

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

Sr. No.	Name of Noticee	PAN
1.	<p>Ms. Jyoti More, Proprietor, The Market Journal, (Registration No: INH000005810) Address- C JR M-89, MIG Duplex, Sukhliya, Indore, Madhya Pradesh-452001. Alternate Address: C/o Devendra More, B/ 133, Gomti Nagar, A.B. Road, Dewas – 455001, Madhya Pradesh.</p>	BBFPM4285C

In the matter of Unregistered Investment Advisory Services

BACKGROUND OF THE CASE

1. Jyoti More (Proprietor- The Market Journal) (hereinafter referred to as “**Noticee**”) having PAN No.: BBFPM4285C is registered with Securities and Exchange Board of India (hereinafter referred to as ‘**SEBI**’) as Research Analyst (hereinafter referred to as “**RA**”) in individual capacity, bearing Registration number INH000005810, from

April 09, 2018. Its registered address is C JR, M-89, MIG Duplex, Sukhliya, Indore-452001 and alternate address is C/o Devendra More, B/ 133, Gomti Nagar, A.B. Road, Dewas – 455001, Madhya Pradesh.

2. SEBI initiated enquiry proceedings against the Noticee under Regulation 23 of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) read with Regulation 28(a), (b) and (e) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”), for allegedly violating the provisions of Section 12(1) of SEBI Act, 1992 (hereinafter referred to as ‘**SEBI Act**’) read with Regulation 3(1) of IA Regulation, Section 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c) and (d), Regulation 4(1) and 4(2)(k) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”), and Regulation 24(4) read with Regulation 32(i) r/w Regulation 32(ii) r/w Regulation 32(iii) of the SEBI (Research Analysts) Regulations 2014 (hereinafter referred to as “**RA Regulations**”).

ENQUIRY BY THE DESIGNATED AUTHORITY

3. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide order dated August 29, 2022 to conduct an enquiry against the Noticee and submit a report and make recommendation in compliance with Regulation 26 of Intermediaries Regulations.
4. Accordingly, the DA issued Show Cause Notice dated September 27, 2022 (hereinafter referred to as “Enquiry SCN”) to the Noticee *inter alia* observing as under:
 - 4.1. SEBI conducted an inspection of “Jyoti More (proprietor), The Market Journal,” from October 09 to 11, 2019 for the period April 01, 2018 to March 31, 2019 (hereinafter referred to as “Inspection period”). Based on certain findings of

inspection, administrative warning was issued to the Noticee on September 28, 2020 for certain violations.

4.2. Additionally, it was also observed that the Noticee has violated provisions of the SEBI Act, IA Regulations, PFUTP Regulations, RA Regulations and Intermediaries Regulations as the Inspection Team found that the Noticee was running a website viz., www.themarketjournal.in. The observations of the Inspection Team ~~the~~ as well as from the archived pages of the website of the Noticee (www.themarketjournal.in), are as under:

4.2.1. The business of Noticee is based on the 'subscription' model.

4.2.2. Noticee represented itself as providing independent RIA and broker services that are powered by over 20 years of industry experience.

4.2.3. The fees charged was based on the product/ package subscribed and the subscription period for the product is monthly, quarterly, half-yearly, & yearly.

4.2.4. Noticee provided trading recommendations upon technical set-up & chart patterns, market sentiments, trading environment with sole objective to maximizing returns.

4.2.5. Noticee in its website claimed to be one of the leading research service providers in India offering Indian stock market recommendations, intraday recommendations, short term stocks and BTST/STBT.

4.2.6. Noticee provided recommendations for cash, F&O segment, BSE, NSE trading tips.

4.2.7. Noticee had packages for cash or equity market, futures, Nifty special package, option trading etc. Their packages provided research

recommendations and other alerts directly to the client's mobile phone, via SMS or Messenger.

4.2.8. Noticee was offering free trial to customers before on boarding them as their clients.

4.2.9. Noticee offered packages namely stock cash, stock future, stock options, HNI Cash, HNI Future and HNI Option.

4.3. Noticee offered packages namely stock cash, stock future, stock options, HNI Cash, HNI Future and HNI Option. The advisory fees for the aforesaid packages charged by Noticee and risk categorization as mentioned in the website is given below: -

S No	Service	Monthly	Quarterly	Half Yearly	Yearly	Client risk categorization for providing par services
1	Stock Cash	-	25,000	40,000	65,000	Medium
2	Stock Future	-	35,000	50,000	85,000	High
3	Stock Option	-	35,000	50,000	85,000	High
4	HNI Cash	30,000	50,000	80,000	1,45,000	High
5	HNI Future	30,000	50,000	80,000	1,45,000	High
6	HNI Option	30,000	50,000	80,000	1,45,000	High

4.4. SEBI inspection team raised queries to the Noticee, vide email dated August 24, 2020. On non- receipt of reply, reminder email was sent to the Noticee on September 09, 2020 and September 18, 2020. The Noticee vide email dated September 28, 2020 submitted the information. Summary of the information provided by the Noticee is given below:

SEBI Observation	Justification
<i>It is observed that you have an offering of 6 services namely Stock Cash, Stock Futures, Stock options, HNI Cash, HNI Future and HNI Options. Please provide the Basis/process of offering of these services to a prospective client.</i>	<p><i>".....The client is free to choose the product that suit the best as per their requirement. For further information or understanding the details of the services offered by us under various category the client can communicate with us and in case of. As per their discretion the Client can then start the activation process.</i></p> <p><i>To the clients who are not sure about the quality of the services we provide we offer a demonstration. Please take a note that the demonstration is not for trading/investing but for observing the quality of the service. If the customer feels that he should avail our services, then he can process service activation....."</i></p>
<i>What is the difference among the services- Stock Cash, Stock Futures, Stock options, HNI Cash, HNI Future and HNI Options, which are listed on your website? Whether a client can choose any of the services on their own.</i>	<i>".....Yes, as per their discretion Client can choose any service but before opting and starting the services by the client, we communicate with the client to understand his/her requirement and inform him/her about the proper details and features of the services"</i>
<i>Whether it is mandatory for clients to complete RPM before availing any service from you.</i>	<i>No, it is not mandatory</i>
<i>Provide the details of any 5 clients (having their names, PAN, email id, mobile number, payment details, details of the service taken, fees charged etc.) during the financial year 2019-20 to whom services were offered after doing their RPM. Please provide copy of RPM of such clients.</i>	<i>As mentioned above as it is not mandatory. Therefore, we are unable to provide the information sought by you.</i>

4.5. The reply submitted by the Noticee was not in line with the welcome email sent by Noticee to some of its clients viz. Onkar Singh, Vijay Suryavanshi, C V Padmarajan, Sachin Kumar and Amish Mehta.

- 4.6. Noticee also carried out Risk profiling of its clients, as observed from the Welcome email submitted by Noticee, at the time of on boarding of clients
- 4.7. Indore Police has lodged First Information Report (FIR) against the Noticee u/s 154 of The Code of Criminal Procedure 1973. As per the FIR, charges u/s 420 (Cheating and dishonestly inducing delivery of property), section 406 (Punishment for criminal breach of trust) and section 120B (Punishment of criminal conspiracy) of Indian Penal Code, 1860 have been pressed against the Noticee.
5. Based on the above, it was alleged in the SCN that the Noticee has violated the following provisions;
- 5.1. Section 12(1) of the SEBI Act read with Regulation 3(1) of IA Regulations
- 5.2. Section 12A(a), (b), (c) of SEBI Act and Regulations 3(a),(b),(c) and (d), Regulation 4(1) and 4(2)(k) of PFUTP Regulations”
- 5.3. Regulation 24(4) read with Regulation 32(i), (ii) and (iii) of RA Regulations
- 5.4. ‘Fit and proper criteria’ as provided in Schedule II read with Regulation 7(2)(e) read with Regulation 9(1)(c) of Intermediaries Regulations read with Regulations 6(vii) and 13(i) of RA Regulations.
6. The Noticee, vide email dated November 30, 2022 and December 05, 2022, submitted its reply to the SCN. Thereafter, upon completion of the enquiry, an Enquiry Report dated January 13, 2023 (“Enquiry Report”) was submitted by the DA to the Competent Authority. The DA had noted in the Enquiry Report that the Noticee had violated various provisions of SEBI Act, IA Regulations, PFUTP Regulations, RA Regulations and Intermediaries Regulations. Therefore, the DA recommended that

the Noticee may be prohibited from taking up any new assignment or contract or launching a new scheme for a period of one year in terms of regulation 26(1)(iv) of the Intermediaries Regulations.

POST ENQUIRY PROCEEDINGS BY THE COMPETENT AUTHORITY

Show Cause Notice, Reply of the Noticee and Personal Hearing

7. A post-enquiry Show Cause Notice dated February 07, 2023 ("SCN"), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of Regulation 27 of the SEBI (Intermediaries) Regulations, 2008 as to why action as recommended by the DA or any other penalty should not be imposed on the Noticee in terms of the said Regulations, as deemed fit by the Competent Authority.
8. The Noticee vide letter dated March 05, 2023, submitted the following:
 - 8.1. The Noticee repeated, reiterated and confirmed the contents of the Reply filed on November 30, 2022 and additional submissions dated December 05, 2022, before DA respectively.
 - 8.2. With reference to the Paragraphs 14 to 15 of the Enquiry Report, the Noticee submitted that the contention made by SEBI is vague and is denied as the SEBI (Research Analyst) Regulations, 2014 nowhere specifically denies that the Research Analysts shall not carry out risk profiling. The Noticee just in good faith and to ensure additional compliance was voluntarily carrying out the risk profiling of the clients and the clients were neither mandated nor forced for the risk profiling. Also, the Investment Advisers need to carry out risk profiling and suitability assessment prior to charging of fees and rendering investment advice, however the Noticee was giving the option for carrying out risk profiling only after offering a package and charging of fees from the clients.

8.3. The Noticee further submitted that the SEBI has noted that Risk profiling form was sent along with the Welcome Email; the Noticee was sending the welcome email to her clients only after on boarding of the client was done i.e. after offering the product and charging of fees from the client. Prior to selling the subscription of the product, the Noticee was not analysing the investment aspects of the clients as it is being done by the Investment Adviser and also to offer investor specific recommendations/advice one has to do the risk profiling of the client followed by suitability assessment. However, the Noticee was doing only risk profiling that too after selling the subscription of the product and hence the Noticee was engaged in offering securities specific research recommendations rather than investor specific.

8.4. The Noticee stated that SEBI in its earlier letters and inspection report did not raise any question on the risk profiling, SEBI has raised the questions in 2022 after 4 years, so based on that the Noticee had contacted the client and the mail was sent by the client. Also, the mail has been sent by a client whose name was being mentioned in the Notice and was part of the SEBI proceedings, which do ensure transparency and accountability on the part of the Noticee.

8.5. The Noticee further stated that she was merely offering standardized subscription-based services, wherein the recommendation provided were uniform across all the clients and was not engaged in providing any investors specific services based on the investor's investment objection or financial status, etc. While providing the said recommendations, the Noticee was not having any regard to the risk capacity of the Notice and the risk categorization displayed upon the website was of the products/services only. Further, the medium through which the Noticee was disseminating information/services, clearly disclosed that the Noticee is a SEBI Registered Research Analyst along with the registration number viz. website, welcome email; and nowhere the Noticee claimed that she is an investment adviser. Also, the Noticee has not misled any of her clients as

all the fact relating to her registration was properly disclosed upon its website, email communication, client service portal, etc.

8.6. The Noticee relied on the following decisions of the SEBI:

8.6.1. Order in the matter of Star World Research

8.6.2. Order in the matter of Niveshicon Investment Advisor

8.7. The Noticee submitted that the Noticee is a 'fit and proper' person and does not fall in any of the disqualifications as mentioned in Schedule II of the SEBI (Intermediaries) Regulations, 2008.

9. An opportunity of hearing was granted to the Noticee on April 12, 2023. The Noticee vide email dated April 06, 2023 authorized Mr. Abhishek Mishra to appear for the hearing and further, requested that the hearing may be conducted through Video Conference. The request was granted and the Noticee's authorized representative appeared for the hearing and has reiterated the submissions made vide letter dated March 05, 2023.

10. The Noticee vide email dated April 17, 2023 made the following submission:

10.1. The Noticee submitted that she was doing risk profiling of the clients voluntarily after selling the subscription of the product only of the clients who were opted for it in order to serve them in a better manner. Also, the risk profiling form used by the Noticee was a basic one and did not contain a detailed questionnaire as required under Regulation 16 of the SEBI (Investment Advisers) Regulations, 2013.

10.2. The Noticee has not violated any of the provisions of the SEBI Regulations, as it is nowhere mentioned that the Research Analysts shall not carry out risk profiling. The Noticee to ensure additional compliance was

voluntarily conducting risk profiling of the clients and the clients were not forced in any manner to avail the risk profiling, which, SEBI had verified while carrying out the inspection during October 9 to October 11, 2019. Also, none of the clients in their SCORES Complaints had alleged that they were forced for the risk profiling. The Noticee has neither mandated its clients nor were the clients forced in any manner for risk profiling.

10.3. The Noticee stated that the line “risk profiling is mandatory” in the Welcome Mail sent to the clients was mistakenly mentioned in the footer of the email, whereas the Noticee has never forced any of its clients for doing risk profiling. The same was also being confirmed by the client, evidence of which was duly submitted to SEBI in the proceedings vide reply dated 30th November, 2022.

10.4. The Noticee further submitted that merely doing of risk profiling does not constitute investment advisory activity as Investment Advisers are required to conduct risk profiling and suitability assessment prior to selling of a product to the clients, whereas in the instant case only basic risk profiling was done that too after selling of the product.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have considered the material available on record i.e. Enquiry Report along with the SCN, oral and written submissions including the Noticee’s reply dated March 05, 2023 and April 17, 2023 and based on the aforesaid frame the following issues for consideration:

Issue No. I: Whether the Noticee has committed the violations, as brought out in the SCN?

Issue No. II: If yes, then whether the recommendation made by the Designated Authority under Regulation 26 of the Intermediaries Regulations against the Noticee can be accepted?

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

SEBI Act 1992

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12 (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

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 recognized 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Intermediaries Regulations

Consideration of application.

7(1)

(2) Any application for grant of certificate: -

.....

.....

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

Conditions of certificate

9(1) Any certificate granted by the Board to an intermediary shall be subject to the following conditions, namely: -

.....

.....

(c) it shall abide by the provisions of the securities laws and the directions, guidelines and circulars as may be issued thereunder;

RA Regulations

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: -

.....

(vii) whether the applicant, individuals employed as research analyst and partners of the applicant, 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;

Conditions of certificate.

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

(i) the research analyst shall abide by the provisions of the Act and these regulations;

General responsibility.

24. (4) Research analyst or research entity shall furnish to the Board information and reports as may be specified by the Board from time to time.

Liability for action in case of default.

32. Research analyst or research entity who:

(i) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;

(ii) fails to furnish any information relating to its activity as a research analyst as required by the Board;

(iii) furnishes to the Board information which is false or misleading in any material particular;

(iv) does not submit periodic returns or reports as required by the Board;

(v) does not co-operate in any enquiry, inspection or investigation conducted by the Board;

(vi) fails to resolve the complaints or fails to give a satisfactory reply to the Board in this behalf,

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

IA Regulations

Application for grant of certificate.

3(1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.
- (2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: -
 - (k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

13. I note that the Noticee is registered with SEBI as a Research Analyst bearing Registration no. INH000005810. Being a registered RA, she is governed by the provisions of RA Regulations. An inspection of the Noticee was carried out by SEBI's Inspection team during October 09-11, 2019 for a period from April 01, 2018 to March 31, 2019.

14. I note that as per the findings of Inspection, the Noticee had a website viz., www.themarketjournal.in through which the Noticee claimed to be offering Indian stock market recommendations, intraday recommendations, short term stocks and BTST/STBT. I note that the Noticee through her website was offering 'subscription' based packages for cash or equity market, futures, Nifty special package, option

trading etc. The Noticee advertised that upon subscription to these packages, she would provide trading recommendations based upon technical set-up & chart patterns, market sentiments, trading environment with the sole objective to maximizing returns for cash, F&O segment, BSE, NSE trading tips. The said recommendations and alerts were directly provided to the client's mobile phone, via SMS or Messenger. Further, the fees charged were based on the product/ package subscribed and the subscription period for the products were monthly, quarterly, half-yearly, & yearly. I also note that the Noticee was offering free trial to customers before on boarding them as their clients.

15. I note that the Noticee offered packages namely stock cash, stock future, stock options, HNI Cash, HNI Future and HNI Option. The advisory fees for the aforesaid packages charged by Noticee and risk categorization as mentioned in the website is given below: -

S No	Service	Monthly	Quarterly	Half Yearly	Yearly	Client risk categorization for providing par services
1	Stock Cash	-	25,000	40,000	65,000	Medium
2	Stock Future	-	35,000	50,000	85,000	High
3	Stock Option	-	35,000	50,000	85,000	High
4	HNI Cash	30,000	50,000	80,000	1,45,000	High
5	HNI Future	30,000	50,000	80,000	1,45,000	High
6	HNI Option	30,000	50,000	80,000	1,45,000	High

16. The Noticee has also, inter alia, provided the following bank details for payment on its website: -

ICICI Bank- Name: The Market Journal Account No. 657005601319 (IFSC Code: ICIC00006570)

SBI Bank- Name: The market Journal Account No. 38319749731 (IFSC Code: SBIN000090164)

17. When questioned about these packages, the Noticee vide email dated September 28, 2020 informed that the client is free to choose the product that suits their requirement but before opting and starting the services by the client, they communicate to the client to understand his/her requirement and inform him/her about the proper details and features of the services.
18. I note from the definition of Research Analyst as given in Regulation 2 (1) (u) of the Research Analysts Regulations states that *“Research Analyst means who is primarily responsible for- i. preparation or publication of the content of the research report; or ii. providing research report; or iii. making 'buy/sell/hold' recommendation; or iv. giving price target; or v. offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis”*. I have also perused Regulation 2 (1) (l) of the IA Regulations which defines Investment Advice as *“advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.”*
19. From the aforesaid, I note that a Research Analyst is an entity who writes and publishes a research report on securities whereas an investment advisor is an entity or an individual who gives investment advice to a particular client based on his/her financial situation and needs. From the contents of the Noticee’s website and correspondence of noticee, I note that the Noticee interacts with the client to understand their requirement and inform them about the details and features of the services offered by it.

20. I note from copies of welcome emails dated May 23, 2019, September 15, 2018, June 25, 2018, July 20, 2008 and July 01, 2020 that it '*offers tips in Equity, Commodity, and Derivatives Market, and takes cautious measures in designing the services*'. Further, the email also states that utmost care is being taken in providing advice to clients. The relevant extract of the email is reproduced as under:

"We offer tips in Equity, Commodity and Derivatives Market, we take cautious measures in designing the service & utmost care is being taken in providing advice to clients, but we do not guarantee any assured profits,"

21. From the said emails, I also note that a 'Risk profiling form' was sent to clients. I also note that it was mentioned under "Terms and Conditions" of the "Welcome Mail" as under:

"As per the SEBI norms in order to serve you better we would require following documents from you to maintain the records which includes the mandatory requirement from SEBI

*Pan No. & DOB (to fetch KYC from KRA)
Risk Profiling Form*

*Above details are mandatory requirement from SEBI. In case clients fails to provide above details, company has all the required rights to discontinue the service until such details are obtained from the client. Along with KYC compliance, **we also do risk profiling of clients for assuring where in service are provided to the client are in accordance to their risk appetite.***

22. Having regard to the responsibilities of Research Analyst as prescribed in Regulation 2 (1) (u) of RA Regulations, I note that the activity of "Risk profiling" of client is not mentioned in the responsibilities of Research Analyst. However, Regulation 16 of IA Regulations deals with "Risk profiling" of clients, and prescribes guidelines related to "Risk profiling" as follows:

Risk Profiling

16. Investment adviser shall ensure that, -

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

(i) age;

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

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

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

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

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

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

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

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

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

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

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

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

23. After having considered the relevant provisions of both RA Regulations and IA Regulations, I note that carrying out Risk Profiling of clients is mandated for Investment Advisors, whereas it is not included in the responsibilities of Research Analyst. As per RA Regulations, Research Analysts are not mandated to do risk profiling and though they give buy/sell/hold recommendations and price targets the same is "securities-specific" without considering the "investor specific" aspect mandated to be taken into account by the Investment Adviser. In order to ascertain those "investor specific" aspects of advice, the Investment Advisor is mandated to do appropriate risk profiling of the clients and should have a process to arrive at suitable advice in line with the client's requirements based on his financial situation, investment experience, risk appetite and investment objectives.

24. I also note that that clause (e) of Regulation 16 of IA Regulations states that risk profile of the client is communicated to the client after risk assessment is done. I note from the copies of emails available on record that Noticee was communicating Risk profile to clients after their risk assessment. It was mentioned in the emails dated September 15, 2018, June 25, 2018, July 20, 2018 and July 10, 2019 that:

"As per the Risk Analysis done by our team, your risk tolerance is "Medium" according to Stock Cash Pack, also the details of Risk Classification are as attached, in case of any change in Risk Profiling, please revert us within 3 days of the receipt of this e-mail."

25. I note that, vide order No. WTM/MPB/IMD-CIS/127/2020 dated August 04, 2020, in the matter of Chetan Yashwant Shukla (PAN: ABBPS2467H, SEBI Registered Research Analysts having number INH000001402), SEBI held that, *"Research Analysts are not mandated to do risk profiling and though they give buy/sell/hold recommendations and price targets the same is "securities specific without considering the "investor specific" aspects mandated to be taken into account by the Investment Adviser....."*
26. The Noticee, vide reply dated March 05, 2023 has submitted that Noticee just in good faith and to ensure additional compliance was voluntarily carrying out the risk profiling of the clients and the clients were neither mandated nor forced for the risk profiling. I am unable to agree with the aforesaid submission as based on the reading of the "Welcome Email" I note that the Noticee informed its clients that it was mandated by SEBI to maintain certain documents including the Risk Profiling Form. The clients were also informed that failure to provide the said information may lead to discontinuation of their services until such details are obtained from them. I note that in the name of SEBI, the Noticee was carrying out Risk Profile which is not required under the RA Regulations. Further, knowing SEBI as the securities market regulator, investors would feel compelled to share information supposedly mandated by SEBI with the Noticee.

27. I note that the Noticee has also stated that Investment Advisers need to carry out risk profiling and suitability assessment prior to charging of fees and rendering investment advice, however, the Noticee was giving the option for carrying out risk profiling only after offering a package and charging of fees from the clients. I note that clause (f) of Regulation 16 of IA Regulations states that the IA shall ensure that information provided by clients and their risk assessment is updated periodically. I note from the emails communicating the risk profile of the clients, the Noticee has stated in such emails *in case of any change in Risk Profiling, please revert us within three days of the receipt of this e-mail*. I note that unless the Noticee was giving investor – specific investment advice, the Noticee in her capacity as a Research Analyst would not be required to update herself regarding the change in the client’s risk profile.
28. In the light of the above, I am not inclined to accept the submissions of the Noticee that Risk profiling is done on voluntary basis to ensure additional compliance. With regard to the email dated November 28, 2022 of the client of the Noticee, wherein they state that *“with reference to your welcome mail dtd. 25/06/2018 and recent telephonic discussion I confirm that there was no pressure or force from your end for Risk Profiling and I have submitted all the information voluntarily.”* i.e. after 4 years referring to the welcome email dated June 25, 2018, the DA has rightly observed that the same is just an afterthought. Hence, I do not find merit in the submission of the Noticee in this regard.
29. I have perused the definition of Investment Adviser as given in Regulation 2 (1) (m) of IA Regulations, which states that *“investment adviser” means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called*; Further, I have perused Regulation 2 (1) (l) of the IA Regulations which defines Investment Advice as *“investment advice” means advice relating to investing in, purchasing, selling or*

otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning: Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations”

30. I note that the Noticee has contested that Risk categorization displayed on the website was of the product/ services offered by the Noticee and not of the clients and by mentioning the same, the Noticee just wanted to make the clients aware of the risks involved in particular product/ services. I am not inclined to accept the submission of the Noticee as it has already been established in the paragraphs above that Noticee was sending Risk profiling form along with welcome email to clients and subsequently after carrying out the risk assessment, the Risk profile of the client was communicated to clients.
31. In view of the above discussion, more specifically, from the services mentioned by the Noticee on website and risk profiling admittedly undertaken by the Noticee, I find that the Noticee was providing investment advisory services without registration as an “investment advisor”.
32. I also find that Noticee was disseminating information through physical/ digital form, which might have led clients to believe that she was an investment advisor also which she was not knowing fully that the same is misleading and should not be carried out without obtaining a valid registration as an Investment Adviser. I note that the Noticee has relied on the order of the SEBI in the matter of Star World Research wherein the fraud allegations were dropped against a registered investment advisor. Firstly, I note that facts of the present case are distinguishable as the Noticee in the said case was a registered investment advisor alleged to have handled client demat account and promised assured returns to its clients. However, in the present case, the Noticee was holding itself as an investment

advisor without having the requisite registration from SEBI. Secondly, I feel it is pertinent to note the observations of the Hon'ble Supreme Court in *SEBI v. Kanaiyalal Baldevbhai Patel* (2017) 15 SCC 1, which are as under-

“The definition of ‘fraud’, which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a ‘fraudulent act’ or a conduct amounting to ‘fraud’. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”

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.”

33. In view of the above, I find that the Noticee by undertaking investment advisory services and holding it out as an investment advisor without obtaining the requisite registration from SEBI, has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of IA Regulation, Section 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c) and (d), Regulation 4(1) and 4(2)(k) of SEBI PFUTP Regulations and Regulation 24(4) read with Regulation 32(i) r/w Regulation 32(ii) r/w Regulation 32(iii) of the RA Regulations.

34. I also note that the Indore Police has lodged First Information Report (FIR) against the Noticee u/s 154 of The Code of Criminal Procedure 1973. As per the FIR, charges u/s 420 (Cheating and dishonestly inducing delivery of property), section

406 (Punishment for criminal breach of trust) and section 120B (Punishment of criminal conspiracy) of Indian Penal Code, 1860 have been pressed against the Noticee. The FIR, inter-alia, alleges the following:

- 34.1. Employees of Noticee were giving calls to the customers through the internet as well over the phone.
- 34.2. Employees are providing share market tips to clients/ customers without having necessary qualifications, adequate knowledge and proper guidance.
- 34.3. On the basis of advice given by the employees, the clients are sending money into Bank accounts of Noticee.
- 34.4. The employees are cheating clients by assuring unrealistic returns/ gains.

35. From the perusal of copy of FIR, I note that serious allegations have been levelled against the Noticee. As a registered intermediary, Noticee is required to comply with "Fit and Proper" criteria, as specified in Schedule II of the Intermediaries Regulations. As the requirement of being 'Fit and Proper' is an ongoing requirement, in view of the seriousness of charges made in the FIR, it was alleged that the Noticee no longer fulfilled the criteria of "Fit and Proper", as specified in Schedule II of Intermediaries Regulations.

36. With respect to FIR filed against the Noticee under section 154 of The Code of Criminal Procedure 1973, the Noticee in its reply dated November 30, 2022 to the SCN, submitted that FIR against the Noticee has not been filed by the Board as referred in clause 3 (b) (i) of schedule II of Intermediaries Regulations; rather, it has been filed on the basis of false information provided by person who was neither the client nor employee nor vendor of the Firm. The Noticee submitted that the question of criteria of "Fit and Proper" does not hold tenable as the FIR has not been filed by SEBI. The Noticee also informed that she has already filed a petition in Hon'ble High Court of Madhya Pradesh Bench at Indore to quash the FIR. Noticee also produced a copy of order dated November 17, 2021, wherein the court had asked to explain the delay in submission of charge sheet.

CONCLUSION

37. I note that in view of the aforesaid violations the DA has recommended that the Noticee is liable for action in terms of regulation 26(1)(ii) of Intermediaries Regulations read with Regulation 32 of RA Regulations, the provisions of which are reproduced hereunder:

Intermediaries Regulations

Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,—

- (i) disposing of the proceedings without any adverse action;
- (ii) cancellation of the certificate of registration;
- (iii) suspension of the certificate of registration for a specified period;
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
- (vii) issuance of a regulatory censure to the noticee:

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

RA Regulations

Liability for action in case of default.

32. Research analyst or research entity who:

- (i) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;
- (ii) fails to furnish any information relating to its activity as a research analyst as required by the Board;
- (iii) furnishes to the Board information which is false or misleading in any material particular;
- (iv) does not submit periodic returns or reports as required by the Board;
- (v) does not co-operate in any enquiry, inspection or investigation conducted by the Board;
- (vi) fails to resolve the complaints or fails to give a satisfactory reply to the Board in this behalf,

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

38. Further, I note that the DA vide Enquiry Report dated January 13, 2023 has observed the following:

“25. In view of the above, I find that Noticee was disseminating information through physical/ digital form, which might have led clients to believe that she was an investment advisor also which she was not knowing fully that the same is misleading and should not be carried out without obtaining a valid registration as an Investment Adviser.

26. Thus, the Noticee has violated the provisions of Section 12(1) of SEBI Act read with Regulation 3(1) of IA Regulation, Section 12A(a), (b), (c) of SEBI Act and Regulations 3(a), (b), (c) and (d), Regulation 4(1) and 4(2)(k) of SEBI PFUTP Regulations...

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34. From the above, I note that although the Noticee has carried out activities which can be done only after taking registration with SEBI as an Investment Adviser under IA Regulations, and has violated various provisions of SEBI Act, IA Regulations, PFUTP Regulations, RA Regulations and Intermediaries Regulations, there is no finding on record that brings out that the activities of Noticee have caused any loss to any client or has impacted the integrity of securities market in any manner. No material has been brought out in the examination report to prove any mis-appropriation of funds by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature.”

39. In view of the aforesaid observations, the DA has recommended that the Noticee may be prohibited from taking up any new assignment or contract or launching a new scheme for a period of one year in terms of regulation 26(1)(iv) of the Intermediaries Regulations.
40. I note that for the reasons mentioned in the preceding paragraphs, I find myself in agreement with the findings and recommendation of the DA that the Noticee be prohibited from taking up any new assignment or contract or launching a new scheme for a period of one year.

ORDER

41. I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the Securities and Exchange Board of India Act, 1992 and Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby direct that the Noticee is hereby prohibited from taking up any new assignment or contract or launching a new scheme for a period of one year.
42. The above directions shall come into force with immediate effect.
43. A copy of this Order shall be served on the Noticee and on all recognized Stock Exchanges and Depositories.

Date: April 27, 2023

Place: Mumbai

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