are highly accurate....”*

109. I note that the Hon’ble Supreme Court in ***Kanaiyalal Baldevbhai Patel v. SEBI (2017) 15 SCC*** has observed as under:

“A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood

in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.”

110. In view of the above, I am unable to accept the Noticee’s contention that the extracts provided by SEBI (showing samples of phrases which promised high returns to investors) pertain to only premium services. From the material available on record, it is clear that even in Agri product services which do not fall under the premium services offered by the Noticee, the Noticee has promised high returns and highly accurate advice. The Noticee, being a SEBI registered intermediary, is very well aware that any investment by clients based on the advice given by it is subject to market risk and by assuring any kind of return to the client from investment in the securities market, the Noticee has not acted in the best interest of the clients. Therefore, I find that the Noticee was advertising high returns on its website and luring the clients to get investment advices from the Noticee for the fees charged.

111. Regulation 4(2)(k) of the PFUTP Regulations states that disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of the investors dealing in securities market is a fraudulent practice. I note that the act of assuring accuracy of recommendations and high returns from securities market by the Noticee through its website is fraudulent in nature and done with an intention to bring in more customers thereby increasing the income of the IA. Further, the aforesaid phrases are misleading and are designed to influence the decision of investors who visits the website for dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities

market. Mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer. Therefore, I note that the Noticee was indeed involved in mis-selling of services to its clients by selling high risk services to clients with medium risk profile, by making false and misleading statements of high accuracy and high returns, etc.

- 112.** The Noticee has referred to the order dated May 15, 2019 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the case of ***Piramal Enterprises Limited Vs. SEBI and other connected Appeals*** wherein Hon'ble Tribunal held that:

"23...We were also told that till date there has not been any violation of SEBI Laws. The imposition of penalty, even though meager will leave an indelible mark and leave a blot on their spotless image. Such blot may not be in the interest of the securities market especially in the international market.

24. Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty. Other factors should be considered including those stated in Section 23J of the Act which apparently was not considered.

25. When fairness and transparency was shown by PEL in the execution of the deal and there is no evidence of lack of integrity on the part of PEL, it would be harsh to penalize PEL, howsoever small the penal amount it may be."

- 113.** I have noted the submissions made by the Noticee and its reliance on the order of the Hon'ble SAT in Piramal Enterprises Limited. In this regard, I place reliance on para 22 and 23 of the said order which are reproduced as under-

"22. The purpose of closing the trading window is for a salutary purpose. It is to ensure that trading is restricted during the period in question and pre-clearance

requests can only be sanctioned as per the existing Model Code of PEL. In the given circumstances, even though the trading window was not closed, there was no trading of the scrips by any of the designated employees of the PEL nor were any pre-clearance requests received by PEL. Thus, even though, no announcement was made for closure of the trading window, we find that PEL ensured compliance in pith and substance of the Model Code of PEL and the PIT Regulations including the Model Code. We further find that UPSI at all times was preserved and there was no misuse of UPSI.

23. In the light of the aforesaid, we find that the violation of the Model Code in the given circumstances is technical in nature. We were informed that the PEL is a blue chip company and has its presence in many countries which has not been denied by the respondent. We were also told that till date there has not been any violation of SEBI Laws. The imposition of penalty, even though meager will leave an indelible mark and leave a blot on their spotless image. Such blot may not be in the interest of the securities market especially in the international market.”

The Hon'ble SAT has noted that the violations by Piramal Enterprises Limited was merely a technical violation of the model of code of conduct.

114. However, in the present case, I note that the Noticee has promised high returns and further did not do the risk profiling of the clients suitably thereby misleading the investors which cannot be termed as a technical violation and has serious repercussions. The said acts of the Noticee involve fraud charges which have been established as discussed in the preceding paragraphs. Thus, I note that the reliance of the Noticee on the abovementioned SAT order is misplaced and the facts of the present matter are distinguished.

115. Additionally, the Noticee's submissions in respect of the allegation that it had deceived the clients and violated PFUTP regulations, the Noticee has relied upon the order passed by Ld. Whole Time Member, SEBI dated May 28, 2021 in the case of **Tatia Global Venture Limited** wherein it is, *inter alia*, mentioned that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of the PFUTP Regulations, 2003 deals with fraud / manipulation / unfair trade practices while dealing

in securities and in relation to securities market. Further, the Noticee has stated that Section 12A(a), (b) & (c) of the SEBI Act, 1992 may be invoked in cases in connection with the issue, purchase or sale of any securities. The Noticee has stated that its role is merely of providing investment advice. In view thereof, the allegations of PFUTP Regulations are not applicable to the Noticee in respect of the facts of the case. Relevant extract from the said order is reproduced herein under:

“46. I note that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations, 2003 deals with fraud/manipulation/ unfair trade practices while dealing in securities and in relation to securities market. Section 12A (a),(b)&(c) of the SEBI Act, 1992 may be invoked in cases where there exists any manipulative or deceptive device or contrivance, any device, scheme or artifice to defraud or any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, purchase or sale of any securities. In the SCN, there are no trading or order data or details of any purchase, sale or issue or subscription of securities by any of the Noticees.

47..... further observe that the definition of fraud as given under Regulation 2(1) (c) and as interpreted by the Hon'ble Supreme Court of India in Securities and Exchange Board of India and Ors v. Kanaiyalal Baldevbhai Patel and Ors. (2017) 15 SCC 753, makes it clear that 'inducement' is required to constitute 'fraud' under PFUTP Regulations 2003 and must be made while 'dealing in securities' and must be made for the purpose 'to induce others to deal in securities'. The allegations made in the SCN does not bring out findings or any facts relating to trading in securities by Noticees or these essential ingredients of 'fraud' such as 'manipulation in securities', 'dealing in securities', 'inducement', etc.

48. Therefore, I find that violations of PFUTP Regulations, 2003, as alleged in the SCN, are very general and vague in nature without making out any specific case containing necessary ingredients required to constitute these violations nor were the Noticees given opportunity to inspect or furnished any finding of examination relating to PFUTP Regulations 2003 violations which was additionally included while issuing the SCN. In my view, due to the aforesaid reasons, under the facts and circumstances of the present case, I find substantial merit in the submissions made by the Noticees that the allegations of violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 and provisions of PFUTP Regulations, 2003 is not tenable against the Noticees.... ”

- 116.** I note that the WTM in the said order was dealing with violation of Section 12A(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations and findings of the WTM need to be seen in that context. However, the present proceedings deal with Regulations 3 (a), (b), (c) & (d), 4(1) and 4(2)(k) & (s) of PFUTP Regulations. Furthermore, Regulation 4(2)(k) deals with *“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”*.
- 117.** I note that the Noticee was promising high returns in securities market. Even though the Noticee is not issuing, purchasing or selling any securities, the Noticee, being a SEBI registered intermediary is a person associated with the securities market by giving investment advices to its clients for dealing in securities, which is a serious responsibility as the Noticee is a registered investment advisor. The acts of the Noticee in giving investment advice by promising higher returns, luring the clients, etc. were acts by way of which clients were getting induced. As observed by the Hon’ble Supreme Court in the case of *Kanhaiyala Baldevbhai Patel (Supra)* *a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient* to prove the charge of fraud under the PFUTP Regulations. Therefore, the Noticee’s reliance on the SEBI order in *Tatia Global Venture Limited* is incorrect and therefore, unacceptable.
- 118.** In addition to above, I note from the Issue No. III dealt in detail above that the Noticee has misrepresented and concealed from the clients information with respect to services provided, fees charged and risk profiling which amount to ‘fraud’ as defined in regulation 2(1) (c) of PFUTP Regulations. Further, such acts of the Noticee were done by it with the sole purpose of enhancing its income thereby defrauding its clients. Such acts of the Noticee are clearly fraudulent in nature and covered within the definition of “fraud” as defined in Regulation 2(1) (c) of the PFUTP Regulations.

119. As per Regulation 3 of the PFUTP Regulations, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud in connection with dealing in securities; engage in any act, practice, course of business which operates as a fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules rules or regulations made thereunder. The business practice/ modus operandi followed by the Noticee is in the nature of a scheme to lure investors by assuring them guaranteed returns and the same is manipulative and deceptive in nature. Further, as determined above, the sole objective of the Noticee is, to extract service fee from its clients, based purely on assurance of delivering profit and regardless of their risk profile or by failing to assess the risk of the client appropriately after verifying the documents in a true and correct manner. These acts of the Noticee are manipulative, fraudulent and unfair trade practices adopted for carrying out the business of an Investment Advisor. The commissions and omissions of the Noticee in conducting the exercise of risk profiling establishes the fraudulent manner in which the investment advisory business were carried out.

120. I find that the Noticee by promising high returns and providing misleading information to clients has lured and induced them to follow its advice and buy the products offered by the Noticee which amounts to fraud under the provisions of the PFUTP Regulations. Further, the Noticee, by misrepresenting the clients regarding services provided, fees charged and undertaking the risk profiling in the manner mentioned in the preceding paragraphs has violated the provisions of Regulation 15(1) of IA Regulations, clauses 1, 2, 5 and 8 of the Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) & (c) of SEBI Act.

121. In view of all the facts and circumstances of the case as discussed in previous paragraphs, I find the following:

- a. The Noticee has failed to comply with SEBI directions with respect to inspection and therefore, violated Regulations 13(a), 15(12), 25(1) and (2) read with 24(3) and Clause 8 of Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of SEBI IA Regulations, 2013;
- b. The Noticee has failed to inform material information to SEBI in violation of Regulation 13(b) of IA Regulations. Further, by not disclosing the material information of an FIR being filed against it alleging serious charges of cheating, dishonesty, breach of trust, etc., the Noticee is in violation of the provisions as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations;
- c. The Noticee has committed irregularities regarding Risk Profiling and suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b)(iii) and 16(d)(ii) of IA Regulations and Regulation 15(1), 17(a) of IA Regulations, clauses 1, 2, 6 and 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations;
- d. The Noticee failed to resolve investor grievances as per prescribed timelines and failed to display the complaints status on its website and therefore, violated SEBI circular CIR/OIAE/2014 dated December 18, 2014 & SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Regulation 21(1) read with regulation 28(f) of the IA Regulations;
- e. The Noticee has given free trials to its clients in violation of SEBI Circular SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 read with Regulation 13(a) of IA Regulations and Clause 8 of the Code of Conduct as specified in Third Schedule read with Regulation 15(9) of IA Regulations.
- f. The Noticee by promising high returns to clients on their investment failed to act in a fiduciary capacity and by misrepresenting to the clients, information regarding

services provided, fees charged and risk profiling, has violated the provisions of Regulation 15(1) of IA Regulations, clauses 1, 2, 5 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

122. In view of the aforesaid violations committed by the Noticees, I find that directions under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992 along with Regulation 35 of the Intermediaries Regulations read with Regulation 28 of IA Regulations, need to be issued.

123. The Noticee was also asked to show cause as to why a direction to refund an amount of Rs. 8,20,39,745/- received by the Noticee from the clients / investors / complainants on or after July 23, 2018, as fees or consideration or in any other form in respect of the investment advisory service provided should not be issued against it. In this regard, the Noticee in its replies dated October 14, 2022, November 24, 2022 and November 26, 2022 has submitted that the amount of fees collected in the year 2017-18, 2018-19 and 2019-20 were Rs. 13,45,500/-, Rs. 2,92,11,522/- and Rs. 1,37,79,693/-, respectively, totalling to Rs.4,43,36,715/-. The same pertains to the services provided by the Noticee to the clients as a registered investment advisor. In view of the same, the Noticee has stated that there is no rationale as to the direction of refund.

124. In addition, the Noticee, vide its letter dated November 24, 2022, has stated that the total of Rs. 8,20,39,745/- as computed by SEBI includes the following:

- Fees received from the clients to whom the refund was also provided. The said refund was provided on mutually agreed terms. The Noticee has provided a sample copy of agreement between Tushar Desale, one of their client and the Noticee as Annexure -6 to its reply.

- Deposit / Transfer to and from the account of proprietor / the Noticee within the banks.
- Cash deposits
- Loans and Advances given by friends and family in their accounts.
- GST forming a part of their invoice paid to government.

In support of the said submissions, the Noticee has produced the Income Tax Returns for the years 2018-19, 2019-20 and 2020-21 alongwith a Tax Audit Report for the year 2019-2020 digitally signed by the Chartered Accountant verifying the profit and loss statement of the Noticee.

125. I have perused the response of the Noticee with respect to the refund direction and the documentary evidence produced before me in support thereof. I note that in terms of Regulation 19(1) of the IA Regulations, an investment advisor has to mandatorily maintain 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 fees, if any, charged for such advice, amongst few other records. In terms of Regulation 19(2) of the IA Regulations, all records shall be maintained either in physical or electronic form and preserved for a minimum period of five years. Also, a yearly audit has to be conducted by the Investment Adviser from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and submit a report of the same as may be specified by SEBI, in terms of Regulation 19(3) of the IA Regulations.

126. As observed in the preceding paragraphs in Issue No. I, I note that SEBI, vide its letter dated September 22, 2020, had advised the Noticee to send its reply to the PIQ latest by October 06, 2020. However, no response was received from the Noticee with respect to the said letter. I note that the Noticee, voluntarily had undertaken to provide the data / information w.r.t PIQs within 20 - 25 days in each of the email communications available in the file during the period of examination as all the database, servers, etc were seized by the Police Authorities. Also, in one of the email communications dated

October 22, 2019, the Noticee had stated that it will be seeking the data from the concerned judicial authorities for submitting the same to SEBI and had sought for 20-25 days to submit the requisite data. Vide email dated September 17, 2020 i.e. after almost one year from the last communication date, again the Noticee sought time to submit the requisite data. Despite this, no data was provided by the Noticee. Further, the Noticee did not even produce any documentary evidence before me to demonstrate their efforts to procure the requisite information / data from such authorities. It is pertinent to note that the SCN dated May 27, 2022 in the present case was issued to the Noticee wherein the Noticee was asked to show cause as to why directions of refund of Rs. 8,20,39,745/- should not be issued against it. The Noticee did not produce any cogent documentary evidence to prove otherwise. Only after conclusion of the personal hearing before me on October 18, 2022 that the Noticee has now submitted its detailed response vide its letters dated November 24 & 26, 2022 on the refund direction. Also, the documentary evidence i.e. the Income Tax Returns for the years 2018-19, 2019-20 and 2020-21 and the Tax Audit Report for the AY 2019-20 certified by the Chartered Account certifying the Balance Sheet and the profit and loss statement of the Noticee cannot be considered as relevant documents to assess the fees received by the Noticee by way of providing investment advisory services to its clients during the period under examination and therefore, are irrelevant for the purposes of quantifying the amount to be refunded by the Noticee. The documents which may show the details of the fees collected by the Noticee during the relevant period would be the list of clients to whom advice was given, fees collected for the services provided, list of services provided, etc. which have not been produced by the Noticee. In the absence of appropriate documentary evidence in terms of Regulation 19 of the IA Regulations in support of the submission of the Noticee that it had collected only Rs. Rs.4,43,36,715/- during the years 2017-18, 2018-19 and 2019-2020, the said submission is not tenable.

- 127.** Having said that, it is pertinent to note that in the case of *Shri C. Paranitharan and Others and Trend Market Advisory Services*, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, inter alia, directing the Noticees therein to refund

the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, the Hon'ble SAT, vide common order dated September 21, 2022 *inter alia* directed the appellants therein to deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

128. Also, in the case of *Anirudh Sethi Vs. SEBI (Appeal Nos. 303 and 390 of 2018)* decided on July 29, 2021, the Hon'ble SAT, while partly allowing the appeal no. 390 of 2018, remitted back the case to the Ld. Whole Time Member (WTM) for arriving at an exact figure in the light of the material that would be supplied by the appellant to the Ld. WTM. Four months' time was granted for the said exercise and upon arriving at a specific amount, the directions were to be issued by the Ld. WTM. In the meantime, the Hon'ble SAT had directed the appellant to credit an amount of Rs. 12 lacs to the said fund within a period of two months from the date of the order. Rs. 20 lacs was directed to be deposited with SEBI within a period of two months to be kept in an interest bearing escrow account.

129. The SCN in the matter, also calls upon the Noticee to explain as to why suitable penalty be not imposed, as deemed fit, under Sections 114A and 11B(2) read with Section 15HA, 15HB (for violation prior to March 08, 2019), section 15EB (for violations subsequent to March 08, 2019) and 15C of the SEBI Act read with Regulation 35 of intermediaries Regulations read with Regulation 28 of IA Regulations.

130. In this regard before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for necessary reference:

15C. Penalty for failure to redress investors' grievances.

"If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary 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 rupees."

15EB. Penalty for default in case of investment adviser and research analyst.

"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."

15HA. Penalty for fraudulent and unfair trade practices.

"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."

15HB. Penalty for contravention where no separate penalty has been provided.

"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty

has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees”

131. It is relevant to mention here that for determining the amount of penalty to be imposed under the provisions of the SEBI Act, guidance is provided under Section 15J of the SEBI Act which is reproduced as under:

“15J. Factors to be taken into account while adjudging quantum of penalty.

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

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

(c) the repetitive nature of the default.

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

132. I note that the SCN has not brought out the quantum of profit/gains made by the Noticee by way of promising assured returns and charging its clients service fees arbitrarily and collecting unreasonable amount of fees by offering multiple packages. I note from the complaints received from the clients that certain investors have suffered losses due to the actions of the Noticee.

133. Upon consideration of the above penalty provisions, I find that Section 15 C has been invoked for the delay in the redressal of investor grievances. In this regard, reference is made to Table No- 05 and Table No-07 above. The details in Table No- 05 and Table No -07 clearly state that out of the Five (5) pending complaints, all complaints were pending for more than 100 days. These delays were much above the time prescribed for resolution of complaints i.e., thirty (30) days in terms of the

SEBI Circular dated December 18, 2014. I therefore, find that penalty under Section 15 C of the SEBI Act is clearly attracted.

134. Similarly, I note that Section 15EB and 15HB of the SEBI Act has been invoked for the violation of SEBI Circular SEBI/H0/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, for promising assured returns to its clients, charging its clients service fees arbitrarily and collecting unreasonable amount of fees, improper risk profiling and not abiding by the norms of suitability. I note that the above allegations have been clearly established in the preceding paragraphs. I also note that these violations are in derogation of the principal duties and responsibilities cast upon an Investment Adviser. I therefore, find that penalties under Section 15EB and 15HB are also attracted.

135. I also note that Section 15HA has been invoked in respect of the Noticee for promising assured returns and charging its clients service fees arbitrarily and collecting unreasonable amount of fees. I note that the above allegations have been established in the preceding paragraphs. I further note that Noticee's acts of charging its clients service fees arbitrarily and collecting unreasonable amount of fees was fraudulent and an unfair trade practice. The Noticee by promising assured returns violated the fundamental canon of the securities market i.e., investments were subject to market risks, and as such has misled and deceived the clients. I, therefore, find that penalty under Section 15 HA is clearly attracted.

136. I note that the Noticee has not extended its co-operation during the period of inspection and has till date not provided the relevant documents as were sought from it for the purposes of carrying out the inspection. Also, I note that the SCN in the case was issued to the Noticee on May 27, 2022. However, the Noticee did not file any reply in the matter up until October 2022. In addition, during the proceedings before me, it has been noticed that the Noticee sought further opportunities to produce documentary evidence in support of its submissions with respect of refund amount.

Despite providing the Noticee ample opportunities, the Noticee has not provided any cogent evidence in support of its claim as referred to in para 16 above. I also note that the certificate of registration of the Noticee in the capacity of an investment Advisor has also been cancelled. In view of the same, considering the non-cooperation from the Noticee in conducting the proceedings in a smooth manner and the other irregularities found in carrying out its business as an Investment Advisor as established in the preceding paragraphs, I find that a period of one year of debarment from accessing the securities market would be appropriate in the present case.

- 137.** Taking into consideration all the facts and circumstances of the case, the findings in the paragraphs above and the orders passed by the Hon'ble SAT in similarly placed cases, I shall now proceed with the directions and imposition of monetary penalties on the Noticee.

DIRECTIONS AND MONETARY PENALTIES

- 138.** In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4), 11 (4A) and 11B (1), 11B (2) read with of Section 19 of the SEBI Act, read with Regulation 28 of IA Regulations and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby issue the following directions:

- A. The Noticee, Market Captains Investment Advisor (Proprietor: Mr. Amit Soni) shall, refund the money received from any complainants /investors /clients, as fees /consideration or in any other form towards providing investment advisory services within a period of three months from the date of coming into force of this Order, in the following manner:
- (i) The Noticee shall resolve/ redress all pending complaints as on the date of passing of this Order and refund the money due/ payable to such complainants.

- (ii) The Noticee shall refund the amounts collected as fees from its clients after adjusting the charges for the services rendered by it, including the excess amount charged to such clients/complainants/investors as the case may be;
- B. The Noticee shall be responsible to issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;
- C. The repayments to the complainants /investors /clients shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels (and not cash transfers), which ensures audit trails to identify the beneficiaries of repayments.
- D. After completing the refunds as directed in paragraph no. 138 (A), within a period of 15 days, the Noticee shall file a report detailing the amount refunded with SEBI, addressed to the “Division Chief, Division of Post–Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai– 400051”. The report shall be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment, name of the parties refunded, communication address, mobile numbers and telephone numbers etc.;
- E. The remaining balance amount, if any, which could not be refunded to the investors/ complainants/ clients, for any reason whatsoever, shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticee. Thereafter, remaining amount if any, will be deposited in the Investor Protection and Education Fund maintained by SEBI;

- F. Until the report as mentioned in paragraph no. 138 (D) is filed with SEBI, the Noticee is prevented from selling his assets, properties and holding of mutual funds /shares /securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, banks are directed to allow debit only for the purpose of making refunds to the Complainants /investors /clients who were availing the investment advisory services from the Noticee, as directed in this Order, from the bank accounts of the Noticee.
- G. The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of one year from the date of this Order or till the expiry of one year from the date of completion of refunds to complainants /investors /clients as directed in paragraph A above, whichever is later.
- H. The direction for refund and depositing the balance amount with SEBI, as given in paragraph no. 138 (A) and (E) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum/ authority of competent jurisdiction.
- I. The Noticee is hereby imposed with, the monetary penalties, as provided hereunder:

Provisions under which penalty imposed	Amount of Penalty (INR)
Section 15 C of the SEBI Act	One (1) lakh
Section 15 EB of the SEBI Act	One (1) lakh
Section 15 HB of the SEBI Act	One (1) lakh
Section 15 HA of the SEBI Act	Five (5) lakhs
Total	Eight (8) lakhs

J. The Noticee shall remit / pay the said amount of penalties within forty- five (45) days from the date of receipt of this order. The Noticee shall remit / pay the said amount of penalties through either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or 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 Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticee may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details)	

K. The above directions shall come into force with immediate effect.

L. This Order shall be served on the Noticee, Recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents and the Banks to ensure necessary compliance.

Sd/-

Date: December 14, 2022

Place: Mumbai

**Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**