

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

UNDER SECTION 11(1), 11(4), 11(4A), 11B (1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

In respect of:

NOTICEE	SEBI Registration No.
Bonaz Capital Investment Adviser (Proprietor Mr. Rajesh Singh Rathore) PAN No.AHPPR9284D	INA000003197

BACKGROUND

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

adequate steps for redressal of grievances of the investors were being taken and the conditions of registration were complied with.

3. During the course of inspection, documents/information pertaining to KYC, risk profiling, change in risk profiling, product list, client master, invoices, SMS logs, employees list, compliance audit report, NISM Certifications, website viz., [www. bonazcapital.com](http://www.bonazcapital.com) and documents/information provided by the complainants on SCORES (SEBI Complaints Redress System), etc., were inspected.
4. On the basis of findings of inspection, SEBI issued show cause notice dated 25.05.2022 (**“SCN”**) to the Noticee alleging violation of provisions of SEBI Act, SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**“PFUTP Regulations”**) and the IA Regulations. In short, the SCN alleged as follows: -
 - a. Website of the Noticee i.e. [www. bonazcapital.com](http://www.bonazcapital.com) contained statement which was in the nature of promising assured profit/unrealistic return to the clients to induce investors/clients on pretext of high returns and profit assurance.
 - b. The Noticee acted in a dishonest manner and failed to act in the best interest of the clients, thereby, the Noticee failed in its responsibility to act in fiduciary capacity towards its client, which was entrusted upon it.
 - c. The Noticee charged advisory fees from the clients prior to risk profiling and KYC (Know Your Customer) process of clients. The Noticee categorized all clients i.e. senior citizens or pensioners or too young persons or persons whose income levels were low, in high risk category and offered high risk products to low risk clients.
 - d. The Noticee knowingly provided wrong information about risk profiling of the client and adopted a mechanism whereby its executives took payment for its advisory services and coerced the clients to sign the

risk profiling in back date to give impression that risk profiling is done prior to obtaining any advisory fees from the clients.

- e. The Noticee has failed to do suitability assessment while offering the products to clients. The clients are assigned high risk category and provided with products without any rationale for arriving at the investment advice. Within a short span of time, risky products were offered to clients' multiple times even though the earlier service had not been fully served/completed.
 - f. The Noticee failed to make adequate disclosure to the client of all material facts relating to the key features of the products or services, particularly, performance track record, thereby, the Noticee is alleged to have not acted honestly and diligently with its clients.
 - g. The Noticee has not maintained record of communication with clients during risk profiling and rendering of investment advice. The rationale of investment advice maintained by the Noticee is not signed.
 - h. The Website of the Noticee i.e. www.bonazcapital.com featured various fake testimonials under the banner of "what people say".
 - i. By posting fake testimonials on its website, the Noticee induced the clients to avail the advisory services of the Noticee and failed in its responsibility to act in fiduciary capacity to its clients.
5. The SCN was served on the Noticee who vide letter dated June 16, 2022 sought time to submit reply. The Noticee vide letter dated June 28, 2022 filed reply to the SCN, whereby, the Noticee submitted as follows:-
- a. The information published on the website is a marketing gimmick. The features mentioned on the website for each product are for information purpose. The welcome mail made client aware about the risk associated

with securities market before services commenced. The welcome mail given to each client inter-alia mentioned that: -

“...(g) Past Performance is not an indicator of Future Returns. All the analyst commentary provided on bonazcapital.com is provided for information purposes only.

(h) You understand and acknowledge that there is a high degree of risk involved while trading in securities.

(i) Past results of any trader published on our website are not an indicator of future returns, and are not an indicator of future returns which be realized by you, investment in the market is subject to Market Risk.....”

b. The Noticee denied call recordings of the complainants viz., Nimesh Bhosle (Complaint No. SEBIE/MP20/0000908/1) and Dinesh Kumar Mishra (Complaint No. SEBIE/MP19/0002620/1) as unverified and unauthenticated.

c. It has system based Risk Profiling procedure, which involved a questionnaire having several questions and responses carrying equal weightages to assess the ability and willingness of investor to take risk while investing in securities market.

d. All risk profiles were made on or before signing date of the client and payment date. The date noted as date of creation of RPM in the SCN is merely the date of download of document on the computer system. Any file downloaded to the computer system from email has date impression same as the date of download onto that system, therefore, such analysis was technically incorrect.

e. While assessing the risk profiling of a client, the role of the Noticee as an investment adviser was not only assessing the ability of the client to bear the risk but also to assess his willingness to bear the risk. The risk profiling questionnaire based on which risk profile was assessed, consisted of various questions measuring the ability and willingness of a client to absorb risk associated with the securities market. The questions in the questionnaire consisted of response carrying equal

weights. Every client answers each and every question by filling in the risk profile form sent to him, and based on the responses of the client a cumulative total score is obtained, which in turn categorizes the client in his appropriate risk profile category. The risk profiling process therefore, does not rely on just one or two factors but on multiple factors addressing both the ability and willingness of the client to take a risk.

- f. Risk profiling was done at an arm's length and all responses were obtained by the client themselves. The services offered to clients were purely based on risk assessment done by the Noticee based on the responses of the client, and there was no fraudulent and malafide intention.
- g. Suitability assessment is the end goal of Risk Assessment. The Noticee had taken conscious decisions to give services deemed fit for the clients based on their risk profiling. The questionnaire in the Risk Profile included some questions whose responses were quantifiable, while others were not quantifiable. No unsuitable services were sold to any client which were in conflict to the risk profiling of the client.
- h. Prior to the Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations 2020, came into force, there was no restriction on amount of subscription fee to be collected or products to be offered. In the absence of any regulation, multiple subscriptions were offered to the clients. All subscriptions were sold through online mode and at arm's length. None of the subscriptions sold to the clients were under duress and all the clients who subscribed multiple subscriptions had their own free will.
- i. Welcome email was sent to all clients on subscription of services. The welcome email contained all disclosures with regard to investment advisory to be provided to the client. All subscriptions were sold online

and through their website which contained all relevant information regarding the services. Its client onboarding process included verification call to check if the client is aware of the services and risk involved. All material facts are disclosed in the terms and conditions, invoices, and on its website.

- j. Regulation 19(1) does not mandate to preserve recordings of client communication and hence the recordings were not preserved and provided to SEBI.
- k. The testimonials posted on the website were genuine. The Noticee has relied on observations made by the Hon'ble Whole Time Member ("**WTM**") in paragraph 34 of the Final Order dated February 8, 2022. The Noticee also placed reliance on the WTM Order dated January 20, 2017 to contend that the Noticee therein was not charged with violation of PFUTP therein.
- l. The acts of the Noticee during the course of business were bonafide and there was no intention to defraud its clients. The Noticee resolved 126 of the 128 complaints which indicates that it had put in adequate efforts to resolve the investor complaints.
- m. The Noticee has ceased to act as IA since March 2020.
- n. Out of the amount of Rs.5,46,02,403/- on or after April 1, 2019 as advisory fees, the Noticee has paid significant amount as GST, Salaries, Rent and Office Expenses and also paid Income Tax on profits during that period. The Noticee has refunded advisory fees to clients in all resolved complaints. The Noticee is not left with any substantial gains from the conduct of his business as IA.

- o. The lapses observed if any were merely procedural in nature which might have occurred in routine while providing advisory services to its client and not fraudulent and unfair in nature.
- 6. The Noticee was granted personal hearing on October 12, 2022. However, it was re-scheduled to October 17, 2022, wherein, Mr. Pulkit Mehta, Chartered Accountant appeared for the Noticee. After brief submissions, the Authorised Representative (AR) of the Noticee sought time to file financial statements to countenance the submission that substantial amount of fees collected by the Noticee has been spent towards Goods and Service Tax (GST), payment of salaries, etc., Accordingly, hearing was adjourned to November 04, 2022 and the AR of the Noticee was granted time to file financial statements of the Noticee.
- 7. On November 04, 2022, the AR for the Noticee along with Rajesh Singh Rathore, proprietor of the Noticee, appeared for the hearing. The AR for the Noticee reiterated submissions made vide reply dated June 28, 2022 and submitted written submissions dated November 03, 2022 which are on lines of the submissions made vide reply dated June 28, 2022.
- 8. Vide letter dated November 17, 2022, the Noticee submitted balance sheets and profit & Loss statements, copy of ITR, Bank statements of Rajesh Singh Rathore, refund client list, copy of extracts of bank statements, copy of affidavit pertaining to future complaints, list of SEBI complaints, copy of mail for surrender of registration.

Consideration:

- 9. I have considered the allegations levelled in the SCN, reply and written submissions filed by the Noticee, submissions made by the Noticee and post hearing submissions filed by the Noticee.

10. Relevant provisions are reproduced hereunder: -

Provisions of the SEBI Act

“12A. No person shall directly or indirectly—

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

Provisions of PFUTP Regulations

2(1)(c)“*fraud*” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) *a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) *an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) *a promise made without any intention of performing it;*
- (5) *a representation made in a reckless and careless manner whether it be true or false;*
- (6) *any such act or omission as any other law specifically declares to be fraudulent;*

(7) deceptive behavior by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market or

(d) any other matter of a like nature

whether such comments are made in public or in private;”

“3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a

recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

.....

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

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

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

- (i) knowingly making a false or misleading statement, or*
- (ii) knowingly concealing or omitting material facts, or*
- (iii) knowingly concealing the associated risk, or*
- (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer};"*

Provisions of IA Regulations

General responsibility.

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

.....

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

Risk profiling.

16. Investment adviser shall ensure that, -

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

.....

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

.....

- (d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:
 - (i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
 - (ii) questionnaire is not structured in a way that it contains leading questions.

Suitability.

17. Investment adviser shall ensure that, -

- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client;
- (b) It has a documented process for selecting investments based on client's investment objectives and financial situation;
- (c) It understands the nature and risks of products or assets selected for clients;
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into:
 - (i) meets the client's investment objectives;
 - (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
 - (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

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

Disclosures to clients.

18.(1) An investment adviser shall

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

.....

Maintenance of records.

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

- (e) Investment advice provided, whether written or oral;
(f) Rationale for arriving at investment advice, duly signed and dated;

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

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

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THIRD SCHEDULE

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

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

CODE OF CONDUCT FOR INVESTMENT ADVISER

1.Honesty and fairness

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

2.Diligence

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

4.Information about clients

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

6.Fair and reasonable charges

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

8.Compliance

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

Promising assured profit/unrealistic returns to its clients:

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

12. In this regard, the Noticee has submitted that information published on its website was a marketing gimmick. The features of the products on website were only for the information purpose. Welcome email sent by the Noticee to the client clarified that the Noticee had not provided any profit warranty or guarantee to customers and past performance was not an indicator of future returns. Call recordings submitted by Nimesh Bhosle and Dinesh Kumar Mishra were unverified and unauthenticated.
13. I note that the Noticee has not disputed contents of the website viz., www.bonazcapital.com. The contents alleged against the Noticee reads as follows: -
- “PREMIUM STOCK CASH: Premium Stock Cash service is essentially designed for a unique set of clients, those who want to earn a good profit in the cash market. Minimum stop loss with high target call will be given to our clients. Accuracy of calls is based on intraday calls. It was a chance for traders to earn huge profits because two big targets and one stop loss will be given in one single call.....*
- “Stock Option: This one is considered as most reliable services of our firm. Service provided with tips on call put and put option that is another way to lock profits, reduce overall profit risk, and additional income streams. Again, technical and economical indicators are of higher concerns.”*
14. I note that the Noticee has disputed call recordings provided by Nimesh Bhosle and Dinesh Kumar Mishra as unverified and unauthenticated. I find that details as to the name of employee or any evidence connecting alleged employee of the Noticee in the call recording with the Noticee is not available on record. In view thereof, I find that sufficient evidence is not available on record to decide conclusively whether call recordings alleged against the Noticee pertains to employee of the Noticee or not.
15. From perusal of the contents of the website, I find that availing of premium stock cash services or stock option service is claimed to be a way to earn profit. However, no other evidence is available in support of the allegation that clients were indeed induced by the same or that the clients subscribed to such services shown on the website, that was owned and operated by the Noticee. I note that the welcome email, for instance email dated 07.09.2019 sent to

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

Improper Risk Profiling of Clients

16. In this regard, it is alleged that the Noticee failed to do proper risk profiling of clients. From, Dinesh Kumar Mishra, Atul Kumar Pathak and D Sadasivan Nair, the Noticee received payment for advisory services prior to risk profiling. In the case of D Sadasivan Nair, the risk profile was neither signed nor dated. In the case of Tapan Kumar Mishra, Anil Garg, Saurabh S.O. Shiva, Vineet Kumar and Ashif, date of signature on risk profile and date of payment are same. However, the date of creation of RPM file is after date of signature and payment. All sample clients viz., Parmeshwari Sharma, Anil Garg, D. Sadasivan Nair, Jegar Hussain Qureshi and Parivesh, who were either senior citizen or too young person, had income level below 2 lakhs (being lowest in the risk profile) except D Sadasivan Nair; however, all of them had been categorized as high risk clients. Instead of actual risk assessment, the Noticee categorized the clients in high risk category without assessing the willingness

or ability of the client to take the risk. The Noticee provided investment advice to its clients without an appropriate process of risk profiling. The Noticee adopted a mechanism whereby executives of the Noticee first took payment for its advisory services and then coerced the client to sign the risk profile in back date to give impression that risk profile is done prior to obtaining advisory fees. It is alleged that the Noticee deliberately provided wrong information about risk profiling of clients. It was therefore alleged that the Noticee violated Regulation 15(1), 16(b)(iii), 16(d)(i), 16(d)(ii) of the IA Regulations and Clause 1, 2, 4 and 8 of the Code of Conduct specified under Third Schedule of the IA Regulations read with Regulation 15(9) of the IA Regulations. Further, it is alleged that the Noticee committed fraud as defined under Regulation 2(1)(c) of the PFUTP Regulations and violated Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act.

17. In this regard, the Noticee has submitted that it has developed a system based risk profiling procedure involving questionnaire with responses carrying equal weightages to assess ability and willingness of investor to take risk while investing in securities market. Every client answers each and every question by filing the risk profile form sent to him and based on the responses of the client cumulative total score is obtained which categorises the client in his appropriate risk profile category. All risk profiling were done at an arm's length and all responses were obtained by the client themselves. The services offered by the Noticee were based on the risk assessment done by the Noticee based on the responses of the client. The date noted as date of RPM is date of download of document on the computer system.
18. With regard to allegation of acceptance of advisory fees prior to risk profiling, I note that the Noticee has not specifically denied charging of fees prior to risk profiling. However, the Noticee has made a general and bald submission that all risk profiles were made on or before signing date of the client and payment date. The Noticee has not specifically denied the allegation that risk profile in case of D Sadasivan Nair was neither signed nor dated. In most of the sample

cases cited in SCN, the date of signature and date of payment is the same. It appears that numerous clients have signed the risk profile as well as made the payment on the same date. I note that Annexure 6 of the SCN i.e. the Noticee's email dated October 30, 2018 to Dinesh Kumar read as "Your payment received to us for Advisory Services. To activate your services you have to complete KYC and Risk Profiling Process.....". The Noticee has issued invoice dated October 30, 2018, annexure 7 to the SCN, to Dinesh against receipt of Rs.35,400/- for providing BTST and STBT calls for 3 months period i.e. October 31, 2018 to December 10, 2018. In the case of Atul Kumar Pathak, the Noticee email dated July 9, 2019, annexure 9 to the SCN, read as "Your payment received to us for Advisory Services. To activate your services you have to complete KYC and Risk profiling process". In view thereof, I find that the Noticee had accepted advisory fees from the clients prior to risk profiling of the clients.

19. It shows that the Noticee has not done any due diligence on its part to assess willingness and ability of the client to bear risk. An investment adviser, has a duty to obtain necessary information from the client for the purpose of giving suitable investment advice. He is expected to know his client's profile properly and periodical updation needs to be done on the basis of information given by the clients. The intention of the IA Regulations in spelling out the minutest details to be considered while doing the risk profiling of a client itself shows that risk profiling cannot be done as a perfunctory exercise; but it has to be a conscious assessment of the level of risk a client can actually take upon himself before taking the IA's investment advice. I find that as an investment adviser, the Noticee failed in its duty to act fairly and exercise due skill, care and diligence in the best interest of the clients.
20. From the manner in which risk profiling has been done by the Noticee, I note that the Noticee has only assessed the willingness of the client to take risk as opposed to the ability of the client to bear the risk. Consequently, both

youngsters of age of 18 years and senior citizens have been categorized as high risk, as can be seen in the table reproduced below: -

Table No.1

S.No.	Client name	Age	Risk score	Risk score in 1 out of 17 questions (Investment /Trading preferred pattern)	Risk category	Occupation as per KYC/Risk Profile	Income Level (Rs.)
i.	Parmeshwari Sharma	70 yrs	43	9	High	Pensioner	Below 2 lakhs
ii.	Anil Garg	61 yrs	42	9	High	Pensioner	Below 2 lakhs
iii.	D Sadasivan Nair	Above 60 yrs	48	9	High	Pensioner	2 to 5 Lakhs
iv.	Eegar Hussain Qureshi	18 yrs	46	9	High	Business and Pensioner	Below 2 lakhs
v.	Parivesh Dhakad	18 yrs	46	9	High	Private Sector Service/Business and Profession	Below 2 lakhs

21. It appears that the Noticee has devised a strategy whereby most of the clients have been categorized as high risk so that they can avail high risk products. I find that such mechanism has been adopted deliberately by the Noticee so that more number of products of high risk can be sold to the clients to generate high amount of advisory fees. I find that the Noticee has not assessed ability of the clients to take risk. In view thereof, I find that the Noticee has failed to have a process for assessing the risk a client is willing and able to take, thereby, the Noticee has violated Regulation 16(b)(iii) of the IA Regulations.

22. I note that the Noticee has categorized both pensioners and youngsters around the age of 18 years in the high risk category which further shows that

the Noticee has not done proper risk profiling of the clients. I find that the Noticee has failed to act honestly, fairly and in the best interest of its client by failing to have a process for assessing level of the risk a client is willing and able to take. I find that the Noticee has failed to exercise due skill, care and diligence in assessing ability and willingness of the client to take risk. The Noticee has failed to seek relevant information about its clients. In view thereof, I find that the Noticee has violated Clauses 1, 2, 4 and 8 of the Code of Conduct specified in Third Schedule of the IA Regulations read with Regulation 15(1), 15(9) of the IA Regulations.

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

23. In this regard, it is alleged that the Noticee had sold multiple products even though old service had not been fully served/completed. It is also alleged that the Noticee sold high risk products to both senior citizens and young age clients, thereby, the Noticee failed to provide investment advice which is appropriate to the risk profile of the client. It is alleged that the Noticee violated Regulation 17 of the IA Regulations. Sample of such clients is as follows: -

Table No. 2

i. **Client Name: D. Sadasivan Nair**

S. No.	Date Of Payment	Advisory Services/ products	Start Date of Service	End Date of Service	Fees collected from the client (in Rs.)
1.	15-Jun-19	STOCK CASH	19-Jun-19	01-Jul-19	3540
2.	18-Jun-19	STOCK CASH	02-Jul-19	23-Aug-19	13570
3.	19-Jun-19	Stock Future Circuit Call	24-Jun-19	27-Jun-19	30000
4.	21-Jun-19	Stock Future Circuit Call	28-Jun-19	05-Jul-19	19824
5.	25-Jun-19	Stock Future Circuit Call	08-Jul-19	01-Aug-19	30090

6.	26-Jun-19	Stock Future Circuit Call	02-Aug-19	23-Aug-19	48380
7.	27-Jun-19	Stock Future Circuit Call	23-Sep-19	22-Nov-19	135000
8.	27-Jun-19	Stock Future Circuit Call	26-Aug-19	20-Sep-19	48970
9.	28-Jun-19	OPTION	01-Jul-19	27-Dec-19	34998
10.	28-Jun-19	OPTION	30-Dec-19	21-Feb-20	14986
11.	29-Jun-19	OPTION PLATINAM	02-Jul-19	05-Jul-19	39884
12.	29-Jun-19	PLATINAM FUTURE	02-Jul-19	15-Jul-19	10009
13.	30-Jun-19	OPTION PLATINAM	07-Aug-19	23-Aug-19	37996
14.	30-Jun-19	OPTION PLATINAM	08-Jul-19	06-Aug-19	11800
15.	08-Jul-19	OPTION PLATINAM	26-Aug-19	13-Sep-19	39990
16.	10-Jul-19	BTST And STBT Calls	15-Jul-19	22-Jul-19	6018
17.	16-July	BTST And STBT Calls	23-Jul-19	10-Sep-19	49914
18.	16-Jul-19	BTST And STBT Calls	11-Sep-19	16-Oct-19	32556
19.	06-Aug-19	BTST& STBT CALLS	17-Oct-19	08-Nov-19	21830
20.	09-Aug-19	OPTION PLATINUM	16-Sep-19	23-Sep-19	10030
21.	10-Aug-19	OPTION PLATINUM	24-Sep-19	14-Oct-19	42229
22.	05-Oct-19	Option	24-Feb-20	02-Mar-20	2478
23.	24-Oct-19	OPTION PREMIUM	05-Nov-19	29-Nov-19	18509
ii. T a	Total				7,02,601

bular Summary of fees collected by the Noticee from Vineet Kumar is as follows: -

Table No. 3

S.No.	Date Of Payment	Advisory Service/ products	Start Date of Service	End Date of Service	Fees collected from the client in
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1.	28-Jun-19	CASH PREMIUM	04-Jul-19	12-Jul-19	3,540
2.	29-Jun-19	OPTION PREMIUM	04-Jul-19	16-Aug -19	30,090
3.	2-Jul-19	OPTION PREMIUM	19-Aug -19	04-Oct-19	37,760
4.	5-Jul-19	OPTION PREMIUM	07-Oct-19	20-Nov-19	295,00
5.	7-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	105551
6.	8-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	17,820
7.	8-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	17,820
8.	9-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	208000
9.	10-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	100000
10.	11-Jul-19	STOCK CASH CIRCUIT CALL	15-Jul-19	11-Nov-19	102000
11.	12-Jul-19	STOCK CASH CIRCUIT CALL	12-Nov-19	18-Nov-19	29,000
12.	27-Jul-19	STOCK CASH CIRCUIT CALL	19-Nov-19	22-Nov-19	12,500
13.	29-Jul-19	STOCK CASH CIRCUIT CALL	25-Nov-19	29-Nov-19	12,500
14.	19-Aug-19	STOCK CASH CIRCUIT CALL	02-Dec-19	09-Dec-19	25,000
15.	19-Aug-19	STOCK CASH CIRCUIT CALL	10-Dec-19	17-Dec-19	25,000
16.	3-Nov-19	BULLION COMBO	11-Nov-19	26-Nov-19	7,000
17.	4-Nov-19	BULLION COMBO	27-Nov-19	08-May-20	53,000
18.	14-Nov-19	MCX	20-Nov-19	20-Dec-19	33,040
19.	14-Nov-19	BULLION COMBO	11-May -20	31-Jul-20	33,040
20.	14-Nov-19	BULLION corvB0	03-Aug -20	16-Oct-20	33,920
21.	28-Nov-19	BULLION COMBO	17-Aug-20	10-Sep -20	5,000
22.	28-Nov-19	BULLION COMBO	17-Aug -20	10-Sep -20	5,000
23.	30-Nov-19	BULLION COMBO	11-Sep -20	30-Sep -20	8,000
	Total				9,34,081

- iii. It was alleged that same service for same duration was like giving same investment advice to the same client for same duration multiple times, which was of no use to the client. The above activity of the

Noticee prima facie indicates that the Noticee had allegedly defrauded the client by charging advisory fees multiple times by selling the same product.

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

Table No. 4.

Sl.no.	Date Of Payment	Advisory Services/ products	Start Date of Service	End Date of Service	Fees collected from client the (in Rs.)
1.	01 -Apr19	OPTION PREMIUM	02-Apr-19	09-May-19	23600
2.	01 -Apr19	OPTION PREMIUM	10-May-19	27-Jun-19	34220
3.	01 -Apr19	OPTION PREMIUM	28-Jun-19	03-Jul-19	5782
4.	19-Apr19	OPTION PREMIUM	04-Jul-19	19-Jul-19	11800
5.	19-Apr19	OPTION PREMIUM	22-Jul-19	12-Aug-19	13216
6.	30-Apr19	Stock Future Circuit Call	03-May-19	13-May-19	50150
7.	30-Apr19	Stock Future Circuit Call	14-May-19	17-May-19	24780
8.	02-May19	Stock Future Circuit Call	20-May-19	30-May-19	50150
9.	03-May19	Stock Future Circuit Call	03-Jun-19	17-Jun-19	56640
10.	20-May19	Stock Future	18-Jun-19	02-Jul-19	74340

		Circuit Call			
11.	20-May19	Stock Future Circuit Call	03-Jul-19	23-Jul-19	100300
12.	20-May19	Stock Future Circuit Call	24-Jul-19	05-Aug-19	70481
13.	28-May19	Stock Future Circuit Call	06-Aug-19	12-Aug-19	25724
14.	29-May19	Stock Future Circuit Call	13-Aug-19	16-Aug-19	15340
15.	08-Jun19	Stock Future Circuit Call	19-Aug-19	26-Aug-19	41890
16.	08-Jun19	Stock Future Circuit Call	27-Aug-19	09-Sep-19	71980
17.	10-Jun19	Stock Future Circuit Call	10-Sep-19	17-Sep-19	35400
18.	12-Jun19	PLATINAM FUTURE	21-Oct-19	17-Apr-20	42786
19.	25-Oct19	STOCK FUTURE CIRCUIT	05-Nov-19	12-Nov-19	21000
Total					7,69,579

- v. Tabular Summary of services, payment in the case of Manikandan is as follows: -

Table No. 5.

S.No	Date of Payment	Service	Start Date	End Date	AMOUNT
1.	Aug 2018	STOCK CASH	04 Sep 2018	Sep 2018	3000
2.	Sep 2018	STOCK CASH	Sep 2018	Oct 2018	11500
3.	Sep 2018	Stock Cash HNI	Sep 2018	Oct 2018	38000
4.	Sep 2018	Stock Cash HNI	Oct 2018	Dec 2018	50000
5.	Sep 2018	Stock Cash HNI	Dec 2018	01 Jan 2019	15000

6.	Sep 2018	Stock Cash HNI	02 Jan 2019	09 Jan 2019	8250
7.	Sep 2018	Stock Cash HNI	Jan 2019	01 Feb 2019	26250
8.	Sep 2018	Stock Cash HNI	04 Feb 2019	Feb 2019	18000
9.	Sep 2018	Stock Cash HNI	Feb 2019	01 Mar 2019	5000
10.	Sep 2018	Stock Cash Circuit Call	Sep 2018	Oct 2018	45000
11.	Sep 2018	BULLION COMBO	Nov 2018	Dec 2018	20200
12.	03 Oct 2018	Stock Cash Circuit Call	Oct 2018	Oct 2018	10000
13.	03 Oct 2018	Stock Cash Circuit Call	Oct 2018	Oct 2018	20000
14.	03 Oct 2018	Stock Cash Circuit Call	01 Nov 2018	09 Nov 2018	40000
15.	03 Oct 2018	Stock Cash Circuit Call	Nov 2018	Nov 2018	
16.	03 Oct 2018	Stock Cash Circuit Call	Nov 2018	Nov 2018	5000
17.	03 Oct 2018	Stock Cash Circuit Call	Nov 2018	Nov 2018	15000
18.	Oct 2018	Stock Cash Circuit Call	Nov 2018	05 Dec 2018	5000
19.	Oct 2018	Stock Cash Circuit Call	06 Dec 2018	Dec 2018	20060
20.	Oct 2018	Stock Cash Circuit Call	Dec 2018	Dec 2018	15000
21.	Oct 2018	Stock Cash Circuit Call	Dec 2018	Dec 2018	20000
22.	Oct 2018	Stock Cash Circuit Call	Dec 2018	04 Jan 2019	50000
23.	Oct 2018	Stock Cash Circuit Call	07 Jan 2019	05 Mar 2019	226990
24.	Oct 2018	Stock Cash Circuit Call	06 Mar 2019	Mar 2019	25000
25.	Nov 2018	BULLION COMBO	Dec 2018	Jan 2019	20000
26.	Nov 2018	BULLION COMBO	Jan 2019	Feb 2019	20001
27.	Nov 2018	BULLION COMBO	Feb 2019	Mar 2019	13000
28.	Dec 2018	BULLION COMBO	Mar 2019	05 Jun 2019	20000
29.	Dec 2018	BULLION COMBO	06 Jun 2019	Jun 2019	5022
30.	Jan 2019	BULLION COMBO	Jun 2019	02 Jul 2019	7250
31.	Jan 2019	BULLION COMBO	03 Jul 2019	Jul 2019	10000
32.	Jan 2019	BULLION COMBO	Jul 2019	Aug 2019	10000
33.	04 Feb 2019	BULLION BASE	06 Feb 2019	Feb 2019	20000

		METAL			
34. VI.	05 Feb 2019	BULLION BASE METAL	Feb 2019	Feb 2019	20000
35. T	05 Feb 2019	BULLION BASE METAL	Feb 2019	Mar 2019	17250
36. a	Apr 2019	PREMIUM INDEX OPTION	Apr 2019	Jun 2019	14000
b					
37. u	Apr 2019	PREMIUM INDEX OPTION	Jun 2019	09 Aug 2019	11000
38. I	06 May 2019	PREMIUM INDEX OPTION	Aug 2019	Aug 2019	10950
v	Total				9,35,723

. Tabular summary of services and payment in case of Dinesh Kumar Mishra is as follows:-

Table-6

S.no	DATE OF PAYMENT	SERVICE	Start Date	End Date	AMOUNT
1.	30 Oct 2018	BTST And STBT Calls	31 Oct 2018	10 Dec 2018	35400
2.	03 Nov 2018	BTST And STBT Calls	11 Dec 2018	03 Jun 2019	106200
3.	19 Nov 2018	MCX I-INI	20 Nov 2018	18 Dec 2018	47790
4.	20 Nov 2018	MCX HNI	19 Dec 2018	19 Apr 2019	147441
5.	26 Nov 2018	Stock Future Circuit Call	26 Nov 2018	17 Dec 2018	110389
6-	03 Dec 2018	Stock Future Circuit Call	19 Dec 2018	28 Dec 2018	49265
7.	17 Dec 2018	Stock Future Circuit Call	31 Dec 2018	21 Jan 2019	145000
8.	31 Dec 2018	Stock Future Circuit Call	22 Jan 2019	12 Feb 2019	104000
9.	31 Dec 2018	Stock Future Circuit Call	13 Feb 2019	04 Mar 2019	100300
10.	01 Jan 2019	Stock Future Circuit Call	05 Mar 2019	03 Jun 2019	33699
11.	01 Feb 2019	OPTION PLATINAM	04 Feb 2019	04 sep 2019	345150
12.	04 Jun 2019	PREMIUM INDEX FUTURE	05 Jun 2019	19 Jun 2019	23600
13.	03 Jul 2019	NIFTY FUTURE	04 Jul 2019	23 sep 2019	12213
Total					12,60,447

24. Analysis of risk profiles of the clients, services issued and advisory fees charged to the clients revealed that the service fees charged from the clients

are multiple times of the annual income. Tabular summary of some of the clients is as follows:-

Table No. 7

S. No.	Client Name	Income	Time duration	Services Provided	Fees charged in Rs.
1.	Ranjit Das ABZPD8220D	Between 5-10 lac p.a.	1.5 months	Stock cash circuit call Cash platinum	9,81,089
2.	Birbal Singh CPWPS6785P	Between 2-5 lakhs p.a.	3 months	Stock cash, stock cash Hni, cash platinum, stock cash circuit call, platinum future	8,08,680
3.	Sunil Agrawal	Between 2-5 lakhs p.a.	During 04 months	stock cash, stock cash circuit option premium, option platinum, premium index, option, nifty option, option, stock future circuit equity super 50	10, 16,863
4.	Das Gupta ACNPD7238E	Below 2 lakhs p.a.	1 week	stock option option premium option premium mcx hni	5,19,760
5.	Shoma Gupta	Between 2-5 lakhs p.a.	2.5	stock future premium stock future HNI platinum future	5,40,381

25. It was alleged that the Noticee had not done the suitability analysis of the clients considering the income level of the client and has charged huge amount of advisory fees only to satisfy its own interest. The above sample analysis revealed that the Noticee had not been fair and transparent in its dealing with the clients regarding the fees charged to the client. Prima facie, the Noticee had adopted unethical business practices to deceive clients into buying/subscribing multiple packages. The Noticee acted in the above

manner with an objective to maximize its fees and kept its own interest ahead of the clients' interest. The Noticee had sold newer products to its clients even though the subscription period for products earlier sold was not yet over so as to receive more fees from the clients. In most of the cases, it was observed that the amount of advisory fees charged is multiple times of the annual income of such clients. By virtue of such strategy, the clients were left with no scope to earn any returns on their investment as they were charged huge amount of advisory fees. The aforesaid acts of the Noticee were prima facie in complete disregard to the responsibility entrusted on him under the provisions of the IA Regulations to act in a fiduciary capacity and in the best interest of its clients.

26. It was also alleged that most of the clients who possessed beginner level knowledge of financial market, as mentioned in the risk profiles, had been sold risk products in risky products as option and derivatives. The Noticee had not considered clients' experience and knowledge while selecting product for the client and therefore the clients' investment objectives have been impaired. The Noticee had not done 'Suitability' assessment as mentioned in Regulation 17 of the IA Regulations and had charged unreasonable fees from its clients.
27. In view of the above, it was further alleged that the Noticee failed to comply with Regulation 15 (1) and 17 of the IA Regulations, Clause 1, 2 and 6 of the Code of Conduct specified under the Third Schedule of the IA Regulations read with Regulation 15(9) thereof.
28. In this regard, the Noticee has reiterated its submissions addressing allegation of Improper Risk profiling. In addition thereto, it has been submitted that the Noticee has taken conscious decisions to give services deemed fit for the clients based on their risk profiling. The questionnaire in the Risk profile included questions whose responses were quantifiable, while others which were not quantifiable. As per the Noticee, no unsuitable services were sold to any client. Further, it has been submitted that prior to the SEBI (Investment Advisers) (Amendment) Regulations, 2020, there was no restriction on

amount of subscription fee to be collected or products to be offered. In the absence of any regulation, multiple subscriptions were offered to the clients. All subscriptions were sold through online mode and at arm`s length. None of the subscriptions sold to the clients were under duress and all the clients subscribed to multiple subscriptions out of their own free will.

29. It is noted that the Noticee has not disputed the above stated facts or the facts stated in para 5.2 to 5.8 of SCN. I note that clause 6 of the Code of Conduct specified in Third Schedule of the IA Regulations prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020 read *“An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board, if any. The investment adviser shall ensure that fees charged to the client is fair and reasonable.”* Vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, which came into effect from September 30, 2020, Regulation 15A was inserted in IA Regulations which provided that an investment adviser shall be entitled to charge fees for providing investment advice from a client in the manner specified by the Board. Accordingly, SEBI vide circular no. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 issued guidelines for investment advisers which inter-alia provided for the manner of charging of fees. In view thereof, I find that prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, ceiling on fees was not specifically provided. However, Clause 6 of the Code of Conduct laid down in the Third Schedule of the IA Regulations, even prior to September 23, 2020, mandated investment adviser to levy *“fair and reasonable charges”*. In view thereof, the contention of the Noticee to the effect that there was no restriction on fees prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, cannot be accepted. I find that even prior to the 2020 Amendment, the investment adviser, especially having been engaged by the client in a fiduciary capacity, was mandated to charge a fees which is fair and reasonable. In view of the above finding, the contention of the Noticee that, as there was no regulation with respect to fees he was free to sell multiple subscriptions to the clients and none of the subscriptions were sold to the clients under duress, etc. cannot be accepted.

30. I note from Table No. 7 hereinabove that the Noticee has charged fees equal to or more than the annual income of the client. I find that charging of fees equal to or more than annual income of the client cannot be said to be fair. I thus find that the Noticee has failed to fulfill the mandate of charging fair and reasonable fees from the client.
31. I note that the IA Regulations mandate that an investment adviser shall act in a fiduciary capacity towards its clients and is required to abide by the Code of Conduct which requires him to (i) act honestly, fairly and in the best interests of its clients and in the integrity of the market, (ii) act with due skill, care and diligence in the best interests of its clients and (iii) ensure that its advice is offered after thorough analysis and taking into account available alternatives. Further, the IA Regulations also mandate that the fees charged by the investment adviser shall be fair and reasonable. I find that the Noticee, in order to maximize its advisory fees sold multiple services to the clients before the completion of earlier service without having any regard for the interest of the client or suitability of product. Thus, the Noticee has violated Regulation 15(1) and 15(9), Regulations 17 of the IA Regulations read with Clauses 1, 2 and 6 of the Code of Conduct specified in Third Schedule of the IA Regulations.

Disclosures to Clients

32. In this regard, it is alleged that the Noticee has failed to disclose to the clients about details of the investment advisory services/products, and thereby, the Noticee is alleged to have violated Regulation 15(1), 18(6) and Clauses 1 and 2 of the Code of Conduct specified under Third Schedule read with Regulation 15(9) of the IA Regulations.
33. The Noticee has submitted that clients were sent welcome mail covering all disclosures with regard to the investment advisory to be provided to the client. All subscriptions were sold online and through website which contained all relevant information regarding services. Its client onboarding process included

a verification call to check if the client was aware of the services and risk involved. Terms and conditions, invoices and its website disclosed all material facts.

34. I note that Regulation 18(6) of the IA Regulations require that IA shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record. I note that Clauses 1 and 2 of the Code of Conduct specified under Third Schedule of the IA Regulations requires that an IA shall act honestly, fairly and in the best interests of its clients and in the integrity of the market. Further, an IA is required to act with due skill, care and diligence in the best interests of its clients and ensure that its advice is offered after thorough analysis and taking into account available alternatives. I note that welcome email contained general terms and conditions regarding investment in securities market and availing services of the Noticee. The welcome email did not provide details or disclosures related to the material facts and key features of the products or securities. I find that the Noticee has failed to provide any evidence to show that it made adequate disclosures to the client of all material facts relating to key features of the products or securities, particularly, the performance track record. I find that the Noticee by providing investment advice to the clients without informing them of the key features and risks associated with the products has failed to act honestly, fairly and in the best interest of its clients or with due skill, care and diligence in the best interest of its clients. I find that the Noticee has failed to act in a fiduciary capacity towards its clients. Thus, I find that the Noticee has violated Regulation 15(1), 18(6) and Clauses 1 and 2 of the Code of Conduct prescribed in Third Schedule of the IA Regulations.

Maintenance of Records

35. In this regard, it is alleged that risk profiling, analysis of client(s) financial position, financial objective and rendering of investment advice were done telephonically. The Noticee was advised to submit proof of all the telecommunication done with the client. However, the Noticee failed to make

any response. In response to the advise to provide the sample of the rationale for arriving at the decision for recommending a particular advice to a client, the Noticee provided unsigned copy of the rationale. In view thereof, it is alleged that the Noticee violated Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations.

36. The Noticee has submitted that Regulation 19(1) of the IA Regulations does not mandate to preserve recordings of client communications and hence recordings were not preserved and provided to SEBI.
37. I note that Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations provide for an investment adviser to maintain record, either in physical or electronic form, of investment advice provided (written or oral), rationale for arriving at investment advice, duly signed and dated, for minimum period of 5 years. Further, Regulation 19(2) require that where records are required to be duly signed and maintained in electronic form, such record shall be digitally signed. I find that the Noticee has failed to provide record of investment advice provided to the clients and signed rationale for arriving at investment advice. From a reading of Regulation 19(1)(e) and 19(2), I note that record of oral communication is required to be maintained where investment advice is provided orally. In present case, investment advice was being provided telephonically and therefore, the Noticee should have maintained telephonic records of investment advice. In view thereof, I find that the Noticee has violated Regulation 19(1)(e), 19(1)(f) and 19(2) of the IA Regulations.

Misrepresentation and mis-selling

38. In this regard, it is alleged that website of the Noticee i.e. www.bonazcapital.com under the banner of "What People Say" featured various testimonials. Some of those testimonials read as follows:
- "(i) "I, T. S. RAO put on record that the services offered by bonaz capital are very good. The executive vishavjit and manager Rupesh Raj have put their best efforts and at times i felt their services are very much personal and*

beyond their job preview.At times Ifelt they are more worried about client money than the client.By -Mr. T.S. Rao,

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

39. The Noticee was asked to provide details of those clients. However, no information was provided by the Noticee. In view thereof, it was alleged that fake testimonials were used by the Noticee on the home page of its website to lure and induce clients to subscribe its services. Such false testimonials were used to create confidence amongst prospective clients and impair their decision making. By way of the said testimonials, the Noticee had misrepresented and made false claims about its performance and accuracy of the services with the objective to lure the clients. It was alleged that the Noticee failed in its responsibility to act in fiduciary capacity to its clients which is entrusted upon it under Regulation 15 (1) of the IA Regulations and the Noticee failed to abide by Clause 1 of the Code of Conduct as specified under Third Schedule of the IA Regulations read with Regulation 15(9) of the IA Regulations. Further, it was alleged that the said act of the Noticee was, prima facie, fraudulent and covered within the definition of "fraud" as defined in Regulation 2(1)(c) of PFUTP Regulations, thus, the Noticee was alleged to have violated Regulation 3 (a), (b), (c), (d), 4(2)(k) and 4(2)(s) of the PFUTP Regulations read with Section 12A(a), (b) and(c) of SEBI Act.
40. In this regard, the Noticee has submitted that the said testimonials were genuine, however, the copies of communications received from clients were lost, therefore, the said testimonials were taken down from the website. The Noticee placed reliance on order dated February 08, 2022, passed by WTM, SEBI in the case of another IA. Further, the Noticee placed reliance on Order dated January 20, 2017, passed by WTM, SEBI, to contend that the Noticee

in the said order was not charged with violation of PFUTP Regulations, whereas, in the present case, the Noticee has been charged with violation of PFUTP Regulations which would be against principles of equality in justice.

41. I note that the Noticee has failed to provide documents in support of testimonials made on its website. This shows that the said testimonials making claims of very good services and they “being more worried about the client's money than the client” are spurious and not actually given by any person. In view thereof, I find that the Noticee by posting fake testimonials on its website has acted dishonestly, unfairly, negligently and against the interest of the investors and the integrity of the securities market, thereby, the Noticee has violated Regulation 15 (1) and Regulation 15(9) of the IA Regulations read with Clause 1 of the Code of Conduct as specified under Third Schedule to the IA Regulations.
42. I note that the Noticee has also placed reliance on two Orders passed by the WTMs (Whole Time Members) of SEBI passed against investment advisers, to claim that there is no finding of violation of PFUTP Regulations against the Noticees therein. However, I do not find it relevant to get into the applicability of the said decisions in view of the facts in the instant case.
43. In light of the allegations in SCN, the primary question that arises for consideration is whether such display of fake testimonials on the website is enough to hold that the Noticee has violated the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations or not. In this regard, I find that, apart from the display of the testimonials, no other evidence is available in support of the allegation that clients were indeed induced by the same or that the clients subscribed to the services of the Noticee solely based on such testimonials. Even though I find that the display of fake testimonials on the website is misleading the public and is to be avoided by an IA, I am not in a position to give any adverse finding on this account in the absence of any evidence. In this connection, I would like to place reliance on the order of Hon'ble Securities Appellate Tribunal dated January 04, 2022 in the matter of

Ms. Suhanika Chourey, wherein the findings of PFUTP violations against an unregistered IA were set aside as there was no evidence brought out on record. In view thereof, I find that allegation of violation of Regulations 3 (a), (b), (c), (d), 4(2)(k) and (s) of the PFUTP Regulations read with Section 12A(a), (b) and(c) of SEBI Act is not substantiated.

Conclusion

44. It is seen from the SCN that several allegations have been levelled against the Noticee. I find that certain violations established against the Noticee are relatively more serious than the others. For instance, failure of Noticee to do proper risk profiling of the clients, categorizing pensioners as well as young clients as high risk, offering high risk products to clients without doing suitability analysis and failure to maintain proper records, in my view, are serious violation. The allegation of violation of provisions of PFUTP Regulations does not stand substantiated, in the absence of any evidence, as discussed hereinabove. In this connection, I would like to place reliance on the order of Hon'ble Securities Appellate Tribunal dated January 04, 2022 in the matter of Ms. Suhanika Chourey, wherein the findings of PFUTP violations against an unregistered IA were set aside as there was no evidence brought out on record.
45. It is noted that the Noticee vide written submission dated November 03, 2022 has submitted affidavit and settlement agreement entered into by the Noticee with some of the investors. Perusal of the affidavits revealed that the concerned investors have acknowledged that the Noticee has resolved their respective complaints.
46. From the Noticee`s written submission dated November 17, 2022, I note that the Noticee has claimed to have refunded some of the clients whose list is enclosed therewith. Further, the Noticee has submitted an affidavit of its proprietor Rajesh Singh Rathore stating that, in the event any complaint pertaining to advisory activity of the Noticee is made, he will resolve the same.

47. In view of the above, I note that the Noticee has made efforts to resolve complaints of the clients as apparent from its affidavit, settlement agreement and list of clients filed by the Noticee. Further, the affidavit also contains an undertaking to resolve complaints pertaining to its investment advisory business.
48. 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 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.”

49. I find that since the Noticee has not been found to have indulged in fraudulent and unfair trade practices, it is not liable for penalty under Section 15HA of SEBI Act. However, with respect to other violations found against the Noticee, it would become liable for appropriate penalty. 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.
50. In the instant case, SEBI had conducted inspection of the Noticee for the period April 01, 2019 till September 22, 2020. Accordingly, the period of violation is from April 01, 2019 to September 22, 2020.
51. I note that the Noticee in its reply dated June 28, 2022 and written submission dated November 03, 2022 has categorically stated that it has ceased to act as an IA and stopped providing advisory services since March 2020. I note that registration of the Noticee as an IA with SEBI is active; though the same is under suspension for a period of 3 months with effect from November 30, 2022. Hence, I find that remedial directions under Section 11B(1) and 11(4) of the SEBI Act are not warranted in the present case. However, the Noticee is cautioned to be careful in future, while conducting investment advisory business in all aspects, including that of risk profiling, suitability assessment, disclosures of key features of products/securities, etc., as and when the Noticee pursues its IA activity.
52. In view of the above, I shall now proceed with imposition of monetary penalty.

Directions:

53. In exercise of the powers conferred upon me, in terms of Sections 11(1), 11(4A) and 11B(2) read with Section 19 of SEBI Act, 1992 and Regulation 35 of the SEBI (Intermediaries) Regulations, 2008 read with Regulation 28 of the SEBI (Investment Advisers) Regulations, 2013, I do

hereby impose monetary penalty under Section 15EB of the SEBI Act, as shown hereunder:

Violation	Amount of Penalty (INR)
Regulation 15(1), 15(9) and Clause 1, 2, 4, 6 and 8 of the Code of Conduct	2,00,000/-
Regulation 16(b)(iii),	1,00,000/-
Regulation 17,	1,00,000/-
Regulation 18(6)	1,00,000/-
Regulation 19(1)(e), 19(1)(f) read with Regulation 19 (2)	1,00,000/-
Total	6,00,000/-

- a. The Noticee shall remit / pay the said amount of penalties within forty five (45) days from the date of receipt of this order;
- b. The Noticees shall remit / pay the said amount of penalty through either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of Chairman/ Members > PAY NOW. In case of any difficulties in online payment of penalties the Noticee may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7,

“G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051”
and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

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

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

Sd/-

Date: December 20, 2022

Place: Mumbai

GEETHA G
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA