

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 35 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AND REGULATION 28 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INVESTMENT ADVISERS) REGULATIONS, 2013

In respect of:

S. No.	Name of the Noticee(s)	PAN
1.	Veerendra Gupta, Proprietor of Niveshicon Investment Advisor (SEBI Registration no. INA000009047)	BEDPG9199C

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**BACKGROUND:**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had received various complaints against Veerendra Gupta, Proprietor of Niveshicon Investment Advisor (hereinafter referred to as “**Noticee**”) who is registered as an Investment Adviser (hereinafter referred to as “**IA**”) with SEBI having registration no. INA000009047 with effect from November 15, 2017.
2. Pursuant to examination of complaints, SEBI issued a Show Cause Notice dated July 29, 2022 (hereinafter referred to as “**SCN**”) against the Noticee. The present proceedings emanate from the said SCN wherein the Noticee has been *prima facie* alleged to have violated the provisions of SEBI Act, 1992, SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices

Relating to Securities Market) Regulations, 2003 (hereinafter referred to as **“PFUTP Regulations”**), SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **“Intermediaries Regulations”**) and circulars issued by SEBI. In short, the SCN alleged as follows:

- a) The Noticee failed to comply with ‘fit and proper person’ criteria.
- b) The Noticee failed to inform SEBI regarding material information related to its IA activities.
- c) The Noticee acted in a dishonest, deceitful and fraudulent manner with the clients and failed in his responsibility to act in a fiduciary capacity and in the best interest of the clients by
  - i. promising assured/ guaranteed returns to the clients;
  - ii. indulging in unfair dealing with the clients, not making adequate disclosures of relevant material information to the clients and charging unreasonable fees to the clients;
  - iii. providing investment advice which was inappropriate to the risk profile of clients and selling products / services which were inconsistent with clients’ experience, investment objectives and financial situation;
  - iv. not obtaining consent of client on risk profiling form (**“RPF”**); and
  - v. not following Know Your Client (hereinafter referred to as **“KYC”**) procedure.
- d) The Noticee failed to redress investor grievances and to display the complaints status on website.

### **SHOW CAUSE NOTICE, REPLY AND HEARING:**

- 3. The SCN sent to the Noticee at the address available on record, i.e. 404B, Scheme No. 54, PU-04, Commercial Sector, Plot No. B-2, Metro Tower, Indore, Madhya Pradesh – 452010, returned undelivered. Accordingly, the Noticee was contacted telephonically to provide his present address. The Noticee, vide email dated August 25, 2022 provided his address as 14 – Shankar Colony, Rajgarh, Madhya Pradesh – 465661. The SCN was delivered successfully at the said address on August 29, 2022. The Noticee

submitted his preliminary response to the SCN vide letter dated October 03, 2022.

4. The Noticee was granted an opportunity of personal hearing on November 17, 2022. The Noticee's request for adjournment of hearing was accepted and he was provided another opportunity of personal hearing on November 29, 2022. The Noticee again requested for adjournment of hearing which was acceded to and the Noticee was granted that last opportunity of hearing on December 09, 2022. The authorised representative, Advocate Ashish Agarwal along with the Noticee appeared for the hearing. The authorized representative made his submissions in respect of the alleged violations in the SCN and also undertook to make additional written submissions on or before January 03, 2023. The additional submissions were made by the Noticee on January 03, 2023.

#### **CONSIDERATION OF SUBMISSIONS AND FINDINGS:**

5. **Preliminary Objection** – The Noticee has contended that SEBI has already issued a show cause notice dated February 15, 2022 to the Noticee in respect of the same set of allegations as levelled in the instant SCN. The Noticee has duly replied to the show cause notice dated February 15, 2022 and an Enquiry Report has also been prepared by the Designated Authority wherein actions against the Noticee have been proposed. The Noticee has, thus, contended that multiple proceedings have been initiated by SEBI for the same offence.
6. In this regard, I note that SEBI has initiated following proceedings against the Noticee:
  - a. The instant proceedings under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of SEBI Act, 1992 read with Regulation 35 of SEBI (Intermediaries) Regulations, 2008 and Regulation 28 of SEBI (Investment Advisers) Regulations, 2013.
  - b. Enquiry proceedings under Section 12(3) of SEBI Act, 1992 read with Regulation 23 and 27 of SEBI (Intermediaries) Regulations, 2008 and Regulation 28 of SEBI (Investment Advisers) Regulations, 2013.

7. I note that the show cause notice dated February 15, 2022 has been issued against the Noticee under the proceedings mentioned at (b) above while the show cause notice dated July 29, 2022 has been issued in respect of the instant proceedings as mentioned at (a) above. Section 12(3) of SEBI Act, 1992 under Chapter V of the SEBI Act, 1992 read with Regulation 23 of the Intermediaries Regulations empowers SEBI to suspend or cancel a certificate of registration, by an order, granted to a registered intermediary in such manner as may be determined by the Regulations. I further note that SEBI is legally empowered under the SEBI Act, 1992 to issue directions under Chapter IV of the SEBI Act, 1992 to *“protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit,”* for the violation of the provisions of SEBI Act, 1992 and/or Rules and Regulations made under it. Thus, the objects of the two separate enforcement actions initiated against the Noticee are distinct and the powers conferred on SEBI under Chapter IV of SEBI Act, 1992 are independent from the powers under Chapter V of SEBI Act, 1992.
8. In this regard, I note that in its order dated February 15, 2021 in Appeal No. 168 of 2020 (G.V.Films Ltd. vs SEBI), Hon'ble Securities Appellate Tribunal stated the following:
- “We find that under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’), powers have been given to the WTM to issue direction under Section 11 and 11B of the SEBI Act. While exercising these powers, directions were issued debarring the company from accessing the securities market for a period of five years. The SEBI Act further provides powers to the AO to levy penalty for violation of SEBI Act and its regulations. Thus, the powers of the authorities are different and distinct and does not overlap. The law permits the authorities to impose different penalties and, therefore, it is not the case of double jeopardy.”*
9. In another order dated April 21, 2017 in Appeal No. 193 of 2016 (Ms. Sunita Gupta vs SEBI), Hon'ble Securities Appellate Tribunal stated the following:

*“Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act.”*

10. I, therefore, do not find merit in the contention raised by the Noticee since SEBI is legally empowered to initiate multiple proceedings for violations of provisions of securities laws.
11. I now proceed to deal with the merits of the case. I note that the SCN contains multiple allegations against the Noticee, and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs.
12. **Allegation I – Failure to inform material change to SEBI**
13. It is alleged in the SCN that the Noticee failed to inform SEBI about filing of a First Information Report dated July 25, 2020 (hereinafter referred to as “FIR”) by Indore Police against the Noticee and others and sealing of his office premises and thereby, violated Regulation 13(b) of IA Regulations.
14. Regulation 13(b) of IA Regulations reads as under:

*“13. (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;”*
15. I note that a FIR bearing crime no. 627/2020 was registered at Police Station Vijay Nagar, Indore on July 25, 2020 under section 154 of Code of Criminal Procedure, 1973, charges under Section 420 (Cheating and dishonesty

inducing delivery of property), Section 406 (Punishment for criminal breach of trust), Section 34 (Acts done by several persons in furtherance of common intention) of Indian Penal Code and Section 6(1) of The Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam 2000 against Veerendra Gupta (Proprietor), Mohd. Salauddin (Director), Priyank Shah (Compliance Officer, Grievance Redressal and Data Support Manager) and Sameer Shrivastava (Accountant), in connection with their activities rendered as Niveshicon Investment Advisor.

16. It is observed that the FIR has alleged charges such as deceiving gullible investors, collecting lakhs of rupees and cheating the clients, giving assurance of guaranteed returns to gullible investors with an intention to make illegal gains, etc. I also note that Indore Police had seized office equipment, sealed office premises and also arrested Mohd. Salauddin and Priyank Shah.
17. It has been alleged that the Noticee did not inform SEBI regarding the FIR and sealing of its office premises. In this regard, from the material available on record, I note that vide email dated July 30, 2020, the Noticee had informed SEBI that on July 25, 2020, Indore Police crime branch had come to his office for investigation regarding client complaints and sealed the office premises on the same day. It was also intimated that the FIR has been filed against four officials. The Noticee also informed that due to these events, he was unable to provide services to his clients and resolve their grievances.
18. Thus, I find that the Noticee had, within 5 days of filing of FIR, informed SEBI of the same and other related events which had affected his operations as an IA. Therefore, the allegation of non-compliance of Regulation 13(b) of IA Regulations does not stand established.
19. **Allegation II – Non-redressal of investor grievances and non-disclosure of status of complaints on website**
20. The SCN alleges that the Noticee failed to submit the Action Taken Report ('ATR') within the specified timelines and did not resolve investors' grievances.

It is, thus, alleged that the Noticee has not complied with SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations. It is also alleged that the Noticee has violated SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, by not displaying the status of complaints of clients on his website.

21. Clauses 9 and 13 of SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014 read as follows:

*“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.*

*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.”*

22. Regulation 21(1) and 28(f) of IA Regulations read as follows:

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

*28. An investment adviser who –*

*(f) 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.”*

23. Clause 1(iv) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 reads as follows:

***(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 during the month	Reasons for pendency

24. The Noticee has submitted that the period for which the allegations have been made was the period of nationwide lockdown imposed due to Covid pandemic. It is also submitted that due to the sealing of his office premises in July 2020, the Noticee was unable to service clients and resolve their grievances thereafter. The Noticee has also submitted that he has taken efforts to resolve all the complaints of his clients and only 3 complaints (2 complaints by same person) are pending to be resolved.
25. It is alleged that as on August 18, 2020, the Noticee failed to file ATR in 8 complaints within the specified timeline of 30 days. The details of the said 8 complaints are as under:

**Table No. 1**

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding complaint to the Noticee	Date of Final ATR	Status
1	SEBIE/MP20/0000492/1	Ajay Sharma	17 FEB 2020	18 FEB 2020	11 AUG 2020	Closed on 27 AUG 2020
2	SEBIE/MP20/0000120/1	Pushpendra Kumar	09 JAN 2020	13 JAN 2020	24 FEB 2020	Pending
3	SEBIE/MP20/0000692/1	Rahul Jha	09 MAR 2020	28 MAY 2020	Not submitted	Closed on 25 SEP 2020
4	SEBIE/MP20/0000952/1	Tutare Dadasaheb Tatyaba	18 APR 2020	28 MAY 2020	Not submitted	Closed on 4 DEC 2020
5	SEBIE/MP20/0000756/1	Yaashika	18 MAR 2020	28 MAY 2020	Not submitted	Closed on 4 SEP 2020
6	SEBIE/MP20/0000493/1	Pradeep Kumar	15 FEB 2020	28 MAY 2020	Not submitted	Closed on 24 AUG 2020



Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding complaint to the Noticee	Date of Final ATR	Status
7	SEBIE/MP20/0000944/1	Sonu Verma	27 APR 2020	28 APR 2020	11 JUN 2020	Closed on 19 AUG 2020
8	SEBIE/MP20/0001260/1	Naveen Kumar	02 JUL 2020	14 JUL 2020	Not submitted	Closed on 25 NOV 2020

26. I note that the Noticee has admitted that he did not resolve the grievances in a timely manner and also did not display the status of complaints. The reasons cited by Noticee No. 1 are lockdown imposed on account of Covid pandemic and sealing of his office premises. I note that nationwide lockdown due to Covid pandemic was imposed from March 24, 2020 and the Noticee's office was sealed from July 25, 2020. From Table No. 1 above, I note that 6 out of 8 complaints were forwarded to the Noticee after March 24, 2020. I also note that 3 complaints were closed in August 2020, 2 complaints in September 2020 and one each in November 2020 and December 2020. One complaint continues to be unresolved. Thus, I find that, with respect to 2 complaints (Complaint no. 1 and 2 in the table), the Noticee has clearly delayed in resolving the complaints beyond 30 days or not resolved the same. I also note that the Noticee has responded in respect of certain complaints in SCORES during the period of March 2020 to June 2020. I also note that the Noticee has resolved 3 of the complaints in August 2020. Thus, I find that the Noticee was operational enough to resolve complaints prior to sealing of his office in July 2020 as well as during August 2020. Thus, I find no reason as to why the Noticee could not resolve other complaints within the specified timelines. Therefore, apart from complaint no. 6 and 7 in Table No. 1 above, the Noticee is seen to have been lax in resolving 6 other complaints. In view of the same, I find the Noticee to be in violation of SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations. By not displaying the status of complaints on website, I also find that the Noticee has violated SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

27. **Allegation III – Improper, unfair and fraudulent dealing with clients in violation of certain provisions of IA Regulations and PFUTP Regulations**

28. It is alleged in the SCN that through its various acts, Noticee dealt in a dishonest, deceitful and fraudulent manner with the clients and failed in his responsibility to act in a fiduciary capacity and in the best interest of the clients, thereby violating certain provisions of IA Regulations and PFUTP Regulations. I shall deal with each such alleged act of the Noticee in the following paragraphs.

***a. Promising assured/ guaranteed returns to the clients***

29. The SCN alleges that the Noticee has promised assured profit / unrealistic returns from securities market on the investment made by the clients and lured them to avail his services, thereby violating the provisions of Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992; Regulation 15(1) of IA Regulations; and Clause 1 and 2 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

30. Regulation 3(a), (b), (c), (d) of PFUTP Regulations reads as follows:

***“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.”*

31. Section 12A(a), (b) and (c) of SEBI Act, 1992 reads as follows:

***“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;”

32. Regulation 15(1), 15(9) and Clause 1 and 2 of Code of Conduct for IA as specified in Third Schedule of IA Regulations read as follows:

***“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.***

**Clause 1 and 2 of Code of Conduct**

**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.”*

33. I note that the allegation is based on the complaints lodged against the Noticee and accompanying documents, call recordings, whatsapp messages etc. submitted by the complainants as detailed hereunder.

34. A complaint dated January 09, 2020 was filed by Mr. Pushpendra Kumar (“**Complainant No. 1**”) alleging that the Noticee had taken a fees of Rs.1.74 lakhs while promising a net profit of Rs.6 lakhs. Complainant No. 1 also provided a copy of email dated October 14, 2019 received from the Noticee’s email id *info@niveshicon.com* wherein it was mentioned as follows:

*“Service Name – Equity Combo (Cash Premium, Option Premium & Future Premium)  
Cash Premium 63000/-  
Future Premium 75000/-  
Option Premium 83000/-  
Service Charges: INR 2,21,000/- + GST  
Net Profit: Approx. 6 to 8 Lakh (subject to Market Risk)  
Service Tenure: Quarterly + (1 Month Complementary Services)”*

35. A complaint dated February 17, 2020 from Mr. Ajay Sharma (“**Complainant No. 2**”) alleged that he has paid Rs. 61,000 for the service provided by the Noticee and incurred a loss of Rs.1,50,000. Complainant No. 2 provided a copy of email dated May 18, 2019 received from the Noticee’s email id *info@niveshicon.com* wherein it was mentioned as follows:

*“SERVICE NAME :- (CUSTOMIZE PLAN)EQUITY  
SERVICE CHARGES :- 128500/-  
EXPECTED RETURN APPROX :- 4 lakh ( SUBJECT TO MARKET RISK)  
SERVICE TERM :- 45 trading days (i:e 2 calendar month)”*

36. A complaint dated April 18, 2020 was filed by Mr. Tutare Dadasaheb Tatyaba (“**Complainant No. 3**”) alleging that the he paid Rs. 4,77,200 to the Noticee on the assurance of getting profits of Rs.17,50,000. Complainant No. 2 alleged that he has suffered total loss of Rs.10,02,200 and also submitted a call recording in support of his complaint. The relevant excerpts from the call recording (total duration of 5 mins 43 secs) are as under:

*“Niveshicon @1:25 minute: Jaise aapko maine bataya tha 4 lac 11 hazar ki apni platinum service 6 mahine ke liye ok. Isme proper 3 member ki team assign ki jayegi aur proper isme profit aapka nikalke aayega 6 mahine me wo 11 lac rupaye ka profit nikalkar aayega. Aur plus daily ki aapki earning rahegi wo 6 se 7.50 hazar ki earning rahegi.”*

37. A complaint dated April 27, 2020 was filed by Mr. Sonu Verma (“**Complainant No. 4**”) alleging that the Noticee provided services assuring returns of Rs.17 lakhs. Complainant No. 4 alleged that after suffering a loss of Rs. 20,000 – Rs. 30,000, he was further promised assured return of approx. Rs. 50 lakhs in one year. Complainant No. 4 has alleged that he paid Rs. 4,04,000 to the Noticee and incurred losses amounting to Rs. 80,000. Complainant No. 4 also submitted call recordings in support of his complaint. The relevant excerpts from the call recordings are as under:

First call recording of 14:40 minutes duration:

**“Niveshicon @3:51 minute:** 21 March se pehle hum aapko 8 lakh se 8.75 lakh ke bich profit yaane jo aapko 17 lakh 50 hazar maine bola uska lumpsum 50% amount mai is teen mahine me aapko cover karke de sakta hun. (Statement of providing profit of Rs. 8 lakhs – Rs. 8.75 lakhs repeated a number of times during the call - @6:01, @6:22, @7:38, @8:27, @10:41, @13:24)

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**Niveshicon:** Uske baad jo call generate hogi usme minimum se minimum 30 se 40 hazar per call se profit nikal ke aa jayega. Daily basis pe 3 se 4 call ka minimum 50 se 75 hazar profit market se nikalkar aa jayega.

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**Niveshicon @8:37 minute:** 5 January se pehle main aapko 2 lakh tak ka amount market se nikal kar aapko de dunga. Itna bharosa mere upar rakhiye. 2 lakh aapko main 5 January se pehle market se nikal dunga. (Statement of providing minimum profit of Rs. 2 lakhs by 5<sup>th</sup> January repeated during the call - @11:40, @11:50)

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**Niveshicon @9:00 minute:** 10 din mein minimum se minimum hum aapko 1.5 lakh se upar ka amount nikal ke denge. Iske ek rupee ka bhi amount aapka niche ka nahi rahega.

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**Niveshicon @9:42 minute:** Main cheez kya hai ki abhi event chal rahi hai. Aur event mein aapko bhi pata hai ki market mein rally aati hai aur us rally par jo cheez hum 6 mahine mein karke aapko de sakte hain wo cheez main aapko 3 mahine mein market se nikal kar de sakta hun. To hum 6 mahine ke liye kyun jaayein jab apna 3 mahine mein aur proper market mein aisa event ek saath kabhi market mein nahi hota. Ye aapko pehla aisa situation hoga Indian history mein sir ki 5 event market mein ek saath chal rahe hain. Is karan se market mein humari profile ki bahut demand chal rahi hai.”

Second call recording of 20:15 minutes duration:

**“Niveshicon @0:55 minute:** Sir ek customize service rahegi. Aapke according kaam hoga thik hai. Iski annual charges 5 lakh ki annual charge rahegi. Ok. Isme jo return nikal kar aayega 1 year me, wo return rahega 17 lakh 50 hazar rupaye ka return aapka 1 year me nikal kar aayega. (Highlighted statement repeated a number of time during the call - @4:51, @15:20, 17:04)

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**Niveshicon @2:47 minute:** Yaani aapko 10 dino ke andar 7500 ka profit calculate kar rahe hain intraday mein to 10 dino mein to total profit rahegi wo 75000 ka profit ho jaayega.

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**Niveshicon @3:12 minute:** Hum aapko daily basis Rs. 15000-20000 market mein intraday ka nikal kar provide karenge.

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**Niveshicon @5:34 minute:** First time aapko 50000 ka services discharge karne ke liye nominal amount lagega. Aapko minimum se minimum one month mein 3-3.5 lakh ka profit aapke hand mein aa jaayega. (Highlighted statement repeated @16:10)

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**Niveshicon @6:58 minute:** Mujhe demat mein 1 lakh ka investment chahiye. Wo bhi abhi sirf aur sirf 25000 aur isme main aapko 10 din kaam karaunga. 10 dino ke andar aapka jo 25000 ka investment rahega wo increase hokar 1 lakh mein convert ho jaayega.

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**Niveshicon @8:20 minute:** Achi rally aane waali hai aur is rally ke accordingly aapka jo profit rahega wo safe rahega. Aapki risk Rs. 1000-2000 ki rahegi aur wahan se humein jo profit nikal kar aayega wo Rs. 10000-15000 ka intraday mein profit maan sakte hain.

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**Niveshicon @15:05 minute:** Hum kahin se bhi aapko poore din mein chahe wo cash se ho, options se ho, futures se ho, chahe wo commodity se ho koi bhi segment se aapko profit nikal ke us din mein 15000 anyhow aapko nikal kar provide karenge.

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**Niveshicon @17:17 minute:** Aap jo amount bhi pay kar rahe ho wo company ke current account mein Niveshicon Investment Advisor ke account mein pay karoge.

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**Niveshicon @19:03 minute:** 15000 se ek rupee bhi kam nahi rahega isse jyada nikal sakta hai but isse ek rupee bhi kam aapka din ka earning nahi rahega. Shuruwati 10 dino ki jo earning rahegi wo 7500-10000 jab tak demat ka fund 1 lakh mein convert nahi ho jaata.”

38. A complaint dated November 03, 2019 was filed by Mr. Ajay Babu (“Complainant No. 5”) alleging that he had paid Rs. 2,47,500 to the Noticee for providing investment advice and incurred a loss of Rs. 6,20,000 on his investments. Complainant No. 5 also submitted whatsapp chat messages with the Noticee in support of his complaint. The relevant excerpts from the chat messages are as under:

“10/1/19, 10:58 AM - Ajay: Apka one month ka fee kitna hai

10/1/19, 10:58 AM - Niveshicon: Ok

10/1/19, 10:58 AM - Niveshicon: Good

10/1/19, 10:59 AM - Niveshicon: 485k. Sip

10/1/19, 10:59 AM - Niveshicon: Plan

10/1/19, 10:59 AM - Ajay: Rupees me kitna one month ka

10/1/19, 10:59 AM - Niveshicon: 485000

10/1/19, 11:00 AM - Ajay: Theek hai sham ko decide karta hu

10/1/19, 11:00 AM - Niveshicon: *Market return 169000*

10/1/19, 11:01 AM - Niveshicon: *Work mere according hoga*

10/1/19, 11:01 AM - Niveshicon: *Company profit*

10/1/19, 11:02 AM - Niveshicon: *But mere according 2100000*

10/1/19, 11:02 AM - Niveshicon: *Normal hai*

10/1/19, 11:02 AM - Niveshicon: *Market se*

10/1/19, 11:02 AM - Niveshicon: *Ok. ..*

10/1/19, 11:03 AM - Niveshicon: *Slot book kro or market Ko enjoy kro*

  

10/1/19, 11:27 AM - Niveshicon: *Bhai... Ye apka first and last investment h... Apki pocket se*

10/1/19, 11:27 AM - Niveshicon: *Uske bad to sirf kamana hi h*

  

10/1/19, 3:12 PM - Niveshicon: *3 Oct Ko Kam se Kam 5 to 7 lk profit hoga*

10/1/19, 3:12 PM - Ajay: *Theek hai*

10/1/19, 3:13 PM - Niveshicon: *Sir kal market off hai or 3 Ko bank nifty ka last din hai.*

10/1/19, 3:15 PM - Niveshicon: *Bas ap wait kro apke demat me 10 October tak. 15,00,000/- Nikal Dunga*

  

10/1/19, 4:44 PM - Niveshicon: *10 October tak apko Kam se Kam 15 lk Nikal Dunga promise*

  

10/1/19, 5:03 PM - Niveshicon: *STATE BANK OF INDIA  
NIVESHICON INVESTMENT ADVISOR  
A/C NO. 37532398058  
BRANCH PHOOLKHEDI RAJGARH  
IFSC CODE - SBIN0030331  
-WWW.NIVESHICON.COM - 6232983987*

  

10/2/19, 9:53 PM - Niveshicon: *Kal jo bhi profit ho PURA amount pay karna hai 242500/-*

10/2/19, 9:53 PM - Niveshicon: *Bad me bolna mat*

10/2/19, 9:54 PM - Niveshicon: *Me apna amount Laga Raha hu*

10/2/19, 9:54 PM - Niveshicon: *Or ha ek or bat... Profit minimum 3 lakhs or maximum apki soch se bhi jyada*

10/2/19, 9:54 PM - Niveshicon: *Ab profit booking ke bad hi bat kreg..”*

39. The Noticee, in his submissions, has denied that he had made false promise or tempted the clients to invest on the basis of guaranteed return. The Noticee further submitted that it had always informed their clients that the estimated profit will be subject to market risk and no guarantee of profit was ever given by it. Invoices issued by the Noticee contains the term that all profits will be subject to market risk and it has never failed to issue invoices to its clients. Further, the Noticee submitted that it has never obtained any profit by making

false promise to its customers. During the hearing, the Noticee had also raised questions on the authenticity of the call and message records provided by the complainants.

40. I note that the emails sent by the Noticee to Complainant No. 1 and 2 mention approximate 'Net Profit' and 'Expected Return' from the investments to be made by the clients 'subject to market risk'. I also note from call records provided by Complainant No. 3 (highlighted text at Para 36 above) that the Noticee had assured a profit of Rs. 11 lakhs in 6 months as well as daily earnings of Rs.6000 - Rs.7500 to Complainant No. 3. With respect to Complainant No. 4, I note from the call records (highlighted text at Para 37 above) that the Noticee repeatedly assured Complainant No. 4 that he shall earn a profit of Rs. 17.5 lakhs within one year as promised and half of the assured profit i.e. Rs. 8 lakh – Rs. 8.75 lakh shall be provided within 3 months. The Noticee has repeatedly tried to lure the Complainant to invest by guaranteeing daily profits ranging from Rs. 10,000 – Rs. 20,000. Despite the Complainant's reluctance and inability to pay the required investment amount, the Noticee has tried to re-assure the Complainant repeatedly that his investment will generate daily returns as well as huge profits within 3 months. The Noticee has also enticed the Complainant by guaranteeing to provide a profit of Rs. 1-2 lakhs within 10 days as well as Rs. 3-3.5 lakhs within a month. In various instances, the Noticee has confirmed the guaranteed profit by stating that the Complainant won't get even a rupee less than the assured sum (*"10 din mein minimum se minimum hum aapko 1.5 lakh se upar ka amount nikal ke denge. Iske ek rupee ka bhi amount aapka niche ka nahi rahega; 15000 se ek rupee bhi kam nahi rahega isse jyada nikal sakta hai but isse ek rupee bhi kam aapka din ka earning nahi rahega"*). Further, from the Whatsapp chat messages provided by Complainant No. 5, I note that the Noticee has guaranteed profits of varied amounts (Rs. 5-7 lakhs, Rs. 15 lakhs, minimum Rs. 3 lakhs) to the Complainant at different times during the chats.
41. The Noticee has contended that it has always issued invoices and other communication to the clients stating that the investments are subject to market risk. I find that the Noticee cannot merely take shelter under such disclaimers



while in reality, he has lured the clients by explicitly assuring guaranteed profits on their investments while directly interacting with them. The call records clearly indicate that the Noticee has repeatedly provided assurance to his clients promising varied profits for different periods such as daily, 10 days, monthly, quarterly and yearly basis, thereby providing an impression to the clients that profit on their investments will be achieved continuously irrespective of the tenure.

42. The Noticee has also raised questions on the authenticity of the call and message records provided by the complainants. In this regard, I note that in the call record provided by Complainant No. 4, it has been stated that the Complainant has to make the payments in the current account of Niveshicon Investment Advisor (Second call recording provided by Complainant No. 4 - ***Niveshicon @17:17 minute: Aap jo amount bhi pay kar rahe ho wo company ke current account mein Niveshicon Investment Advisor ke account mein pay karoge***). Further, in the whatsapp messages provided by Complainant No. 5, the SBI Bank account (*Account number 37532398058, Branch - Phoolkhedi Rajgarh*) in which the payment has been sought belongs to the Noticee. I also find that the email id with which the complainants have communicated is *info@niveshicon.com* which is admittedly the email id of the Noticee used for the purpose of investment advisory services. I also note that the Noticee has not produced any document or evidence to prove otherwise. I, thus, reject this contention of the Noticee with respect to validity of the call records.
43. Accordingly, I find that the Noticee, being a registered IA, did not act honestly, fairly and in the best interests of its clients and thus violated Regulation 15(1) of IA Regulations and Clause 1 and 2 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.
44. With respect to the consequent allegation of fraud against the Noticee, I note that the material question to be considered is whether an IA guaranteeing assured returns to the clients on their investments can be said to attract the prohibitions against fraudulent dealings in securities market. In my view, the acts of making one to one promises or making misleading representations to

make the clients invest in various securities in itself cannot be considered to attract the prohibitions under PFUTP Regulations, unless there is sufficient proof of “dealing in securities”, in the sense contemplated under the PFUTP Regulations. Therefore, I do not find that the alleged violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 is maintainable against the Noticee.

***b. Unfair dealing with clients, inadequate disclosures to clients and charging unreasonable fees to clients***

45. The SCN alleges that the Noticee has not been fair in its dealing with the clients. The Noticee sold new services / products to his clients even though the subscription period for same services / products bought previously by the client was not completed. It is alleged that the Noticee has not given adequate information about service period to the clients. It is also alleged that the Noticee has lured clients to buy/subscribe to multiple packages with same features having different names and fees. It is also alleged that the amount of fees charged by the Noticee to its clients is unreasonable, arbitrary and unfair. Thus, the Noticee is alleged to have violated the provisions of Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992; Regulation 15(1) of IA Regulations; and Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

46. While the other alleged provisions have been reproduced in the preceding parts of this order, Clause 5 and 6 of Code of Conduct as mentioned in Third Schedule of IA Regulations read as follows:

***“Clause 5 and 6 of Code of Conduct***

***5. Information to its clients***

*An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.*

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

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

47. I note that the allegations are based on the complaints filed with SEBI against the Noticee and supporting documents provided by the complainants. The observations on the same are discussed hereunder.

48. As per the invoices provided by Complainant No. 3, following payment details are noted:

**Table No. 2**

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount (in Rs.)
1	05.12.2019	NIA0003186	Standard Cash	Not mentioned	2,700/-
2	21.12.2019	NIA0003187	Standard Cash	Not mentioned	18,500/-
3	24.12.2019	NIA0003199	Standard Cash	Not mentioned	37,000/-
4	27.12.2019	NIA0003223	Standard Cash	Not mentioned	11,000/-
5	27.12.2019	NIA0003220	Standard Cash	Not mentioned	30,000/-
6	04.01.2020	NI13940418	Standard Cash	13.01.2020 to 21.01.2020	2,000/-
7	07.01.2020	NI13940418	Premium Option	13.01.2020 to 24.02.2020	68,000/-
8	13.01.2020	NI13940418	Crystal Option	14.01.2020 to 13.02.2020	50,000/-
9	14.01.2020	NI13940418	Crystal Option	14.02.2020 to 13.03.2020	50,000/-
10	19.01.2020	NI13940418	Standard MCX	20.01.2020 to 01.05.2020	51,000/-
11	23.01.2020	NI13940418	Standard MCX	04.05.2020 to 12.08.2020	50,000/-
				<b>Total</b>	<b>3,70,200/-</b>

49. From Table No. 2 above, the following observations are made:

- a. In 5 of the invoices, duration of service has not been mentioned.
- b. A total fees of Rs. 1,01,200 was taken by the Noticee from Complainant No. 3 for 'Standard Cash' service within a period of one month, whereas as per the website of the Noticee, the fees for 'Standard Cash' service was as follows:

Monthly	Rs. 7,000
Quarterly	Rs. 18,000
Half Yearly	Rs. 32,000
Yearly	Rs. 52,000

- c. Complainant No. 3 has been sold the service of 'Crystal Option' for the tenure 13.01.2020 to 24.02.2020 and 'Premium Option' for the

tenure 14.01.2020 to 13.02.2020 with separate fees for each of the service. The features of the both services are as below:

**Table No. 3**

<b>Crystal Option (Fees Rs. 50,000/- p.m.)</b>	<b>Premium Option (Fees Rs. 40,000/- p.m.)</b>
<ul style="list-style-type: none"> <li>- We provide you around 1-2 Crystal Intraday Options market calls</li> <li>- Here risk will be lower than reward in percentage term. (according to market condition ratio can be change)</li> <li>- In this plan we have achieved a high level of accuracy on consistent basis</li> <li>- Telephonic support will be provided from 9:00 AM to 6:00 PM</li> <li>- Domestic and Global Market position Overview.</li> <li>- Economic Update</li> </ul>	<ul style="list-style-type: none"> <li>- We provide you around 1-2 Super Premium Intraday Options market calls</li> <li>- Here risk will be lower than reward in percentage term. (according to market condition ratio can be change)</li> <li>- In this plan we have achieved a high level of accuracy on consistent basis</li> <li>- Telephonic support will be provided from 9:00 AM to 6:00 PM</li> <li>- Economic Update.</li> </ul>

d. From the above, it is observed that the features of the two services are very similar and the tenure for which the services have been sold to Complainant No. 3 are overlapping to a large extent.

50. As per the invoices provided by Mr. Adarsh Veer Bhardwaj (“**Complainant No. 6**”), following payment details are noted:

**Table No. 4**

<b>Sr. No.</b>	<b>Invoice Date</b>	<b>Invoice No.</b>	<b>Product Name</b>	<b>Duration of service</b>	<b>Amount (in Rs.)</b>
1	15.05.2019	NIA0001750	Stock Cash - Intraday	Not mentioned	10,000/-
2	17.05.2019	NIA0001751	Stock Cash - Intraday	Not mentioned	10,000/-
3	17.05.2019	NIA0001753	Platinum Cash	1 month	81,250/-
4	17.05.2019	NIA0001754	Stock Cash	1 month	7,300/-
5	17.05.2019	NIA0001755	Cash Premium	1 month	50,000/-
6	18.05.2019	NIA0001772	HNI Stock Cash	Not mentioned	31,450/-
7	19.05.2019	NIA0001783	Platinum Cash	1 month	25,000/-
8	22.05.2019	NIA0001784	Stock Cash	1 month	3,540/-
9	23.05.2019	NIA0001782	Equity-HNI Service	Not mentioned	1,13,755/-
10	25.06.2019	NIA0001887	Platinum Cash	1 month	1,20,100/-
11	06.07.2019	NIA0002023	Cash Premium	1 month	28,000/-
12	08.07.2019	NIA0002039	Cash Premium	1 month	27,000/-

13	07.08.2019	NIA0002201	Cash Premium	1 month	30,000/-
14	07.08.2019	NIA0002203	Cash Premium	1 month	20,000/-
				<b>Total</b>	<b>5,57,395/-</b>

51. From Table No. 4 above, the following observations are made:

- a. In four of the invoices, duration of service has not been mentioned.
- b. The Noticee has issued multiple invoices with different amounts for the same product having same duration before the completion of tenure of first service. For instance, 'Platinum Cash' product was sold on May 17, 2019 with tenure of service of one month for Rs. 81,250. The same product was again sold on May 19, 2020 (within 2 days) with tenure of service of one month for Rs. 25000. Similarly, 'Stock Cash' product was sold on May 17, 2019 with tenure of service of one month for Rs. 7,300. However, same product was again sold on May 22, 2020 (within 5 days) with tenure of service of one month for Rs. 3,540.
- c. Fees charged to the client for a particular product/service is not consistent. For instance, there are four invoices of 'Cash Premium' product within a period of one month all having different amounts without mentioning the actual fees for the service.
- d. As per the RPF of Complainant No. 6, proposed investment amount is mentioned as less than Rs.1 lakh, market value of portfolio held is mentioned as between Rs. 1 to 2 lakhs and gross annual income is mentioned as between Rs. 1 to 5 lakhs out of which upto 50% is allocated to pay off debts. The Noticee has taken a total amount of Rs. 5,57,395/- towards service charges from Complainant No. 6 for the service period of 4 months (i.e. from May 15, 2019 to September 07, 2019) for different products. The fees taken is more than 5 times of his proposed investment amount, more than 2.5 times of his investment portfolio held and more than 2 times of the net gross annual income (after deducting debt dues).
- e. As per the website of the Noticee, the monthly fees for 'Premium Cash' service was Rs. 25,000. However, none of the four invoices

issued to Complainant No. 6 for the said services amount to Rs. 25,000.

52. As per the invoices provided by Complainant No. 5, following payment details are noted:

**Table No. 5**

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount (in Rs.)
1	19.09.2019	NIA0002521	Standard Cash	Not mentioned	2,000/-
2	30.09.2019	NIA0002622	Option Premium	Monthly	23,000/-
3	01.10.2019	NIA0002623	Option Premium	Monthly	2,07,500/-
4	01.10.2019	NIA0002652	Platinum Option	Monthly	15,000/-
				<b>Total</b>	<b>2,47,500/-</b>

53. From Table No. 5 above, the following observations are made:
- In one invoice, duration of service has not been mentioned.
  - The Noticee has obtained a total fees of Rs. 2,30,500 from Complainant No. 5 for monthly service of 'Option Premium' product whereas as per the website of the Noticee, the monthly fees for the said product was Rs. 40,000.
54. With regard to Complainant No. 5, I also note that on February 20, 2020, the Noticee had confirmed to provide Rs. 4 lakhs (in four equal monthly instalments) towards settlement to the complaint. Accordingly, the complaint was withdrawn by Complainant No. 5. However, apart from the first instalment, the promised amount was not paid to the Complainant by the Noticee as a result of which the Complainant filed another complaint on April 01, 2020. The Noticee cited the Covid pandemic as a reason for non-payment of promised amount. Subsequently, SEBI received a complaint from Smt. Usha Devi, mother of Complainant No. 5, on April 14, 2020 wherein she mentioned *inter alia* that her son has committed suicide on April 08, 2020 allegedly because of a loss of Rs. 9 lakhs incurred due to the unfair dealings and fraud committed by the Noticee on her son.

55. As per the invoices provided by Complainant No. 2, the following payment details are noted:

**Table No. 6**

<b>Sr. No.</b>	<b>Invoice Date</b>	<b>Invoice No.</b>	<b>Product Name</b>	<b>Tenure of service</b>	<b>Service Charges (in Rs.)</b>
1	18.05.2019	NIA0001759	Equity HNI Services	Not mentioned	30,000/-
2	24.05.2019	NIA0001780	Equity HNI Services	Not mentioned	20,000/-
3	26.06.2019	NIA0001908	Cash Premium	Monthly	11,000/-
				<b>Total</b>	<b>61,000/-</b>

56. From Table No. 6 above, it is observed that duration of service was not mentioned in two invoices.
57. In respect of the said allegations, the Noticee has submitted that he has always given service to the clients on their consent and willingness. The invoices were issued to the clients and they were informed about the services availed by them. The Noticee has submitted that the services have been provided at a right and reasonable rate. The Noticee has contended that the services were offered by him only subsequent to the acceptance by the clients. I note that the Noticee has submitted RPFs, Suitability Assessment documents and invoices issued to the clients to substantiate his claims. I find no mismatch in the invoices issued to the clients and those provided by the complainants. Further, the documents submitted by the Noticee do not show any consent or acceptance by the clients as claimed by the Noticee. I find that the Noticee has not submitted any evidence to substantiate his contention that the fees charged was correct and reasonable. In my view, the fees charged to a client cannot be termed as reasonable only on the basis that client has accepted to the same. The test of 'reasonableness' would depend on various factors such as uniformity and consistency in charging fees, financial condition of the client, being fair and sensible etc. I am, therefore, not inclined to accept the submissions made by the Noticee in this regard.

58. A registered IA has the fiduciary responsibility of acting in the best interests of his clients. An IA is duty bound to adhere to the prescribed Code of Conduct in the IA Regulations. From the aforesaid facts and observations, I find that, in various instances, the Noticee has not provided adequate information to his clients about the service period for which the amount was collected from the clients. I also find that the Noticee has dealt unfairly with the clients and not acted in the best interests of his clients by selling similar featured services with overlapping tenures. The Noticee has adopted deceitful business practices by selling new services / products to his clients even before the completion of the subscription period for same services / products bought previously by the client. I also find that the Noticee has acted in a dishonest manner and being a registered IA, has raised serious concerns on the integrity of securities market by deceiving Complainant No. 5 to withdraw his complaint under the assurance of making payment of Rs. 4 lakhs and later reneging on his commitment.
59. As observed above, I also find various instances which indicate that the Noticee has charged unreasonable, arbitrary and unfair fees to his clients. The fees taken from the clients was higher and not according to the disclosures made on his website. The Noticee has collected fees in an arbitrary manner by not following consistency in the charges for same products and without disclosing the actual charges for the service/product sold. I find that, by collecting fees much beyond the proposed investment amount and disregarding financial wherewithal of the clients, the Noticee has charged unreasonable and unfair fees to his clients.
60. I, therefore, find the Noticee to be in violation of Regulation 15(1) of IA Regulations and Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations. As discussed earlier at Para 44 above, the violations of provisions of Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992 are not attracted.



***c. Irregularities in Risk Profiling and Suitability Assessment***

61. The SCN alleges that the Noticee has sold products/services meant for high risk clients to clients who have medium risk appetite. It is alleged that the Noticee has sold products / services without considering the clients' experience, investment objectives and financial situation. It is also alleged that the Noticee did not take any consent from the clients for changing their risk category. The SCN also alleges that Noticee has not done client KYC as per the regulatory norms. Thus, the Noticee is alleged to have violated the provisions of Regulation 15(1), 15(8), 17(a), 17(d) and 17(e) of IA Regulations; Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations; Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992; and SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.
62. While the other alleged provisions have been reproduced in the earlier parts of this order, Regulation 15(8), 17(a), 17(d) and 17(e) of IA Regulations read are extracted hereunder:

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

***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) ...;*
- (c) ...;*
- (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.”*

63. Clause 1(ii) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 reads as follows:

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

*Risk profiling of the client is essential to provide advice on suitable product based on various criteria like income, age, securities market experience etc.*

*RIAs shall provide investment advice only after completing the following steps:*

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

64. I note that the allegations in the SCN are based on the examination of RPFs, suitability assessment reports, invoices etc. pertaining to certain clients of the Noticee. The observations on the same are discussed hereunder.

65. As per the RPF of a client named Ms. Kshitija Ananda Mali, the risk category of the client was deemed to be ‘Medium Risk’ by the Noticee. As per the invoices pertaining to the client, following payment details are noted:

**Table No. 7**

<b>Sr. No.</b>	<b>Invoice Date</b>	<b>Invoice No.</b>	<b>Product Name</b>	<b>Service period</b>	<b>Amount (in Rs.)</b>
1	11.02.2020	NIA0003915	Standard Cash	12.02.2020 to 23.03.2020	9,000/-
2	15.02.2020	NIA0003916	Standard Option	17.02.2020 to 16.04.2020	11,000/-
3	09.03.2020	NIA0004313	Crystal Future Pack	11.03.2020 to 23.03.2020	20,000/-
4	18.03.2020	NIA0004580	Index Option	19.03.2020 to 08.05.2020	18,000/-
5	18.03.2020	NIA0004650	Standard Future	19.03.2020 to 20.04.2020	8,000/-
				<b>Total</b>	<b>66,000/-</b>

66. The suitability assessment for the client mentions ‘Standard Cash’ to be the suitable product based on the investment objective, risk tolerance and

experience of the client. However, it is observed from Table No. 6 above that the Noticee has sold products other than 'Standard Cash' namely 'Standard Option', 'Crystal Future Pack', 'Index Option' and 'Standard Future' within a period of almost one month. Thus, it is seen that the Noticee has sold products other than those considered suitable as per the suitability assessment. However, I also note that these other products sold to the client except 'Crystal Future Pack' are part of the list of products mentioned by the Noticee for Medium Risk clients. The 'Crystal Future Pack' was sold on March 09, 2020 (i.e. within one month from the date of suitability assessment) for a charge of Rs. 20,000. Noticee has submitted that he had done risk profiling again and the revised RPF was communicated to the client on March 11, 2020 seeking acceptance from the client. I note that as per the revised RPF, the client's risk category has changed from "Medium" to "Very High Growth" within a month's period of initial risk profiling. I also note that the said product was sold on March 09, 2020 whereas revised risk profiling was done on March 11, 2020 showing that a high risk product was sold by the Noticee even before completing the risk profiling of the client. I also find that no evidence is on record to show that consent of the concerned client was taken by the Noticee in respect of the revised risk profiling as mandated by SEBI circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019. Further, it has been admitted by the Noticee in his submissions in SCORES on August 11, 2020 that KYC procedure was not done at the time of initial risk profiling of the said client.

67. I note that the Noticee has sold 'Crystal Option Pack' for a period from March 20, 2020 to April 07, 2020 and at a charge of Rs. 30,000 to a client named Onkar Kolapkar. The said client had submitted a complaint with SEBI alleging that after payment of Rs. 30,000, the client had requested the Noticee to cancel the service and refund the amount on March 23, 2020. I note from the RPF of the said client that he was a student aged 20 years and had no sources of primary or secondary income. His risk category was deemed to be 'Medium' by the Noticee. In this regard, the Noticee has submitted that the said client had demanded the services and as soon as it came to his knowledge that the said client is a student, he promptly stopped the services for the said client

within two days and further the amount received from the said client was also refunded back. Considering these facts, I find that it is not clear whether the Noticee had done the risk profiling of the client prior to providing the service or subsequent to the same. However, either of the scenarios depict a fault on the part of the Noticee. It clearly shows the negligent business practice of the Noticee of not considering the risk profile of the clients while providing services to them. I find that despite the client having stated that he had no sources of income, the Noticee has provided services to the client and sold a product belonging to the segment of futures and options which is generally considered to be a risky investment product in the securities market. I, thus, find that the Noticee has not exercised adequate due diligence and sold services in complete disregard to the client's financial status and experience.

68. From the RPF pertaining to Complainant No. 2 and his invoices as tabulated at Table No. 6 above, I note that Complainant No. 2 was categorized as a 'Medium Risk' client and sold the product of 'Equity HNI' which was under the list of 'High Risk' products marketed by the Noticee. Thus, I find that the Noticee has sold a 'High Risk' product to a 'Medium Risk' client.
69. I note that the RPF of Complainant No. 3 states that he had no experience in commodity investments. His proposed investment amount as well as market value of portfolio held were less than Rs. 1 lakh. It is observed from Table No. 2 above that the Noticee has charged a total fee of Rs. 3,70,200 from Complainant No. 3 by selling 4 different products for service period encompassing about 8 months. As noted above, in 4 of the invoices, service period was not even mentioned. I also note that despite the client having stated that he had no experience in commodity investment, Noticee has sold 'Standard MCX' product and charged more than Rs. 1 lakh for the same. Thus, I find that the Noticee has collected fees much beyond the proposed investment amount of his client and sold a product without considering the experience of the client.
70. I note that as per RPF, the risk category of Complainant No. 6 was deemed to be 'Medium'. The RPF also states 'HNI Equity' service under 'High Risk'

products. From Table No. 4 above, it is observed that the Noticee has sold 'HNI Equity' service to Complainant No. 6 at a charge of Rs. 1,13,755. Thus, I find that Noticee has sold a 'High Risk' product to a 'Medium Risk' client. Further, as noted at Para 51(d) above, the total fees taken by the Noticee from Complainant No. 6 is more than 5 times of his proposed investment amount, more than 2.5 times of his investment portfolio held and more than 2 times of the net gross annual income (after deducting debt dues). I, therefore, find that the Noticee has totally ignored the financial status and risk appetite of the client while providing investment advisory service.

71. In respect of these allegations, the Noticee has submitted that risk profiling system is managed and administered by well qualified personnel and is based on the information provided by the clients. The clients are offered and informed about the packages which includes risk, experience and rates of packages and customers opt for the service which could be irrespective of their risk profile and experience. In this regard, I find that the objective of risk profiling and suitability assessment is to determine the risk tolerance level of clients and recommend commensurate products/services to the clients. This objective would be defeated if such exercise is not undertaken properly by an investment advisor and would lead to unsuitable and inappropriate services being offered to the clients. By merely providing service on the basis of demands of the clients without addressing the risks involved and client suitability, the Noticee has not followed the due procedures expected from an investment advisor. I, therefore, find the contention of the Noticee to be devoid of merits.
72. From the aforesaid instances, I find that the Noticee has sold products contrary to the risk profile and suitability of the clients. The material available on record does not show any justification from the Noticee in this regard. I also find that the Noticee has taken payment for the services/product prior to undertaking the risk profiling of the client. The Noticee is seen to have considered the risk profiling and suitability assessment of a client as a mere formality and thus, found to be in non-compliance with the Code of Conduct specified under IA Regulations.

73. In view of the above, I find the Noticee to be in violation of Regulation 15(1), 15(8), 17(a), 17(d) and 17(e) of IA Regulations and Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019. As discussed earlier at Para 44 above, the alleged violations of provisions of Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992 are not maintainable against the Noticee.

74. **Allegation IV – Not ‘fit and proper person’**

75. It is alleged in the SCN that, in view of the serious charges levelled against the Noticee in the FIR and findings of the SEBI examination, the Noticee no longer fulfills the criteria of ‘fit and proper person’ in terms of Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulations 6(f) and 13(a) of IA Regulations.

76. Schedule II of Intermediaries Regulations reads as follows:

**“SCHEDULE II  
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)  
REGULATIONS, 2008  
[See regulation 7]**

*(1) The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

- (a) the competence and capability in terms of infrastructure and manpower requirements; and*
- (b) the financial soundness, which includes meeting the net worth requirements.*

*(2) The ‘fit and proper person’ criteria shall apply to the following persons:*

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*  
*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold*

*controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.*

**Explanation–** *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

*(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

*(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*

*(b) the person not incurring any of the following disqualifications:*

*(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*

*(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*

*(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*

*(iv) recovery proceedings have been initiated by the Board against such person and are pending;*

*(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*

*(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*

*(vii) such person has been declared insolvent and not discharged;*

*(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*

*(ix) such person has been categorized as a wilful defaulter;*

*(x) such person has been declared a fugitive economic offender; or*

*(xi) any other disqualification as may be specified by the Board from time to time.*

*(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*

*(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of*

registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:

Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.

(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."

77. Regulation 7(2)(e) of Intermediaries Regulations reads as under:

**"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."

78. Regulation 6 (f) and 13(a) of the IA Regulations read as under:

**"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 partners, principal officer and persons associated with investment advice, 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:-**

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



79. It has been found in the earlier part of this order that the Noticee had informed SEBI within 5 days of filing of FIR and other related events which had affected his operations as an IA. The Noticee has also informed during the hearing that chargesheet has been filed and the proceedings are pending before the respective judicial authority. Thus, I note that the charges determined against the Noticee have not yet been conclusively adjudged. Further, as noted above, the allegations of fraudulent dealing in securities market have not been established against the Noticee. I find that the other violations found against the Noticee are not grave enough to conclude that the Noticee is not a 'fit and proper' person.
80. The SCN had called upon the Noticee to show cause as to (i) why suitable directions, for debarment from accessing the securities market and prohibition on buying, selling or dealing in securities and suitable directions for refund of fees collected as a consideration for the investment advice rendered, under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992 should not be issued against it and (ii) why suitable directions for imposing penalty under sections 11B(2) and 11(4A) read with sections 15HA, 15HB (for violations prior to March 08, 2019) and 15EB (for violations subsequent to March 08, 2019) and 15C of SEBI Act, 1992 should not be issued against it for the aforesaid alleged violations.

## **CONCLUSION:**

81. In view of the above, I find that the Noticee failed in redressing complaints in a timely manner and did not display the status of complaints on his website. I also find that the Noticee has lured/misled investors by offering assured/guaranteed returns. In various instances, the Noticee failed to provide adequate information to his clients about the service period for which the fees was collected from the clients. I find that the Noticee dealt in an unfair manner with his clients by selling same service as well as similar featured services with overlapping tenures. The Noticee is found to have been dishonest with one of his clients by making undeliverable promises. It is also established that

the Noticee has charged unreasonable, arbitrary and unfair fees to his clients with the purpose of generating more income. I find that the Noticee has provided advice to clients and sold products/services which are inconsistent with clients' risk appetite, experience, knowledge, investment objectives and capacity for absorbing loss. The Noticee has also been found to have not taken consent of clients on risk profile. Such acts of the Noticee defeat the purpose of clients seeking advice from a registered IA and the fiduciary duty towards clients expected from an IA. I also note that there are criminal actions initiated by the State Government against the Noticee under various sections of Indian Penal Code and under Section 6(1) of Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. I, therefore, find these violations by the Noticee to be serious in nature which makes the Noticee liable for penalty under Sections 11B(2) and 11(4A) of SEBI Act, 1992 and related directions under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992.

82. I shall now proceed to consider the directions that would be commensurate with the aforesaid violations committed. The instant proceedings also provide for imposition of monetary penalty, apart from the issuance of directions, in terms of relevant provisions of laws as reproduced below:

***“Penalty for failure to redress investors’ grievances.***

**15C.** *If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, 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 crore rupees.*

***Penalty for fraudulent and unfair trade practices.***

**15HA.** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

***Penalty for contravention where no separate penalty has been provided.***

**15HB.** *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.*

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

**15EB.** *Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”*

83. I find that the Noticee has been found to have failed in redressing investor grievances and thus, becomes liable for appropriate penalty under Section 15C of SEBI Act, 1992. For other violations found against the Noticee, in view of the amendment of Chapter VI A of the SEBI Act, 1992 with effect from March 08, 2019, the violations committed by an IA would attract penalty both under Section 15HB and 15EB, as the case may be, depending on the period of violation.
84. In consideration of the above, I shall now proceed with the issuance of suitable directions and imposition of monetary penalty.

**ORDER:**

85. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act, 1992, in the interest of securing market integrity and protection of investors' interest, do hereby direct that:
- a. The Noticee shall not undertake, either directly or indirectly, investment advisory services or any activity in the securities market, for a period of six months from the date of this order;
  - b. The Noticee is restrained 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 six months from the date of this order;

- c. The Noticee is also restrained for a period of six months from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and from associating with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;
- d. The Noticee is directed to resolve all complaints pending against him/Niveshicon Investment Advisor in SEBI's SCORES portal or otherwise within a period of one month from the date of this order and furnish a compliance report to SEBI.
- e. The Noticee shall be liable to pay monetary penalty as provided hereunder:

<b>Violation</b>	<b>Provisions under which penalty imposed</b>	<b>Amount of Penalty (INR)</b>
SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations. and SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019	15C of SEBI Act, 1992	5,00,000
Regulation 15(1) of IA Regulations and Clauses 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15(9) of IA Regulations	15HB/15EB of SEBI Act, 1992*	10,00,000
Regulation 15(1), 15(8), 17(a), 17(d) and 17(e) of IA Regulations and Clauses 1, 2, 5 and 6 of Code of Conduct as specified in Schedule III read with Regulation 15(9) of IA Regulations and SEBI Circular	15HB/15EB of SEBI Act, 1992*	10,00,000

SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019		
<b>Total</b>		<b>25,00,000</b>

\* Section 15HB of SEBI Act, 1992 (for violations prior to March 08, 2019) and Section 15EB of SEBI Act, 1992 thereafter

- f. The Noticee shall remit / pay the said amount of penalties within forty- five 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](http://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 Noticee may contact support at [portalhelp@sebi.gov.in](mailto: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](mailto: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)	

2. This order shall come into force with immediate effect.

3. A copy of this order shall be sent to the recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents to ensure necessary compliance with above directions.

**Date: January 31, 2023**

**Place: Mumbai**

**Sd/-**

**GEETHA G.**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**