

CGM/AA/QJC-1/WRO/WRO/21387/2022-23
SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

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

In respect of:

NOTICEE

**Dollar Advisory and Financial Services-
(Proprietor Ravi Prakash Mohta)**

(PAN: AKBPM7004R)

405, Milan Heights, Near Agarwal Public School,
Indore, Madhya Pradesh- 452016.

REGISTRATION NO.

INA000003882

BACKGROUND OF THE CASE

1. Dollar Advisory and Financial Services (Proprietor: Mr. Ravi Prakash Mohta) (hereinafter referred to as “Noticee/Dollar”) is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) as an Investment Advisor with effect from December 09, 2015 having SEBI registration number INA000003882.
2. SEBI initiated enquiry proceedings against the Noticee under Regulation 23 of SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “Intermediaries Regulations”) read with Regulation 28(a), (b) and (e) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “IA Regulations”), for allegedly violating various provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”), IA Regulations, SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘PFUTP Regulations’) and the relevant SEBI Circulars.

ENQUIRY BY THE DESIGNATED AUTHORITY

3. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated July 28, 2021 to conduct an enquiry against the Noticee and submit a

report and make recommendation in compliance with Regulations 26 of Intermediaries Regulations.

4. Accordingly, the DA issued Show Cause Notice dated October 04, 2021 (hereinafter referred to as “Enquiry SCN”) to the Noticee observing/ alleging as under:

A. Non-submission of information and documents to be submitted as per the statement under Oath

The Noticee failed to submit complete information which he undertook to submit under the statement of oath. Thus, Noticee is alleged to have violated the regulations 13 (a), 15(12) of IA Regulations and clause 8 of Code of Conduct of IA Regulations as specified under Third Schedule read with regulation 15(9) of IA Regulations. Accordingly, Noticee is liable for action under regulation 28(b) and (e) of IA Regulations.

B. Noticee engaged representatives for rendering Investment Advice and Research Analyst without registration and information to SEBI

None of the employees/ representatives of the Noticee fulfilled the eligibility criteria as applicable to a registered investment adviser. Thus, Noticee is alleged to have violated regulation 7 read with provisions of regulation 15(13) of IA Regulations. Further, Noticee is alleged to have violated clauses 1, 2, 3 and 8 of Code of conduct for Investment Adviser provided in Third Schedule read with regulation 15(9) of IA Regulations.

It is alleged that the Noticee had provided false undertaking to SEBI while seeking registration, by stating that its Proprietor Mr. Ravi Prakash Mohta would be solely responsible for rendering investment advice. Thus, Noticee is alleged to have violated regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992.

C. Noticee’s operations are not conducted from its Registered Office

It was observed that Noticee was operating its business from different addresses. The Noticee had failed to submit complete information about the change in registered office to SEBI. Further, during the statement under oath, Mr. Ravi Prakash Mohta has, inter alia, submitted that Noticee had operated from 4 different addresses during the period from December 28, 2015 (i.e. date of registration) to March 2, 2020 (date of commencement of inspection). However, it was observed that Noticee had applied to SEBI for change in address to 54, Scheme No. 54, PU-4, Vijay Nagar, Indore only once on September 20, 2018. In this regard, SEBI, vide letter dated September 23, 2019, issued certificate with change of address. Having failed to disclose the change of address to SEBI, it is alleged that the Noticee has violated Regulation 13(b) of IA Regulations, clause 1 and Clause 8 of Code of Conduct as mentioned in Third Schedule read with regulation 15(9) of IA Regulations.

D. Risk Profiling Form

It is alleged that the questions mentioned in the questionnaire have been framed in such a manner so that it would be difficult for the clients to understand and provide an appropriate response. It is also observed that few questions, whose combined score is 25% of the total score are unclear. Thus, it is alleged that Noticee has violated regulation 16(b)(iii) and 16(d)(i) of IA Regulations.

It is observed that the questions as mentioned in questionnaire have been purposely framed in a manner so as to confuse the client. By assigning 25% of the total score to these questions, it appears that the endeavor of Noticee was to categorize the clients in 'High Risk' and try to deceive the clients. The modus operandi adopted by Noticee amounts to 'fraud' as defined in regulation 2(1)(c) of PFUTP Regulations. In view of this, Noticee is alleged to have violated regulation 3(a), (b), (c) and (d) of PFUTP Regulations read section 12A(a), (b) and (c) of SEBI Act.

E. Non availability of supporting documents for risk profiling

It was observed that the Noticee has neither obtained any documentary evidence for KYC records of clients, nor kept any telephone conversation while carrying out Risk profiling of its clients. Thus, by failing to maintain documentary evidence for KYC records of client, telephonic conversation while carrying out Risk profiling of its clients, Noticee is alleged to have violated regulation 19 (1) and 19 (2) of IA Regulations.

F. Differences between product sold

It is alleged that Noticee has adopted unethical business practices by offering multiple packages with different fee structures to clients. However, it is observed that these packages essentially had same services.

It is alleged that the Noticee has deliberately devised multiple packages (which are essentially offering same service) to earn huge amount of service fees from its clients. It is also alleged that Noticee has failed in its responsibility to act in fiduciary capacity to its clients. Thus, Noticee is alleged to have violated regulation 15 (1) of IA Regulations and clauses 1, 2 and 6 of the Code of Conduct for Investment Advisors as specified in Schedule III of IA Regulations read with regulation 15 (9) of IA Regulations.

G. Non-communication of Risk Profile and suitability assessment to clients and starting investment advisory services without confirmation of client on Risk Profile

The products had already been sold by the IA and advisory fees had been charged even before the risk profiling of the client was completed. It is observed that the products sold would not be appropriate to the clients' need as the risk profiling has not been completed for the client. In this regard, it is alleged that the IA had sold products just to earn advisory fees.

It is alleged that the IA deceived the clients into buying its different products without understanding the clients' needs. It also alleged that the IA deceived the clients into buying its different products without understanding the clients' needs and it acted with sole aim to earn profits by selling products without caring for the needs of the clients.

Therefore, the Noticee by selling its products and charging advisory fees from the clients without undertaking risk profiling of client, the Noticee is alleged to have violated regulation 17(a) of IA Regulations and violated clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulation and regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992.

H. Suitability Assessment

It is alleged that Noticee has kept own interest ahead of his clients' interest and has failed to take due care and diligence to ascertain risk profile of the client and to offer him suitable advice. Thus, it is alleged that Noticee and its proprietor Ravi have violated regulations 15(1), 17(a), 17(d) and 17(e) of IA Regulations and Clauses 1, 2 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and regulations 3(a), (b), (c) and (d) of PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of SEBI Act, 1992.

I. Charging Advisory fees before expiry of tenure of existing service/collecting multiple payments in short period

It was observed that Noticee was selling same advisory products/services to the clients before completion of the tenure of the previous service. And for one client, it had charged multiple times for one single service even before the expiry of duration of that service. Further, in some cases, in short span of one month, more than 5 invoices were raised by Noticee and huge amount of fees were charged from the clients. Thus, it is alleged that that these acts of Noticee have been carried out with the purpose of defrauding the clients and to earn maximum fees and alleged to have violated regulation 3(a), (b), (c), (d) of PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of SEBI Act and clauses 1, 2 and 6 of Code of Conduct for Investment Advisers as provided in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations.

J. PMLA/ AML Provisions

It is observed that there was considerable delay of 955 days i.e. (date of appointment of Principal Officer August 09, 2018 and date of registration as IA December 28, 2015) in appointment of Principal Officer and the communication sent to FIU for appointment of Principal Officer. Thereby, it is alleged that Noticee has violated the provisions of SEBI Circular January 18, 2006 read with SEBI Master Circular dated December 31, 2010 and SEBI Master Circular dated July 04, 2018 and has violated the provisions of SEBI Circular CIR/MIRSD/1/2014 dated March 12, 2014 for appointment of Designated Director.

It was observed that Noticee had failed to provide any policy with respect to PMLA and training provided to its employees. Thus, Noticee is alleged to have violated SEBI circular dated December 19, 2008, as amended vide SEBI Master Circular dated February 12, 2010, December 31, 2010, July 4, 2018 and October 15, 2019, w.r.t. Guidelines on Anti Money Laundering (AML). It is further alleged that Noticee has violated clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III of IA Regulations read with regulation 15(9) of IA Regulations

K. Non Redressal of Investor Grievances

It is observed that Noticee has failed to submit the ATR in a time bound manner as prescribed by SEBI and has also failed to resolve investors' grievance, Thus, it is alleged that Noticee has violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21(1) of IA Regulations.

L. Trading on behalf of clients by Noticee

It is observed from the call records provided by the complainant Shri K. Nayeem Taj that prima facie Noticee has traded on their behalf. From the analysis of trade details of the complainants, that were sought from the stock brokers it was observed that these clients are located across India but on analyzing the trade details received, it is observed that the Demat/broking accounts of some of these clients were accessed from Indore, Madhya Pradesh where the office of Noticee is located. Thus, prima facie it appears that the trades were executed in such accounts by the IA.

It is observed that on various dates between February 02, 2018 to May 16, 2019, transactions were done through online mode from Indore, Madhya Pradesh (various IP addresses pertaining to Indore have been identified) where the office of Noticee is located whereas the location of the client is Durg (Chhattisgarh).

It is noted that an IA is in the business of providing investment advice in respect of securities and investment products. It is outside the scope of its activities to trade on behalf of its clients. In view of this, it is alleged that Noticee has violated regulation 15(1), clauses 1 and 2 of Code of Conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

M. Compliance with SEBI Circular dated December 27, 2019

Based on the observations made with respect to compliance with SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 by Noticee it is alleged that the Noticee has violated Clause 1.1 of SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

5. The Noticee replied to the Enquiry SCN vide letter dated December 09, 2021. The hearing scheduled on December 14, 2021 was attended by the Noticee along with his authorized representatives (hereinafter referred to as "AR"), Advocate Mr. Prakash Shah, Mr. Meit Shah and CA, Mr. Kushal Shah, i/b Prakash Shah & Associates.
6. Thereafter, upon completion of the enquiry, an Enquiry Report dated May 06, 2022 ("Enquiry Report") was submitted by the DA to the Competent Authority. The DA had noted in the Enquiry Report that the Noticee had violated the provisions of the IA Regulations, PFUTP Regulations and various SEBI Circulars. Therefore, in accordance

with the Intermediaries Regulations, the DA recommended that the certificate of registration of the Noticee as Investment Advisor (Registration No. INA000003882), **may be cancelled.**

POST ENQUIRY PROCEEDINGS BY THE COMPETENT AUTHORITY

Show Cause Notice, Reply and Personal Hearing

7. A post-enquiry Show Cause Notice dated May 17, 2022 (“SCN”), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why action as recommended by the DA should not be imposed against the Noticee in terms of the said Regulations, as deemed fit by the Competent Authority.
8. The Noticee vide letter dated May 23, 2022, replied and referred to its earlier letter dated November 19, 2021 wherein the Noticee had stated that he has stopped taking new clients and owing to factors such as parents’ illness, the Noticee has decided to close his business and requested SEBI to consider the Noticee’s application for surrender of his certificate of registration as an Investment Advisor. Vide the aforesaid letter dated May 23, 2022, the Noticee also requested SEBI to drop the proceedings initiated vide SCN dated May 17, 2022 as the Noticee had made an application for surrender of registration certificate prior to the issuance of the SCN.
9. The Noticee vide letter dated June 28, 2022 sought inspection of additional documents which was scheduled on July 08, 2022 and communicated to the Noticee vide email dated July 04, 2022. During the inspection, it was noted that the DA had already given an inspection of documents on November 15, 2021 and provided 21 annexures to the Noticee. However, as the Noticee, in the said letter dated June 28, 2022, had referred to the order of the Hon’ble Supreme Court dated February 18, 2022 in *T. Takano v. SEBI*¹ and requested for a copy of the Inspection Report of the inspection conducted in March 2020, a copy of the inspection report along with all annexures (total 634 pages) including copy

¹ Civil Appeal Nos. 487-488 of 2022. The Hon’ble Supreme Court in this order had held that the appellant therein has a right to disclosure of the material relevant to the proceedings initiated against him.

of the complaints received by SEBI against the Noticee were provided to the Noticee during the inspection held on July 08, 2022.

10. A hearing scheduled on July 14, 2022 was adjourned at the request of the Noticee on the ground that *inter alia* he required time to go through the documents provided during inspection and that it required time to prepare the consolidated reply to the SCN.

11. Another opportunity of hearing was granted to the Noticee on August 30, 2022. The Noticee along with his authorized representatives appeared for the hearing and tendered its reply dated August 29, 2022. During the course of the hearing on August 30, 2022, the Noticee *inter alia* made the following submissions:

- *The Noticee has submitted a detailed reply dated August 29, 2022 and he would be relying on the same for making submissions.*
- *The Noticee has stopped taking new clients since September 2019 and details of bank accounts and statement status were forwarded to SEBI vide email dated March 02, 2020.*
- *The Noticee relied on the order of SEBI in the matter of Altius Finserv Pvt. Ltd. to state that when the certificate of registration has expired, any order suspending or cancelling the certificate of registration would be infructuous.*
- *At para 14, page 20 of the Enquiry Report, the DA has referred to two clients, namely, Mr. Angad Chopra and Mr. Raghvendra Uppar. However, neither of these persons were clients of the Noticee.*
- *As regards non submission of documents, the Noticee submitted that the documents were provided to SEBI during inspection. Some of the documents could not be submitted due to the nationwide lockdown in March 2020. However, later on all the remaining documents were provided to the DA.*
- *The Enquiry Report has mentioned that the Noticee had employed 400 persons, however, the same were not employed at the same time.*
- *The research and advice was provided by the Noticee through its proprietor. Mr. Ram Naresh was an employee who had NISM certification but he used to assist the Noticee and the same was informed to SEBI.*
- *Change in registered address was intimated to SEBI every time the address was changed.*
- *The Risk Profiling Form used by the Noticee is similar to that used by the industry and companies like Bajaj Finserv.*
- *Suitability Assessment was done after following proper procedure.*
- *As regards violation of PMLA provisions, the Noticee has submitted that since the Noticee is a proprietorship, the Proprietor, Mr. Ravi Mohta was under the impression that he would be the designated director.*

- *The Noticee did not trade on behalf of his clients. The clients were educated not to disclose any personal details and the employees were sensitized to refrain from obtaining demat account details and other details from clients.*

CONSIDERATION OF ISSUES AND FINDINGS

12. I have considered the material available on record i.e. Enquiry Report along with the SCN, oral and written submissions including the Noticee's reply dated August 29, 2022 and based on the aforesaid frame the following issues for consideration:

Issue No. I: Whether the Noticee failed to submit complete information which he undertook to submit under the statement of oath latest by March 20, 2020 and April 03, 2020?

Issue No. II: Whether Noticee engaged representatives for rendering Investment Advice without adequate qualifications and information to SEBI?

Issue No. III: Whether the Noticee failed to disclose change in registered address?

Issue No. IV: Whether the Noticee violated norms pertaining to risk profiling?

Issue No. V: Whether the Noticee has failed to maintain records pertaining to risk profiling and risk assessment of the client in terms of Regulation 19 of the IA Regulations?

Issue No. VI: Whether the Noticee has deliberately devised multiple packages which are essentially offering same service to earn huge amount of service fees from its clients and thereby failed in its responsibility to act in fiduciary capacity to its clients?

Issue No. VII: Whether the Noticee failed to communicate the risk profile and suitability assessment to clients and started investment advisory services without confirmation of client on Risk Profile?

Issue No. VIII: Whether the Noticee provided Investment Advisory services prior to risk profiling?

Issue No. IX: Whether the Noticee has selected and sold package/ product/services without any regard to the financial situation, risk tolerance level/ loss absorbing capacity of the client?

Issue No. X: Whether the Noticee was charging Advisory fees before expiry of tenure of existing service/ collecting multiple payments in short period?

Issue No. XI: Whether the Noticee failed to comply with the SEBI Circulars in relation to compliance with provisions of the Prevention of Money Laundering Act and Anti Money Laundering Guidelines?

Issue No. XII: Whether the Noticee failed to redress the grievances of investors?

Issue No. XIII: Whether the Noticee traded on behalf of its clients?

Issue No. XIV: Whether the Noticee failed to comply with SEBI Circular dated December 27, 2019?

13. I, now, proceed to deal with the Issues framed hereinabove, individually.

Issue No. I: Whether the Noticee failed to submit complete information which he undertook to submit under the statement of oath latest by March 20, 2020 and April 03, 2020 respectively, thereby, violating regulations 13 (a), 15(12) of IA Regulations and clause 8 of Code of Conduct of IA Regulations as specified under Third Schedule read with regulation 15(9) of IA Regulations. Accordingly, whether the Noticee is liable for action under regulation 28(b) and (e) of IA Regulations read with regulation 35 of SEBI (Intermediaries) Regulations, 2008?

14. I note that an inspection of the Noticee was carried out during March 02 – 06, 2020 for a period from April 01, 2018 to March 02, 2020 (hereinafter referred to as “Inspection Period”). During the inspection, “Statement of Examination on Oath” of Mr. Ravi Prakash Mohta was recorded on March 06, 2020 wherein the Noticee had undertaken to submit certain information/ documents to the Inspection Authority within the time period mentioned in the statement. The details of the information/ documents are as under:

Table no. 1

Sr. No.	Page Number and Question Number	Information/documents not provided	Time sought during the statement recording
1	Page No. 2 – question No. 3	Name and details of bank account number of Dollar Advisory and Financial Services Investment Advisor from which payments from clients were taken	7 days from the date of statement recording
2	Page No. 2 – question No. 4	Bank account name, account number and branch details.	
3	Page No. 4 – question No. 16	Name and tenure of all directors of Fidato Advise Pvt. Ltd.	
4	Page No. 4 – question No. 17	Bank account number and bank account statement of Fidato Advise Pvt. Ltd.	
5	Page No. 5 – question No. 20	Landline number and mobile number used by Dollar and its employees for calling clients with supporting documents	10 days from the date of statement recording
6	Page No. 5 – question No. 22	NISM certificate of Rishabh Singh Yadav, Mr. Lalit Kumar Mehta and Ram Naresh Singh	
7	Page No. 5 – question No. 23	Process of Risk profiling of clients, Suitability Investment Reports and procedure for carrying out Risk Profiling	7 days from the date of statement recording
8	Page No. 6- question No. 27	Products sold to Medium Risk Category clients, Moderately High Risk Category and High Risk clients with documentary evidence	10 days from the date of statement recording
9	Page no. 6- question No. 28	Process followed by Dollar Advisory and Financial Services for arriving rational of Suitability Investment Report	7 days from the date of statement recording
10	Page no. 7- question no. 31	Details along with name, mobile number, address etc. of entities from where Dollar were taking telephone number and process followed for lead generation	
11	Page no. 7- question no. 32	Details of all invoices, email send to clients, KYC documents, supporting documents to ascertain income proof etc.	
12	Page no. 7- question no. 33	PMLA policy and training given to employees	
13	Page no. 8- question no. 38	Complaint register and details of complaints received during the inspection period	

14	Page no. 8- question no. 39	Details of immovable properties, movable properties in the name of Dollar Advisory and Financial Services, Mr. Ravi Prakash Mohta, Mrs. Sarika Mohta, Fidato Advise Pvt. Ltd., directors of Fidato Advise Pvt. Ltd.	10 days from the date of statement recording
15	Page no. 8- question no. 40	Nature of operations, ownership details, bank account detail including bank statement of Pia financial services, reference regarding which was obtained by the Inspection Team during the course of inspection from one of the documents titled "Backbone of Dollar Advisory"	
16	Page no. 8, question no. 41	SOP used by tele caller for clients solicitation	3 days from the date of statement of recording

15. I note that email dated March 17, 2020 was issued by SEBI to the Noticee advising the Noticee to submit the documents latest by March 20, 2020. Further, vide email dated March 24, 2020, SEBI informed the Noticee that although it has submitted the documents/ information pertaining to question nos. 4, 16, 17 and 22 vide email dated March 23, 2020, SEBI was yet to receive documents/ information pertaining to the remaining questions.
16. I note that the Noticee in his reply dated August 29, 2022 has submitted that certain data was provided to SEBI vide emails dated March 09, 2020, March 10, 2020 and March 23, 2020 and has referred to Annexures no. 1 to 1B of its reply dated December 09, 2021 furnished before the DA. Additional details sought by SEBI as mentioned in its letters dated March 17, 2020 and March 23, 2020 were also provided as annexures 3 to 3E to the DA vide its reply dated December 09, 2021.
17. I have perused the annexures and I note that pursuant to the recording of "Statement of Examination on Oath" of Mr. Ravi Prakash Mohta, the Noticee submitted the following documents:

Table No. 2

With reference to sr. no. of table no. 1	Particulars	Date of submission
1	Name and details of bank account number of Dollar Advisory and Financial Services Investment Advisor from which payments from clients were taken	Email dated March 09, 2020

15	Nature of operations, ownership details, bank account detail including bank statement of Pia financial services, reference regarding which was obtained by the Inspection Team during the course of inspection from one of the documents titled “Backbone of Dollar Advisory”	Email dated March 10, 2020
2	Bank account name, account number and branch details.	Email dated March 23, 2020
3	Name and tenure of all directors of Fidato Advise Pvt. Ltd.	Email dated March 23, 2020
6	NISM certificate of Rishabh Singh Yadav, Mr. Lalit Kumar Mehta and Ram Naresh Singh	Email dated March 23, 2020
5	Copy of 2 bills of Tata Docomo having account number 948652797 and 7316601899 Copy of bill of Vodafone having account number 7317148152	Annexure 3, 3A and 3B to reply dated December 09, 2021 (After initiation of enquiry proceedings)
12	PMLA policy and training given to employees	Annexure 40 to reply dated December 09, 2021 (After initiation of enquiry proceedings)
13	Copy of snapshot from the dashboard of SEBI’s SCORES downloaded from SEBI website	Annexure 3D to reply dated December 09, 2021 (After initiation of enquiry proceedings)
16	SOP used by tele caller for clients solicitation	Annexure 3E to reply dated December 09, 2021 (After initiation of enquiry proceedings)

18. From the aforesaid Table No. 2, I note that the information/ documents at sr. no. 5, 12, 13 and 16 was provided to SEBI for the very first time by the Noticee vide its reply dated December 09, 2021 to the DA in response to the Enquiry SCN dated October 04, 2021.

19. The Noticee in its reply dated August 29, 2022 has stated that details of all invoices, emails sent to clients, KYC documents, supporting documents to ascertain income proof etc., has been submitted by it during the course of inspection. However, I note that at the time of recording the Noticee’s statement on March 06, 2020, SEBI’s Inspection Team asked the Noticee to provide *“the details such as all invoices, email sent to the clients, KYC documents, supporting documents to ascertain income proof, call recordings, whatsapp chat, SMS log, email for communicating all invoices, date of payments, Risk Profiling Form, Suitability Investment Report of all sample 42 clients as sought during the course*

of inspection.” In response, the Noticee stated that the information sought will be provided to the SEBI – Indore Local Office within seven days from that day i.e. March 06, 2020. If as stated by the Noticee in his reply dated August 29, 2022, it had provided the information/ documents sought during the course of inspection itself, then the question that begs consideration is that why did the Noticee at the time of recording his statement undertake to provide the said information/ documents within seven days from the date of statement recording. This shows that the Noticee had not provided the information sought during the course of inspection.

20. Furthermore, taking into consideration the information at Table no. 1 and 2, I note that the Noticee has, even as on date, failed to furnish the following information to SEBI:

Table No. 3

With reference to sr. no. of table no. 1	Information/documents not provided
7	Process of Risk profiling of clients, Suitability Investment Reports and procedure for carrying out Risk Profiling
8	Products sold to Medium Risk Category clients, Moderately High Risk Category and High Risk clients with documentary evidence
9	Process followed by Dollar Advisory and Financial Services for arriving rational of Suitability Investment Report
10	Details along with name, mobile number, address etc. of entities from where Dollar were taking telephone number and process followed for lead generation
11	Details of all invoices, email send to clients, KYC documents, supporting documents to ascertain income proof etc.
14	Details of immovable properties, movable proprieties in the name of Dollar Advisory and Financial Services, Mr. Ravi Prakash Mohta, Mrs. Sarika Mohta, Fidato Advise Pvt. Ltd., directors of Fidato Advise Pvt. Ltd.

21. The Noticee has also submitted that due to countrywide lockdown and curfew imposed because of COVID 19 pandemic, the Noticee’s office/ place where the books of account are kept was closed and it was not possible to compile the requisite data and details at the relevant time. The Noticee also submitted that vide email dated October 04, 2020, the Noticee had informed SEBI that it was not taking any clients and that it did not have any staff member working with it which led to further delay in compiling the information.

22. In this regard, I note that the restrictions imposed in connection with the nationwide lockdown had been eased from July 2020 onwards. The Noticee could have submitted the information/ documents anytime thereafter. However, I note that the Noticee waited for the enquiry proceedings to be initiated, pursuant to which it has provided certain additional information, specifically mentioned at Table no. 2. I also note that the Noticee has failed to submit the information captured in Table no. 3 hereinabove till date and no plausible explanation has been provided for the same.
23. At this stage, I find it pertinent to reproduce the relevant regulations as under:

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;

General responsibility.

15.

...

...

...

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

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

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...

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.

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default.

28. An investment adviser who -

(b) fails to furnish any information relating to its activity as an investment adviser as required by the Board;

...

...

...

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

24. In view of the above, I note that the Noticee has failed to furnish the information sought by SEBI. Therefore, I find that the Noticee has violated the Regulations 13 (a), 15 (12) of IA Regulations and clause 8 of Code of Conduct of IA Regulations as specified under Third Schedule read with regulation 15(9) of IA Regulations. Accordingly, the Noticee is liable for action under regulation 28(b) and (e) of IA Regulations.

Issue No. II: Whether the Noticee engaged representatives for rendering Investment Advice without adequate qualifications and information to SEBI in violation of regulation 7 read with provisions of regulation 15(13) of IA Regulations and Clauses 1, 2, 3 and 8 of Code of conduct for Investment Adviser provided in Third Schedule read with regulation 15(9) of IA Regulations?

25. I note that in the application dated November 09, 2015 submitted by the Noticee for seeking registration as an investment adviser, the Noticee has, in reply to the question “Number of employee and agents of applicant, if any, who shall render investment advice under these regulations on behalf of applicant”, stated that there would be no such employee and that Mr. Ravi Prakash Mohta (Proprietor) would be solely responsible for the same.
26. I note that the Enquiry Report has observed that the Noticee operates its advisory activities/business by selling advisory products/services in the form of packages and that it was selling 33 different packages pertaining to Cash and Future & Options segment of equity and commodity derivatives segments. The Noticee sends tips/messages to the subscribers/clients in an automated manner and the said tips/ messages sent are same for the subscribers of a specific package. The Enquiry Report further observes that the Noticee has adopted a mechanism whereby a set of telesales team forming part of sales department

of Noticee is soliciting clients by pitching the products of Noticee. The Sales Team members of Noticee make calls to prospective clients who are spread all over India. The Enquiry Report also observed that the employees of the Noticee used to get in touch with the clients to fill Risk Profile Questionnaire over telephone and sell the products offered by Noticee.

27. As per regulation 7(1) of IA Regulations, the representatives of an IA are required to fulfil the eligibility criteria of a registered investment adviser while rendering investment advice services. Regulation 7(2) of IA Regulations require a representative of an Investment Advisor who is rendering investment advice to have at all times, a certification on financial planning/fund/asset/portfolio management or investment advisory services either from NISM or any other recognized institute. The term “representatives” is defined under regulation 2(1)(r) of the IA Regulations as employees of an investment adviser who render investment advice on behalf of that investment adviser.
28. Regulation 7 (2) of the IA regulations was amended w.e.f. September 30, 2020, the provision prior to the amendment is quoted or reproduced as under:

Qualification and certification requirement.

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

- (a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or*
- (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.*

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

- (a) from NISM; or*

(b)from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM”

29. The Noticee, however, vide his reply dated August 29, 2022 has submitted that none of its employees were covered under the definition of “representative” as defined in regulation 2 (r) of the IA Regulations as none of the employees provided investment advice to any client on behalf of the Noticee. The aforesaid statement is contradictory to the Noticee’s “Statement of Examination on Oath” wherein in response to question no. 36 *“please inform whether your employees are/ were meeting the criteria of representative of Investment Advisor as per IA Regulations, 2013 including NISM certificates”*, the Noticee responded stating *“No, they were/ are not meeting criteria of representative of Investment Advisor as per the IA Regulations, 2013 and they do not hold NISM certificates.”*
30. I note that in terms of regulation 2 (r) of the IA Regulations, the term “representative” means an employee or an agent of an investment adviser who renders investment advice on behalf of that investment adviser. I note that the definition of the term “investment advice” under regulation 2(1)(l) of IA Regulations also includes “financial planning”. The term “financial planning” *inter alia*, includes assessing financial situation, identification of financial goals and developing and recommending financial strategies. From the above provisions of IA Regulations, it is clear that risk profiling, through which financial situation is assessed and investment strategies are recommended, constitutes a vital part of the investment advice. I note from the Enquiry Report that the employees of the Noticee were filling the Risk Profile Questionnaire over telephone for the clients and selling the products offered by Noticee. The said activity performed by the employees of the Noticee falls under the meaning of “financial planning” and thereby falls under the definition of “investment advice”.
31. I note that the Noticee has submitted that in the agreement executed between the Noticee and the client, it is mentioned that the investment advice is in written via electronic mail or SMS on registered mobile, no verbal communication from any of the executives or otherwise under any circumstance shall be considered. According to the Noticee, the sales team or tele callers just enquired about the basic details such as age, name etc. In this regard, I note from the email dated January 14, 2020 of one of the investors, Mr. K

Ramakrishna Prabhu (Annexure 15 to the Inspection Report) wherein he has stated that “...Through phone calls they forced, embarrassed, mislead and cheat in each and every way, though through mails, through Caution Note and Disclaimer (which they sent after maximum of the amount has been forcibly collected through phone calls for services on annual basis) they thrust all risk upon the client/ customer and desist from taking any responsibility for the huge losses incurred due to their irresponsible phone call advice. Likewise they have cheated in each and every respect even after collecting huge amount i.e. Rs. 7,57,672 by way of service charges for advisory services in various names.” In light of the aforesaid, I note that the Noticee’s act of entering into an agreement with clients which included clauses *inter alia* mentioning that no verbal communication from any of the executives of the Noticee shall be considered by the clients, appears to be done only to safeguard the Noticee from any punitive action from the regulator, and therefore, the aforesaid argument of the Noticee is not acceptable.

32. The Noticee in his reply has stated that around 400 employees worked for it during the period from April 01, 2018 to August 31, 2019 and at no point 400 employees were working together. Further the said 400 employees worked in various departments such as back office, sales, HR, office boys etc. and that the Proprietor, Mr. Ravi Prakash Mohta only provided investment advice. Furthermore, vide email dated February 19, 2020, the Noticee has provided a list of employees. Having perused the list of employees, I note that the said list contains the date of joining of 292 of 400 employees but it does not contain the date of resignation of any of the said 400 employees. Furthermore, there is no proof made available to accept the Noticee’s contention that 400 employees were working together at no point. The Noticee also submitted that one, Mr. Ram Naresh was an employee of the Noticee who had NISM certification but he used to assist the Noticee and the same was informed to SEBI.

33. It is pertinent to note the relevant provisions of law:

IA Regulations (prior to amendment of Regulation 15 (13))

“General responsibility.

15.

...

...

...

(13) It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements under Regulation 7 at all times.

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

3. Capabilities

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

...

...

...

8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

34. However, the issue here is that the Noticee's employee/ representatives who have dealt with the clients and carried out risk profiling, sold products of the Noticee, etc. did not have requisite qualifications and certifications as prescribed under regulation 7 of IA Regulations. In view of the discussions above, I note that that none of the employees/ representatives fulfilled the eligibility criteria as applicable to a registered investment adviser. As per regulation 15(13) of the IA Regulations, it shall be the responsibility of the investment adviser to ensure that its representatives comply with the certification requirements as prescribed under regulation 7 of IA Regulations. In view of the above, I find that the Noticee has violated regulation 7 read with provisions of regulation 15(13) of IA Regulations. Further, the Noticee has also violated clauses 1, 2, 3 and 8 of Code of

conduct for Investment Adviser provided in Third Schedule read with regulation 15(9) of IA Regulations.

35. I note that in the application dated November 09, 2015 submitted by Dollar for seeking registration as an investment adviser, in reply to question “*Number of employee and agents of applicant, if any, who shall render investment advice under these regulations on behalf of applicant*”, Mr. Ravi Prakash Mohta, *inter-alia*, stated that there would be no such employee and he would be solely responsible for the same. The Enquiry Report has noted that the Noticee had provided false undertaking to SEBI while seeking registration, by stating that its Proprietor Ravi would be solely responsible for rendering investment advice and therefore, observed that the above conduct of Noticee comes under the definition of ‘fraud’ as mentioned in regulation 2(1)(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred as “PFUTP Regulations”). Accordingly, the Enquiry Report has observed that the Noticee has violated regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992. However, I am unable to agree with the aforesaid finding of the DA as providing false information in itself to SEBI would not constitute as “fraud” under the PFUTP Regulations.

Issue No. III: Whether the Noticee failed to disclose change in registered address and thereby violated Regulation 13(b) of IA Regulations, clause 1 and Clause 8 of Code of Conduct as mentioned in Third Schedule read with regulation 15(9) of IA Regulations?

36. I note that the Enquiry Report has observed that the Noticee failed to disclose the change of address to SEBI, and therefore, violated Regulation 13(b) of IA Regulations, clause 1 and Clause 8 of Code of Conduct as mentioned in Third Schedule read with regulation 15(9) of IA Regulations. In this regard, I note that at the time of seeking registration as an Investment Adviser, the Noticee, in its application dated November 09, 2015, submitted the following as the registered office address: “*204, Westend Corporate, New Palasia, Indore, Madhya Pradesh*”. In 2017, the Noticee made an application to SEBI (received by SEBI-Indore Local Office on February 13, 2017) for change in its registered office address from *204, Westend Corporate, New Palasia, Indore, Madhya Pradesh* to *404, Tulsi Tower,*

22/3, South Tukoganj, Geeta Bhawan Square, Indore. In this regard, SEBI, vide its letter dated September 01, 2017, sought clarification from the Noticee that no online application has been made in SEBI SI portal for change of address. In its response, the Noticee submitted that they tried to upload the details for change of address but there was some system issue.

37. Subsequently, the Noticee, vide its letter dated September 20, 2018 informed SEBI about change in registered office address to 54, Scheme No. 54, PU-4, Vijay Nagar, Indore. Accordingly, SEBI vide its letter dated September 23, 2019, issued certificate with change of address.
38. I note from the Inspection Report that the Noticee was operating its business from the following addresses:

Address of the premise	Lessee	Lessor	Date of Agreement	Period of Agreement	Rent Amount (in Rs.)
204, Plot no 6/6, New Palasia, Western Corporate, Indore	Dollar Advisory and Financial Services	Yashpal Singh Solanki	10.09.2015	11 months (starting from 23.09.2015)	15,000/-
403, Tulsi Tower, 22/3, South Tukoganj, Geeta Bhawan Square, Indore	Dollar Advisory and Financial Services	Shiv Developers	11.07.2016	5 years (01.07.2016-30.06.2021)	30,000/-
413, Tulsi Tower, 22/3, South Tukoganj, Geeta Bhawan Square, Indore	M/s Shareshala Research & Education Prop. Ravi Mohta	Jyoti Garg	01.12.2016	11 months (01.12.2016 to 30.10.2017)	25,000/-
56, PU-4, Scheme no-54, Behind C-21 Mall, A B Road, Indore	Dollar Advisory and Financial Services	GTM Teleshopping Pvt Ltd	18.05.2017	3 years (Starting from 01.06.2017)	1,40,000/-
54, PU-4, Scheme no-54, A B Road, Indore	Dollar Advisory and Financial Services	Hanuman Sales Agency	18.07.2018	5 years (Starting from 01.08.2018)	2,75,000/-

39. In this regard, the Noticee has submitted that the office at 404, Tulsi Tower was interconnected with the office at 403, Tulsi Tower and that the office at 413, Tulsi Tower was in front of the main office, and therefore, the Noticee has submitted that there have been no lapses. Furthermore, as regards, Office no. 56, the Noticee has submitted that vide letter dated September 13, 2017, SEBI was informed that it was used for training and development purpose. As regards, the address at 54, PU – 4, Scheme 54, the Noticee has stated that the same was informed to SEBI and the certificate of registration was amended accordingly by SEBI.
40. In this regard, it is pertinent to look at regulation 13 (b) of the IA Regulations which is reproduced as under:

“Conditions of certificate.

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

...

...

...

(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”

41. I note that the Noticee informed SEBI about the change of its registered office from 204, Westend Corporate, New Palasia, Indore, Madhya Pradesh to 404, Tulsi Tower, 22/3, South Tukoganj, Geeta Bhawan Square, Indore. I also note that at the time of change of its registered address from 404, Tulsi Tower, 22/3, South Tukoganj, Geeta Bhawan Square, Indore to 54, Scheme No. 54, PU-4, Vijay Nagar, Indore, the Noticee informed the same to SEBI and accordingly, SEBI vide its letter dated September 23, 2019, issued a certificate with change of address. Therefore, I am unable to agree with the DA’s observation the Noticee has violated Regulation 13(b) of IA Regulations read with Clauses 1 and 8 of Code of Conduct as mentioned in Third Schedule read with regulation 15(9) of IA Regulations.

Issue No. IV: Whether the Noticee violated norms pertaining to risk profiling more specifically regulation 16(b)(iii) and 16(d)(i) of IA Regulations read with regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act?

42. The Enquiry Report has observed that the Noticee has 12 questions to measure risk appetite/tolerance of the clients in Risk Profiling Form (hereinafter referred to as “RPF”). In the RPF, corresponding to each question, a set of answers had been mentioned. Each answer has been assigned particular weightage. The total score is calculated and risk category of the client as well as risk appetite of the client is assessed, depending on the response of the client. The maximum total score assigned for RPF is 48 (4 marks each for 12 questions). The risk category of the client based on RPF scores is tabulated below:

Table No. 4

Risk Profiling Questionnaire SCORE	Risk Category of the Client
Less than 16	Low
16-25	Medium
More than 25	High

43. I note from the Enquiry Report and the Risk Profiling Form submitted by the Noticee (Annexure 8 to the Inspection Report) that the Noticee has categorized risk categories in three categories namely “*High, Moderately High and Medium category*” which was confirmed by Mr. Ravi Prakash Mohta in his statement recorded on March 06, 2020. The relevant extract is reproduced as under:

*“Q. 26: Laxminarayan Sangtani KYC documents submitted the during the course of inspection by you, only provides SCORES for three risk category namely, Low Risk, Medium Risk and High Risk. So please provide the SCORES assigned to Moderately High Risk category clients?
Ans. We do not have SCORES for Moderately High Clients.”*

44. I note that at the time of carrying out risk profiling of investors/clients, the Noticee asks investors to choose the segment as well as specify the risk, the investor is willing to take/tolerate. The segment which investors want to trade and degree of risk as specified in RPF is given below: -

Table No. 5

Sr. No.	Financial Market segment	Degree of risk
1	Equity	High/Moderately High/ Medium
2	Commodity	High/Moderately High/ Medium
3	Currency	High/Moderately High/ Medium
4	Cash	High/Moderately High/ Medium
5	International Commodities	High
6	Future	High/Moderately High/ Medium

7	Agro Commodities	High/Moderately High/ Medium
8	Options	High/Moderately High/ Medium

45. From the above table, I note that for low risk clients, no products have been offered by the Noticee. I also note that even before carrying out an independent risk profiling, the Noticee is obtaining confirmation from the investors, for the selection of segment in which they want to trade and their risk tolerance capacity.

46. On perusal of the RPF submitted by the Noticee, I note that the Noticee has posed the following questions to the investors:

Question no. 8

Question	Options provided by Noticee	Marks assigned	Why we asked this questions
What is the first thought to cross your mind, when you invest your money?	I should not lose my money	1	Risk capacity and tolerance capacity
	<i>It should not be turn out to be a bad investment</i>	2	
	<i>This should turn out to be a good investment</i>	3	
	I know this is good decision	4	

Question no. 11

Question	Options provided by Noticee	Marks assigned	Why we asked this questions
How would you feel if the performances of your recent investments are below expectations	Very upset	1	Risk capacity and tolerance capacity
	Somewhat upset, but hope that it will improve in future	2	
	Uneasy but willing to take it in my stride	3	
	Not upset because I know that all investment carrying risk	4	

Question no.12

Question	Options provided by Noticee	Marks assigned	Why we asked this questions
Would you invest in a company that underperformed in	Definitely not	1	Risk capacity and tolerance capacity
	<i>May be, but I am not sure</i>	2	
	<i>Perhaps I will</i>	3	

the past and caused you losses?	Definitely yes	4	
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47. I note that it is pertinent to refer to regulation 16(d)(i) of the IA Regulations which states that the investment advisor shall ensure that any questions or description in any questionnaire which is used to establish the risk a client is willing to take should be clear and not use double negative or such complex language that the client is unable to understand. The said regulation is reproduced below for reference:

“Risk profiling.

16. Investment adviser shall ensure that,-

...
...
...

(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;”

48. I note that question no. 8 of the RPF seeks answer to the question, “What is the first thought to cross your mind, when you invest your money?”, and the proposed answers that may be selected by the clients include the ***“It should not be turn out to be a bad investment”*** which is assigned two (2) marks and ***“This should turn out to be a good investment”*** which carries three (3) marks. I note that the former answer contains double negatives which is likely to mislead the clients. Furthermore, the latter answer i.e. ***“This should turn out to be a good investment”*** is similar to the former i.e. ***“It should not be turn out to be a bad investment”***. I note that such similarity in answers is bound to create confusion and thereby mislead the client/ investors. Similarly, question no. 12 seeks answer to the question, “Would you invest in a company that underperformed in the past and caused you a loss?”. The options provided by the Noticee *inter alia* include ***“May be, but I am not sure”*** which has been assigned two (2) marks and ***“Perhaps I will”*** which carries three (3) marks. I note that the word “may be” and “perhaps” are synonymous and are used interchangeably in the normal parlance. I note that the options provided by the Noticee to the questions in the RPF are confusing and may mislead the investors.

49. Furthermore, question no. 8 asks “*What is the first thought to cross your mind, when you invest your money?*”. I note that any investor at the time of investing their money, will not like to lose money and will invest money based on its financial goals, future need of money etc. The return what an investor would get is based on the segment / product in which investment is made by him. If investor risk tolerance level is low, he would not invest in a risky product. As regards, question no. 12 mentioned, “*Would you invest in a company that underperformed in the past and caused you a loss?*”. In this regard, I note that an investor will invest money only after considering, not only a company’s present but also past financials results, company management, company track records, shareholding pattern as well as present economic situation/ policy framed by competent authority etc. Generally, an investor would not invest in a company, whose financial conditions are deteriorating day by day and there is some corporate announcement which is not favorable to the company. Therefore, I note that the aforesaid questions are ambiguous in nature.
50. In view of the above, I conclude that the Noticee has violated regulation 16(d)(i) of the IA Regulations. Regulation 16(b)(iii) of the IA Regulations provides that the process for assessing risk of client appropriately interprets client responses to questions and should not attribute inappropriate weight to certain answers. In this regard, the Noticee in his reply dated August 29, 2022 and even during his submissions at the time of hearing has stated that it has used the risk profiling mechanism which is commonly used by companies such as Bajaj Finserv and IndusInd Bank. The Noticee has also submitted that question nos. 8, 11 and 12 have been taken from the ICICI Prudential Risk Profiling Questionnaire tool. The Noticee has provided the aforesaid as annexures 13, 14 and 15 to his reply dated December 09, 2021.
51. Although the benchmark for RPFs are not set by the two of the entities cited by the noticee, a comparative perspective as proposed by noticee itself, the RPF of Bajaj Finserv, IndusInd Bank and the Noticee were perused. Given below is the comparative analysis, of the said RPFs:

Table No. 6

Sr. No.	Bajaj Finserv	IndusInd Bank	Noticee
1	I fall in the following age band	In which investments do you have highest allocation?	Age Range

2	The portion of my monthly income that goes towards household expenses and payment of loan instalments is	What factor is most important for you while choosing an investment?	Trading Experience
3	Have I planned for and kept funds aside for meeting my financial goals like marriage, purchase of a home, child's higher education, etc.	You have inherited a sizeable amount recently. How would you invest the same?	Where you found (sic) yourself in knowledge in Financial Market
4	5 to 10 years from now, I expect my investments to be	Suppose you own an equity portfolio that has fallen by 20% this month. How would you react?	Occupation
5	By when do you require this money from your proposed investments?	Approximately what portion of your monthly net income goes towards paying of installments for loans?	Any Debt or Liability
6	The assist mix that most closely matches my own preference is	Which of the following age brackets do you currently fall in?	Income
7	If my equity portfolio is losing money, I will sell & exit from the investment if my loss exceeds	-	Investment Objective
8	I would be most comfortable with the following type of portfolio over a period of 5 years	-	What is the first thought to cross your mind, when you invest your money?
9	I don't feel sorry about some bad investment decisions	-	What do you normally associate the risk with the word?
10	I usually pick the tried and tested – the slow, safe, but sure investments	-	To what extent would you expose your investments to risk, to earn higher returns?
11	-	-	How would you feel if the performances of your recent investments are below expectations
12	-	-	Would you invest in a company that underperformed in the past and caused you losses?

52. Having gone by the proposed comparison of the RPFs amongst others such as Bajaj Finserv, IndusInd Bank and the Noticee also, I note that none of the questions appearing in the RPF of Bajaj Finserv and IndusInd Bank are similar to those in the Noticee's RPF. Therefore, I am unable to agree with the Noticee's submission that it has used the risk profiling mechanism which is commonly used by companies.

53. As regards Noticee's submission that question nos. 8, 11 and 12 have been taken from the ICICI Prudential Risk Profiling Questionnaire tool, I have perused Annexure 15 to the Noticee's reply dated December 09, 2021 on which the Noticee has relied in his reply, and I note that it appears on the website of ICICI Prudential Mutual Fund as a Risk Profiling Tool for the investors *to self- assess how much risk they can take*. In this regard, I note that firstly, the risk profiling tool on the said website is for self – assessment by investors and secondly, the same is with respect to ICICI Prudential Mutual Fund. I note that the Noticee having NISM Certification on Investment Advisors ought to have noticed the same.
54. The Enquiry Report has also observed that the total weights assigned to the aforesaid three vague questions/ misleading descriptions in the questionnaire is 12 (maximum marks) out of 48 i.e. 25% of total weights. Regulation 16 (b) (iii) of the IA Regulations which is reproduced as under clearly states that the IA shall not attribute inappropriate weight to certain answers.

“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.”

55. I note that the Noticee has assigned 12 marks out of 48 marks i.e. 25% weightage to the aforesaid vague questions/ misleading descriptions which is in violation of Regulation 16 (b) (iii) of the IA Regulations.
56. I note that by requiring the investors/ clients to answer vague questions/ providing options containing double negatives, the Noticee was engaging in a practice that would operate as deceit upon the investors because the said three questions carry 25% weightage of the questionnaire and would result in ultimately categorizing the client as a Moderate Risk/

High Risk client for the purpose of providing investment advice for dealing in securities.
The relevant provisions of the SEBI Act and PFUTP provisions are as under:

SEBI Act:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

...

...

...

(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;

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

...

...

...

(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.

In view of the above, I find that the Noticee has violated Section 12A (c) of the SEBI Act read with Regulation 3 (d) of the PFUTP Regulations.

Issue No. V: Whether the Noticee has failed to maintain records pertaining to risk profiling and risk assessment of the client in terms of Regulation 19 of the IA Regulations?

57. The Enquiry Report has observed that the Noticee has not collected any document to ascertain current income and other details for doing risk profiling of the client at the time of on-boarding the clients. The relevant provision is reproduced as under:

“Maintenance of records.

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

- (a) Know Your Client records of the client;*
- (b) Risk profiling and risk assessment of the client;*
- (c) Suitability assessment of the advice being provided;*
- (d) Copies of agreements with clients, if any;*
- (e) Investment advice provided, whether written or oral;*
- (f) Rationale for arriving at investment advice, duly signed and dated;*
- (g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.*

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

58. The risk assessment also involves objective assessment of the client's risk capacity which includes the maximum level of risk that a client can take based on their financial situation and would require the Noticee to maintain the records pertaining to the same.
59. In this regard, the Noticee has submitted that it used to request the clients to provide copies of Income Proof i.e. salary slip, bank statements etc., however, certain clients only provided self-attested risk profiling form sans the income proof. The Noticee has also submitted that Regulation 17 (1) does not mention that the information obtained should be backed by supporting documents. In support of the said contention, the Noticee has also relied on SEBI circular dated December 27, 2019 wherein it is stated the IA shall complete the risk profile of the client based on the information provided by the client. The Noticee has argued that prior to the aforesaid Circular nothing was mentioned in the regulation with respect to obtaining supporting documents for risk profiling.
60. I note from Client Investment Advisory Agreement (Annexure 16 to the Noticee's reply dated December 09, 2021) that in terms of Clause 2 titled "Mandatory Requirements from SEBI", the Noticee had informed its clients that as per SEBI norms mentioned in the IA Regulations, 2013 and KYC Regulation, 2011, the Noticee would **require self-attested documents from clients to maintain the records** including KYC form, copy of PAN Card and Aadhar Card and income proof of client (salary slip, bank statement etc.) The Agreement also states that the said details are mandatory requirement for SEBI and failure to submit would be met with discontinuation of services until such details are obtained from the client. The aforesaid clearly shows that the Noticee was aware that it was required to maintain records such as income proof. In fact, Regulation 17 of the IA Regulations also

state that IA has to follow a documented process for selecting investments based on client's investment objectives and financial situation. Therefore, the Noticee's contention that the regulations do not mention that the information obtained should be backed by supporting documents is incorrect and baseless.

61. The Noticee in his reply has stated that during inspection, the Noticee had provided SEBI's Inspection Team with the documents of various clients and other documents such as PAN Card, Aadhar Card, address proof etc. However, I note that in response to Question No. 32 which read as "*Please provide the details such as all invoices, email sent to the clients, KYC documents, supporting documents to ascertain income proof, call recordings, whatsapp chat, SMS log etc.*", the Noticee had responded that the information would be provided to SEBI – Indore Local Office within seven days. The submission of the Noticee is contradictory to his statement recorded on March 06, 2020. Therefore, I am unable to accept the Noticee's submission that he had provided the requisite information to the SEBI Inspection Team during inspection itself.
62. In view of the above, I conclude that the Noticee was not maintaining records pertaining to risk profiling and risk assessment of its clients and therefore I find that the Noticee has violated regulation 19 (1) and 19 (2) of IA Regulations.

Issue No. VI: Whether the Noticee has deliberately devised multiple packages which are essentially offering same service to earn huge amount of service fees from its clients and thereby failed in its responsibility to act in fiduciary capacity to its clients in violation of regulation 15 (1) of IA Regulations and clauses 1, 2 and 6 of the Code of Conduct for Investment Advisors as specified in Schedule III of IA Regulations read with regulation 15 (9) of IA Regulations?

63. In the Enquiry SCN, the DA had observed that Noticee offers 33 types of different services to its clients in the following segments:
- A. Equity Segment
 - B. Commodity Segment

- C. Indian Currency segment
- D. Comex Services
- E. Forex Services and
- F. Investment Planning

64. The products offered by Noticee are as under:

Table No. 7

Equity		
Equity Cash	Equity Future	Equity Option
Morning Shiners(Cash)	Intraday Bazooka future	Intraday Bazooka future
Intraday Bazooka (Cash)	Intraday Bazooka Index Future	Overnight Flame(Option)
Overnight Flame(Cash)	Overnight Flame(Future)	M2F Positional Option
M2F Positional Cash	M2F Positional Future	Blue Chip Option
Blue Chip Cash	Blue Chip Future	Big Boys Option
Big Boys Cash	Big Boys Future	HNI Intraday Bazooka Cash
HNI Intraday Bazooka Cash	HNI Intraday Bazooka Cash	Option Premium
Cash Premium	Future Premium	

Table No. 8

Commodity			
Intraday Services segment	Positional Services segment	HNI services segment	Point Plan services segment
Intraday Bazooka Bullions And Energy (MCX)	No features of products available on website of company	HNI Intraday Bazooka Bullions And Energy (MCX)	No features of products available on website of company
Intraday Bazooka Base Metals And Energy (MCX)		HNI Intraday Bazooka Base Metals And Energy (MCX)	

Table No. 9

Indian Currency	
Intraday Bazooka Currency	HNI Intraday Bazooka Currency
Intraday Bazooka (Currency)	No feature of product available on website of company

65. Further, the Enquiry SCN has recorded that the website of Noticee mentions that they are offering service of Comex, Forex and Investment planning. However, no features of such service were available. The Noticee has also specified fee structures for all these service on quarterly basis, half yearly basis and on annual basis. The features of the various products/services, proposed investments, risk category of clients who are eligible for such types of services, etc. are available on website of the Noticee. The features of all the products as per the website of Noticee were placed as Annexure 8 to the Enquiry SCN.
66. The Enquiry SCN also provided a comparison Table of the services which is as under:

Table No. 10

Details	Blue Chip (Cash)	Big Boys (Cash)
Salient Features	<ul style="list-style-type: none"> • There will be up to 28–35 trading calls per quarter. • Maximum 2 open positions at a time. • Every call will have 2 targets and 1 Stop Loss, 2nd target to Sl ratio is 2:1. • Stock specific news of open calls, if any. • Strategy will be Breakout- BUY ABOVE <Price>& SELL BELOW <Price>. • Follow up messages on every call. • Investment Advice only in NSE trading shares. • Daily Nifty review and trading zone update. • Pre-market Opening & Post Closing details. • Daily “Market Mantra” while opening & “Market Wrap” after closing, market summary on email (on request). • Important events like RBI Policy, Inflation, GDP, IIP updates. • Important World Market updates. • National & International economic calendar. • Service available in Quarterly / Half Yearly and Annual subscription mode. • Fast and effective grievance redressal mechanism. • Accuracy expected (as per our previous performance): Approx 80% – 82%*. 	<ul style="list-style-type: none"> • There will be up to 28 – 35 trading calls per quarter. • Maximum 2 open positions at a time. • Every call will have 2 targets and 1 Stop Loss, 2nd target to Sl ratio is 2:1. • Stock specific news of open calls, if any. • Strategy will be Breakout- BUY ABOVE <Price>& SELL BELOW <Price>. • Follow up messages on every call. • Investment Advice only in NSE trading shares. • Daily Nifty review and trading zone update. • Pre Market Opening & Post Closing details. • Daily “Market Mantra” while opening & “Market Wrap” after closing, market summary on email (on request). • Important events like RBI Policy, Inflation, GDP, IIP updates. • Important World Market updates. • National & International economic calendar. • Service available in Quarterly / Half Yearly and Annual subscription mode. • Fast and effective grievance redressal mechanism. • Accuracy expected (as per our previous performance): Approx 80% – 82%*.

Risk Category	High	High
Ideal Investment	Rs. 2,00,000/- or more	Rs. 2,00,000/- or more
Quarterly fees	Rs. 35,000	Rs. 45,000
Half-Yearly Fees	Rs. 60,000	Rs. 80,000
Yearly Fees	Rs. 1,00,000	Rs. 1,30,000

67. From the aforesaid table, I note that the Noticee is offering two services namely Blue Chip (Cash) and Big Boys (Cash) in Cash segment which have exactly the same features viz. giving 28-35 trading calls per quarter to the clients with follow up message on each call, daily reports, etc. Despite having exactly similar offering in the aforementioned two services, the prices charged for them are different. For instance, the quarterly fees for Blue Chip (Cash) is Rs. 35,000 while the quarterly fees for Big Boys (Cash) it is Rs. 45,000.
68. The Noticee in his reply dated August 29, 2022 has submitted that in the Blue Chip (Cash) Services, the client gets advice regarding companies which have a record of paying continuous dividend whereas in Big Boy (Cash) Services, the recommendation is provided for which the price of the shares is more than Rs. 1,000/-. I note that *The Palgrave Macmillan Dictionary of Finance, Investment and Banking* defines “Blue Chip” as the common stock of a high quality company, generally one with a large market capitalization, established reputation and market share, and strong record of growth and earnings.² According to the *Book of Financial Terms*, “Blue Chip” is understood as “a share of a company that is financially very sound, with an impressive track record of earnings and dividends, and which is highly regarded for its competent management and/ or services. Examples in India are Hindustan Lever etc.”³ A blue chip company is generally understood to be one that gives continuous dividends, and perusal of the list of blue chip companies in India would show that most of these companies are traded at a price more than Rs. 1,000/-. I also note that the Noticee has not adduced any proof to show that the

2 E. Banks, *The Palgrave Macmillan Dictionary of Finance, Investment and Banking* (London, Palgrave Macmillan, 2010) pg. 59.

3 S. Sundararajan, *Book of Financial Terms* (New Delhi, Tata McGraw- Hill Publishing Company Limited, 2004) pg. 16.

recommendations and/or scrips under the two services are different. In view of the above, I am unable to agree with the explanation provided by the Noticee.

69. The Enquiry SCN also provided a comparison Table of the services which is as under:

Table No. 11

Details	Morning Shiners (Cash)	Intraday Bazooka (Cash)	Overnight Flame (Cash)	HNI Intraday Bazooka (Cash)
Salient Feature	Daily 1 - 2 intraday investment advice in cash market.	Daily 2 - 3 intraday investment advice in cash market.	There will be up to 1-2 calls per trading session.	There will be 1-2 trading calls on daily basis.
	1 Positional Call per week (On Demand).	1 Positional Call per week (On Demand).	Every call will have 2 targets and 1 Stop Loss, 2nd target to SL ratio is 2:1.	Maximum 2 open positions at a time.
	Every call will have 2 targets and 1 Stop loss, 2nd target to SL ratio is 2:1.	Every call will have 2 targets and 1 Stop loss, 2nd target to SL ratio is 2:1.	Follow up messages on every call.	Every call will have 2 targets and 1 Stop Loss, 2nd target to Stop Loss ratio will be 2:1.
	Follow up messages on every call.	Follow up messages on every call.	Strategy will be Breakout- BUY ABOVE <Price>& SELL BELOW <Price>.	Strategy will be Breakout- BUY ABOVE <Price>& SELL BELOW <Price>.
	Strategy will be Breakout- BUY ABOVE <Price>& SELL BELOW <Price>.	Strategy will be Breakout - BUY ABOVE <Price>& SELL BELOW <Price>.	Investment Advice only in NSE trading shares.	Follow up messages on every call.
	Investment Advice only in NSE trading shares.	Investment Advice only in NSE trading shares.	Daily Nifty review and trading zone update.	Investment Advice only in NSE trading shares.
	Daily Nifty review and trading zone update.	Daily Nifty review and trading zone update.	Pre-market Opening & Post Closing details.	Daily Nifty review and trading zone update.

	Pre-market Opening & Post Closing details.	Pre-market Opening & Post Closing details.	Daily “Market Mantra” while opening & “Market Wrap” after closing, market summary on email (on request).	Pre-market Opening & Post Closing details.
	Service available in Quarterly / Half Yearly and Annual subscription mode.	Daily “Market Mantra” while opening & “Market Wrap” after closing, market summary on email (on request).	Important events like RBI Policy, Inflation, GDP, IIP updates.	Daily “Market Mantra” while opening & “Market Wrap” after closing, market summary on email (on request).
	Fast and effective grievance redressal mechanism.	Important events like RBI Policy, Inflation, GDP, IIP updates.	Important World Market updates.	Important events like RBI Policy, Inflation, GDP, IIP updates.
	Accuracy expected (as per our previous performance): Approx 80%*.	Important World Market updates.	National & International economic calendar.	Important World Market updates.
		National & International economic calendar.	Service available in Quarterly / Half Yearly and Annual subscription mode.	National & International economic calendar.
		Service available in Quarterly / Half Yearly and Annual subscription mode.	Fast and effective grievance redressal mechanism.	Service available in Quarterly / Half Yearly and Annual subscription mode.
		Fast and effective grievance redressal mechanism.	Accuracy expected (as per our previous performance): Approx 75% – 85%*.	Fast and effective grievance redressal mechanism.
		Accuracy expected (as per our previous performance): Approx 80%*.		Accuracy expected (as per our previous performance): Approx 80% – 85%*.
Quarterly fees	Rs. 20,000	Rs. 16,000	Rs. 20,000	Rs. 1,50,000

Half-Yearly Fees	Rs. 35,000	Rs. 28,000	Rs. 35,000	Rs. 2,50,000
Yearly Fees	Rs. 55,000	Rs. 45,000	Rs. 55,000	Rs. 4,00,000

70. As regards ‘Morning Shiner (Cash)’ and ‘Intraday Bazooka (Cash)’ services, the Noticee has submitted that Morning Shiner caters to those clients who want to trade in early morning trading session and the Intraday Bazooka caters to clients who can trade throughout the day without any constraint. I note that the Noticee has not provided any proof that the clients subscribing to Intraday Bazooka do not receive advice pertaining to trading in the morning trading session. Therefore, I do not find the explanation provided by the Noticee convincing.

71. The Noticee has suggested that in the ‘Overnight Flame’ services are offered to clients who want to Buy Today and Sell Tomorrow whereas HNI Intraday Bazooka Cash are meant for high net worth investors who want to trade in market and the investment amount is Rs. 5 lakhs.

72. The relevant provisions of the IA Regulations, in this regard, are as under:

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.

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

...

...

...

6. Fair and reasonable charges

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

73. I note that the Black's Law Dictionary defines "fiduciary relationship"⁴ as under:

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

74. Furthermore, the Hon'ble Supreme Court in ***Central Board of Secondary Education and Anr. v. Adiya Bandopadhyay and Ors.***⁵ observed as under:

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

75. From the above, I note that an investment advisor has a duty to act for the benefit of his clients. However, in the facts of the present case, I note from paragraph nos. 68 to 72 that despite offering similar services, the Noticee is charging different prices (higher prices) for these services. I note that the Noticee has devised multiple packages (which are essentially offering same service) to earn huge amount of service fees from its clients.

76. Therefore, I find that the Noticee has failed in its responsibility to act in fiduciary capacity to its clients that is entrusted upon it under regulation 15 (1) of IA Regulations. The Noticee has also failed to abide by clauses 1, 2 and 6 of the Code of Conduct for Investment

⁴ Ed. B. Garner (9th ed., *Black's Law Dictionary*, 2009) at pg. 1402.

⁵ (2011) 8 SCC 497.

Advisors as specified in Schedule III of IA Regulations read with regulation 15 (9) of IA Regulations.

Issue No. VII: Whether the Noticee failed to communicate the risk profile and suitability assessment to clients and started investment advisory services without confirmation from client on Risk Profile and thereby violated regulation 17(a) of IA Regulations, Clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulation and regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992?

77. The Enquiry Report has observed that during the inspection, SEBI had sought information such as risk profiles, invoices, suitability assessment, KYC documents, products/ services sold, etc. for 41 sample clients from the Noticee. It was observed that Noticee has provided information for the following 15 clients only. However, the information provided by Noticee for the said 15 clients was also not complete in all respects. The below Table provides the details of the information submitted with respect to the said 15 clients.

Table No. 12

Sr · N o.	Name of clients	Information provided							
		KYC documents	RPF	Suitability Investment Report	Invoices	Payment received by Noticee	Service Sold	Acknowledgement of receipt of documents	Documents verified by CVL KRA
1	Barun Debnath	Yes	Yes	No	No	Yes (through client master)		Yes	Yes
2	Dharamraj Meena	Yes	Yes	No	No	Yes (through client master)		No	No
3	Hirdesh Kumar Tiwari	Yes	Yes	No	No	Yes (through client master)		Yes	Yes
4	Iqbal Miya MajidMiya Malek	Yes	Yes	No	No	Yes (through client master)		Yes	Yes
5	K. Sanjeevi	Yes	Yes	No	No	Yes (through client master)		No	Yes
6	K. Masoor Ahmead	Yes	Yes	No	No	Partly through client master		No	Yes
7	Kisan Lal Achha	Yes	Yes	No	No	Yes (through client master)		No	Yes
8	Nirendra Nath Adhikary	Yes	Yes	No	No	Yes (through client master)		Yes	Yes

9	Ram Krishna Prabhu	Yes	Yes	No	No	Partly through client master	Yes	Yes
10	Rajput Dinesh Kumar	Yes	Yes	No	No	Yes (through client master)	Yes	Yes
11	Suresh Nayak	Yes	Yes	No	No	Yes (through client master)	Yes	Yes
12	Soumit Pal	Yes	Yes	No	No	No	No	No
13	Vikram Ahir	Yes	Yes	No	No	Partly through client master	No	No
14	V. Balashanugam	Yes	Yes	No	No	No	No	No
15	Laxminarayan Dhannalal Sangtani	Yes	Yes	No	No	Yes (through client master)	No	Yes

78. It was observed that during the course of inspection, it was informed by IA that subsequent to risk profiling, they had sent emails to clients, forwarding risk assessment, suitability investment report, KYC and FATCA declaration. IA had also informed that in the said email, Noticee had requested clients to check all the documents such as RPF, suitability investment report, KYC, etc. and acknowledge the same before starting the services. In this regard, I note that the Noticee has forwarded barely legible copies of emails sent to and received from the following clients/ clients. Nevertheless, on analysis of the same, I note that the Noticee has sent emails to his clients purportedly attaching copies of KYC, “RPM”, “Suitability Form” and “Investment Suitability Report”. I note in response to the same, the investors have replied stating “Ok”, “Acknowledge”. The details are as under:

Table No. 13

Sr. No.	Name of the Client	Response submitted
1	Barun Debnath	Ok
2	Hirdesh Kumar Tiwari	Acknowledgement
3	Iqbal Miya MajidMiya Malek	Yes, I confirm
4	Nirendra Nath Adhikary	Ok
5	Ram Krishna Prabhu	Acknowledge (also provided RPF)
6	Rajput Dinesh Kumar	Acknowledge
7	Suresh Nayak	I acknowledge receipt of agreement

79. The Noticee has also submitted a “*Declaration Letter to Investment Advisor regarding suitability of advice as prescribed under SEBI (Investment Advisor) Regulations, 2013*”

with respect to the aforesaid clients wherein it is stated that the KYC and Risk Profiling has been communicated to them.

80. I note that the Noticee has provided copies of the emails and the Declaration Letter only with respect to the aforesaid 7 clients instead of 41 clients for which the data was sought by the SEBI Inspection team. Furthermore, the Noticee has not adduced the RPF and Investment Suitability Report which was forwarded to the aforesaid 7 clients/ investors. I note that in the absence of the supporting documents, I am unable to accept the Noticee's contention that the same were communicated to the clients.
81. I note that the Enquiry Report has observed that the risk profiling of the clients was done telephonically or through email by Noticee without obtaining supporting documents to verify the authenticity of the documents submitted by investors. The Enquiry Report also observed that as the Noticee was not sending Risk profile form, scores of risk profile, Suitability Investment report etc. to its clients, it has failed to obtain confirmation from the clients whether products are suitable for them. As a result, the Enquiry Report concludes that the clients have no understanding of its risk profile and products suitable for them.
82. Based on the above analysis in paragraph nos. 78 to 81, I agree with the finding of the DA in the Enquiry Report. I note that an IA shall ensure that the risk profile of the client is communicated to them after risk assessment is done in terms of regulation 16 (e) of the IA Regulations. However, I find that the Noticee has failed to do the same and thereby violated regulation 16 (e) of the IA Regulations.

Issue No. VIII: Whether the Noticee provided Investment Advisory services prior to risk profiling thereby violating regulation 17(a) of IA Regulations, clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992?

83. The Enquiry Report has observed that the Noticee has sold products to the clients and charged advisory fees even before the risk profiling of the client was completed. In this regard, I note from the Enquiry SCN that the details regarding the date of payment of fees, the services tenure date, date of carrying out risk profiling, etc. with respect to some of the sample clients/ complainants were provided as under. The data provided in response to Enquiry SCN is also captured in the last column in the table:

Table No. 14

Sl. No.	Name	First Date of Payment made by Client	Dates of Risk Profiling	Services Tenure Start Date	Date of Invoice	Amt. of Fees paid (Rs.)	Data provided in response to Enquiry SCN
1	Abhishek Rajannavar	24.11.2018	23.11.2018	27.11.2018	24.11.2018	4,000	-
2	Barun Debnath	Not provided by IA	02.02.2019	06.02.2019	Not provided by IA	1,000	Service charges paid on 04.02.2019
3	Hridesh Kumar Tiwari	10.12.2018	10.12.2018	12.12.2018	Not provided by IA	3,500	Date of invoice is 10.12.2018
4	Nirendra Nath Adhikary	Not provided by IA	10.01.2019	14.01.2019	Not provided by IA	4,130	Service charges paid on and Date of invoice is 10.01.2019
5	Dharam Raj Meena	Not provided by IA	29.08.2018	31.08.2018	Not provided by IA	7,001	Service charges paid on and Date of invoice is 30.08.2018
6	K. Sanjeevi	Not provided by IA	09.07.2018	06.07.2018	Not provided by IA	7,007	Service charges paid on and Date of invoice, not provided
7	Kisan Lal Achha	Not provided by IA	02.07.2018	27.06.2018	Not provided by IA	50,000	Service charges paid on and Date of invoice, not provided
8	Laxminarayan Dhannalal Sangtani	Not provided by IA	20.05.2019	23.05.2019	Not provided by IA	20,000	Service charges paid on and Date of invoice, not provided
9	Kausar Banu	21.02.2018	Not provided by IA and complainant	22.02.2018	21.02.2018	3,015	Date of risk profile, not provided
10	Ram Krishna Prabhu	02.02.2019	02.02.2019	05.02.2019	02.02.2019	6,608	-

11	Rajput Dinesh Kumar Jayprakash Singh	15.10.2018	15.10.2018	19.10.2018	16.10.2018	3,500	-
12	Suresh Nayak	Not provided by IA	26.03.2019	27.03.2019	Not provided by IA	35,361	Service charges paid on and Date of invoice, not provided
13	Vikram Ahir	10.01.2018	29.01.2019	Not specified	10.01.2018	4000	-
14	V. Balashanugam	13.07.2018	14.07.2018	16.07.2018	13.07.2018	2,000	-
15	Iqbal Miya MajidMiya Malek	Not provided by IA	22.11.2018	30.11.2018	Not provided by IA	15,000	Date of invoice is 24.11.2018

84. I note that the data pertaining to the date on which service charges were paid and date of invoice has still not been provided by the Noticee, in respect of clients such as Mr. Kisan Lal Achha and Mr. Laxminarayan Dhannalal Sangtani.

85. I note from the aforesaid table that the advisory services of Mr. K. Sanjeevi were started on July 06, 2018 and Risk profile was carried out on July 09, 2018. The Noticee has not submitted any response regarding the same. I am also cognizant of the fact that the aforesaid data only pertains to a sample size of 15 clients, and that there could be many more such instances where risk profiling was done after starting the services. It is relevant to mention here that details of 41 sample clients were sought from the Noticee, however, the Noticee itself has provided information pertaining to only the aforesaid 15 clients, as a result, SEBI could not further analyse and substantiate/ dismiss the charge citing more instances.

86. I note that as per regulation 17(a) of IA Regulations, the IA has to ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client. It is observed from the above mentioned table that Dollar had sold its advisory products and collected fees from the clients, at the time of risk profiling without receipt of confirmation from the clients regarding risk assigned and services sold, whether the services are appropriate based on his investment goal.

87. Therefore, I note that the Noticee was selling its products and charging advisory fees from the clients without undertaking risk profiling of client, and therefore, the Noticee has violated regulation 17(a) of IA Regulations. Further, on account of the above conduct, the Noticee has violated clauses 1, 2 and 4 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.
88. I note that the Hon'ble Supreme Court in *Kanaiyalal Baldevbhai Patel v. SEBI*⁶ has observed that in the context of the PFUTP Regulations a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. I note that the Noticee's act of selling its products and charging advisory fees from the clients without undertaking risk profiling of client attracts regulation 4(1) of PFUTP Regulations which states that no person shall indulge in an unfair trade practice in securities market.

Issue No. IX: Whether the Noticee has selected and sold package/ product/services without any regard to the financial situation, risk tolerance level/ loss absorbing capacity of the client violated regulations 15(1), 17(a), 17(d) and 17(e) of IA Regulations, Clauses 1, 2 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and regulations 3(a), (b), (c) and (d) of PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of SEBI Act, 1992?

89. I note from paragraph nos. 73 and 74 of the Enquiry Report that the DA analyzed the findings of the suitability of advice for a few of the sample clients namely, Mr. Srinivasa Raghu Chakravarthi, Ms. Ladli Sharn Chopra, Mr. Ramkrishna Prabhu, Mr. Rajput Dinesh Kumar Jayprakash Singh, Mr. V. Balashanugam, Mr. Suresh Nayak, Mr. Dharamraj Meena, Mr. Laxminarayan Dhannalal Sangtani, Mr. Barun Debnath, Mr. K. Sanjeevi, Mr. Hirdesh Kumar Tiwari, Mr. K. Masoor Ahmed, Mr. Kisanlal Achha, Mr. Vikram Ahir and Ms. Kausar Banu and observed that the Noticee has selected and sold package/ product/services without any regard to the financial situation, risk tolerance level/ loss absorbing capacity of its clients. The Enquiry Report also observed that the Noticee has

⁶ (2017) 15 SCC 1.

also ignored the amount its clients are willing to invest as well as annual income of the clients while selling advisory products to the clients.

90. The findings of the suitability of advice for few of the sample clients are provided as under:

(i) Srinivasa Raghu Chakravarthi: -

- The Inspection Report has observed that the client is senior citizen having age of more than 75 years (Date of Birth: October 03, 1946, service start date May 29, 2018) and the fees of Rs. 8, 21,118/- was collected/ charged to client for selling various services as specified in below mentioned table:

Table No. 15

Services sold	Service start Date	Service end Date	Grand Total (Rs.)
HNI Intraday Bazooka (Cash)	29.05.2018	27.07.2018	50,000
HNI Intraday Bazooka (Cash)	28.07.2018	27.08.2018	25,000
Premium – Cash	22.06.2018	20.09.2018	60,000
Blue Chip (Cash)	06.07.2018	16.12.2018	60,000
DAFS Point Plan (Future)	19.07.2018	08.10.2018	45,000
Big Boys (Future)	19.07.2018	22.10.2018	45,100
Blue Chip (Cash)	16.12.2018	31.12.2018	3,600
Blue Chip (Future)	19.07.2018	08.10.2018	31,500
Big Boys (Future)	23.10.2018	19.07.2019	75,000
HNI Intraday Bazooka (Future)	24.07.2018	13.09.2018	85,000
Blue Chip (Future)	08.10.2018	31.01.2019	36,918
HNI Intraday Bazooka Currency	27.08.2018	22.10.2018	77,000
HNI Intraday Bazooka Currency	23.10.2018	18.12.2018	77,000
HNI Intraday Bazooka (Cash)	21.09.2018	12.11.2018	75,000
HNI Intraday Bazooka (Option)	25.10.2018	17.12.2018	75,000
Intraday Bazooka (Option)	29.10.2018	23.12.2019	2,16,000
DAFS HNI Point Plan (Cash)	12.12.2018	15.03.2019	1,54,880
Total			8,21,118

- I note that as per regulation 16 (b) of IA Regulations, the Noticee shall ensure that the IA has a process for assessing the risk a client is willing to take including assessing the client's capacity for absorbing loss. I note that an investor's loss absorbing capacity is dependent on several factors including the level of income of the client, age factor, number of dependents, present source of income, etc. At the age of 75, a person wants safety of his investments and certainty of cash flow. By nature, derivatives products are leveraged products. These products are

considered as very risky in the financial world. By selling products such as DAFS Point plan (Future), Big boys (Future), Blue Chip (Future), HNI Intraday Bazooka (Future), HNI Intraday Bazooka (Currency), HNI Intraday Bazooka (Option), Intraday (Option) to a senior citizen, it, prima-facie, appears that Dollar is mis-selling the products to its clients without making the senior citizen client understand the risk involved in it.

- I note that the Noticee in his reply has stated that the said client started services with the Noticee when he was around 72 years and had submitted that he earns an annual income of more than Rs. 5 lakhs. Despite the same, the Noticee has collected Rs. 8, 21,118/- as IA fees from the client. Furthermore, the Noticee has sold products meant for HNI to a client who claims his income is merely more than Rs. 5 lakhs. I also note that as per the KYC document submitted by the Noticee (Annexure 33C to its reply dated December 09, 2021) of the client which interestingly pertains to ECS Financial Services, the client had submitted that he is retired person and his gross annual income is between Rs. 1 – 5 lakhs. This should have raised a red flag for the Noticee and it ought to have asked the client to provide supporting income proof. The Noticee failed to do so.

(ii) Ladli Sharn Chopra

- The Inspection Report has observed that the client is senior citizen having age of around 61 years (Date of Birth: May 06, 1958; service start date: September 13, 2019). Further, the fees of Rs. 4,87,970/- was collected/ charged to client for selling various services as specified in below mentioned table:

Table No. 16

Segment	Service start Date	Service end Date	Grand Total
Big Boys (Option)	13.09.2019	27.11.2019	20,000
Big Boys (Option)	05.06.2019	13.09.2019	35,000
Intraday Bazooka (Cash)	01.11.2018	22.02.2019	20,000
Blue Chip (Option)	02.10.2018	15.11.2018	20,000
Big Boys (Option)	27.12.2018	05.06.2019	55,000
Big Boys (Option)	20.07.2018	27.12.2018	70,000
HNI Intraday Bazooka (Option)	03.12.2018	19.07.2019	55,200

Blue Chip (Option)	17.07.2018	02.10.2018	30,000
HNI Intraday Bazooka (Option)	05.11.2018	03.12.2018	20,000
DAFS HNI Point Plan (Option)	29.06.2018	02.08.2018	55,000
HNI Intraday Bazooka (Option)	06.09.2018	05.11.2018	39,270
HNI Intraday Bazooka (Option)	14.06.2018	06.09.2018	50,000
Intraday Bazooka (Cash)	21.05.2020	11.09.2020	18,500
Total			4,87,970

- I note that as per regulation 16 (b) of IA Regulations, the Noticee shall ensure that the IA has a process for assessing the risk a client is willing to take including assessing the client's capacity for absorbing loss. A senior citizen, (61-year-old), generally wants safety of its investments and certainty of cash flow. By nature, derivatives products such a DAFS Point plan (Future), Big boys (Option), Blue Chip (Option), HNI Intraday Bazooka (Option), DAFS HNI Point Plans etc. are leveraged products. These products are considered as risky in the financial world. However, I note that the Noticee has sold the services as mentioned to a senior citizen. I also note that the Noticee has not provided any evidence to show the willingness of the client to deal in such risky products.

(iii) Rajput Dinesh Kumar Jayprakash Singh

- I note that Mr. Rajput Dinesh Kumar Jayprakash Singh, has filed a complaint in SCORES against Dollar having complaint number SEBIE/MP19/0002269/1. Vide email dated January 10, 2020 and March 16, 2020, the complainant has submitted details regarding payments made by him to Dollar and invoices received from Dollar.
- I note that as per the RPF dated January 15, 2018, as provided by the Noticee during the course of inspection, the client is a salaried employee with annual income between Rs. 3 to 5 lakh, a trading experience of 1-2 years and proposed investment amount i.e. the amount the client wanted to invest was less than Rs. 1 lakh.
- The details of payment made by Mr. Rajput Dinesh Kumar Jayprakash Singh to Dollar are given below:

Table No. 17

Invoice Date	Payment Date	Service	Service start Date	Service End Date	Total Amount (Rs.)
16.10.2018	15.10.2018	Morning Shiners(Cash)	19.10.2018	08.11.2018	3,500
19.10.2018	19.10.2018	Morning Shiners(Cash)	01.01.2019	19.02.2019	9,350
19.10.2018	17.10.2018	Morning Shiners(Cash)	3 months' service from 09.11.2018 to 31.12.2018 (as per invoice no. DAFS/18-19/3207 dated October 19, 2018)		10,000
19.10.2018	18.10.2018	Intraday Bazooka Cash	22.10.2018	06.11.2018	2,150
19.10.2018	18.10.2018	Big Boys (cash)	22.10.2018	02.11.2018	10,000
20.10.2018	19.10.2018	Morning Shiners(Cash)	20.02.2019	29.05.2019	21,500
23.10.2018	Not provided	Morning Shiners(Cash)	03.06.2019	03.10.2019	27,000
Total					83,500

- I note from the above table that the Noticee has charged Rs. 83,500/- from the client within a period of 7 days despite the client mentioning that his annual income is between Rs. 3 to Rs. 5 lakh and proposed investment amount less than Rs. 1lakh.

(iv) V. Balashanugam

- Mr. V. Balashanmugam, has filed a complaint in SCORES against Dollar having complaint number SEBIE/MP19/0000666/1. As per the RPF dated July 14, 2018, as provided by the Noticee during the course of inspection, it is noted that the client has a gross annual income between Rs. 3 - 5 lakhs, with trading experience of 1 to 2 years. Investment objective of the client, as specified in RPF was long term/ short term and intraday investment in securities market. However, I note that the fees of Rs. 3,60,000/- was collected/ charged to client during 2 months' period for selling various services as specified in the below mentioned table:

Table No. 18

Invoice Date	Date of payment	Service	Service Start Date	Service End Date	Total Amount (Rs.)
13.07.2018	Not provided	Morning Shiners(Cash)	3 months services from 16.07.2018	27.07.2018	2,000
25.07.2018	25.07.2018	DAFS Point Plan(Cash)	15.08.2018	31.10.2018	40,000
30.08.2018	30.08.2018	Big boys(Cash)	14.09.2018	19.02.2019	76,800
30.07.2018	28.07.2018	Blue Chip(Cash)	01.11.2018	22.01.2019	40,000
30.07.2018	28.07.2018	Big Boys Cash	01.11. 2018	23.01.2019	40,000
30.07.2018	30.07.2018	Big Boys Cash	01.01.2019	13.11.2019	33,600
30.07.2018	30.07.2018	Blue Chip Cash	14.11.2019	24.01.2020	33,600
31.07.2018	31.07.2018	Blue Chip Cash	27.01.2020	26.02.2020	11,200
16.08.2018	14.08.2018	Blue Chip Cash	27.02.2020	11.09.2020	76,800
03.09.2018	01.09.2018	Blue Chip Cash	14.09.2020	02.10.2020	6,000
Total					3,60,000

- I note that the above amount of fees i.e. Rs.3,60,000/- charged by the client appears to be exorbitant, taking into consideration the gross annual income of the client.

(v) Hirdesh Kumar Tiwari

- Mr. Hirdesh Kumar Tiwari has filed a complaint against Dollar having complaint number SEBIE/MP19/0001648/1. As per RPF provided by Dollar during the course of inspection, it was noted that client's annual income was between Rs. 3 to 5 lakhs. Furthermore, the client has trading experience of 1-2 years and the proposed investment amount for the client was less than Rs. 1 lakh. However, I note that fees of Rs. 1,62,000/- was charged to the client for selling various services which more than 50 % of the proposed investment amount and 50% of his annual income. The details as specified in below mentioned table:

Table No. 19

Invoice Date	Date of payment	Service sold	Service Start Date	Service End Date	Total Amount (Rs.)
10.12.2018	10.12.2018	Intraday Bazooka (Cash)	12.12.2018	07.01.2019	3,500
11.12.2018	11.12.2018	Morning Shiners (Cash)	12.12.2018	16.03.2020	71,500
04.01.2019	04.01.2019	Intraday Bazooka (Cash)	08.01.2019	30.04.2019	18,922
04.01.2019	04.01.2019	Intraday Bazooka (Cash)	01.05.2019	27.09.2019	26,078
04.01.2019	04.01.2019	Intraday Bazooka (Cash)	30.09.2019	14.11.2019	12,000
04.01.2019	04.01.2019	Morning Shiners (Cash)	17.03.2020	07.08.2020	30,000
Total					1,62,000

- From the above table, it is seen that Dollar has collected Rs. 1,62,000/- within a time gap of less than 30 days from the client for selling services such as Intraday Bazooka and Morning Shiners which as noted above are similar services. As per RPF, client proposed investment amount was less than Rs. 1,00,000/- and annual income was less than Rs. 3 lakh. However, Dollar has charged Rs. 1,62,000/- as advisory fees.

(vi) Mr. Vikram Ahir: -

- Mr. Vikram Ahir has lodged a complaint in SCORES, having complaint no. SEBIE/MP19/0001983/1. Mr. Vikram Ahir vide email dated January 06, 2020 submitted invoices, RPF and suitability investment report received by him from the Noticee. As per the RPF dated January 29, 2019 done by Dollar (copy of RPF placed as Annexure- 24), the client has gross annual income between Rs. 3 lakhs to Rs. 5 lakhs, with trading experience of 1-2 years. Further, proposed investment amount required by client to invest was between Rs. 1-2 lakh.

- The payments made by Mr. Vikram Ahir and invoices received by him from Dollar is tabulated below.

Table No. 20

Invoice Date	Payment Date	Service	Start Date	End Date	Total Amount (Rs.)
10.01.2018	09.01.2018	Intraday Stock Cash	15 days service		4,000
13.01.2018	11.01.2018	Intraday Stock Cash	01.03.2018	30.03.2018	31,000
15.01.2018	Not available	BTST-Options	30.05.2018	28.08.2018	54,498
15.01.2018	12.01.2018	BTST-Cash	01.03.2018	30.05.2018	65,502
17.01.2018	Not available	Not available	Not available	Not available	20,000
17.01.2018					25,000
18.01.2018	Not available	BTST-Options	02.04.2018	29.06.2018	50,000
05.02.2018	02.05.2018	BTST/STB T-Futures	01.06.2018	29.06.2018	20,000
17.02.2018	15.02.2018	Positional Cash	01.05.2018	26.07.2018	81,000
28.02.2018	28.02.2018	Positional Cash	01.03.2018	29.05.2018	55,000
28.03.2018	Not available	HNI Cash	01.06.2018	22.06.2018	19,800
28.03.2018	Not available	BTST/STB T-Futures	10.04.2018	06.06.2018	15,000
28.03.2018	Not available	BTST-Options	03.04.2018	13.07.2018	40,000
28.03.2018	28.03.2018	MCX Base Metals/ Energy	06.06.2018	10.09.2018	20,314
Not available	04.05.2018	Not available	Not available	Not available	55,000
31.05.2018	30.05.2018	Currency-Intraday	31.05.2018	20.08.2018	18,000
29.01.2019	29.01.2019	M2F Positional	31.01.2019	12.04.2019	26,727
Total					5,11,343

- As per RPF, the client has stated that he wants to invest Rs. 1 to Rs. 2 lakhs and his annual income is between Rs. 3 lakh to Rs. 5 lakh. Thus, by collecting Rs. 5,11,343/- from the client, I note that the Noticee has ignored the client's interest and considered its own interest.

91. Based on the aforesaid, I note that the Noticee has selected and sold package/ product/services without any regard to the financial situation, risk tolerance level/ loss absorbing capacity of the client. I also note that the Noticee has also ignored the amount client is willing to invest as well as annual income of the client while selling advisory products to the clients. Furthermore, the Noticee has charged disproportionate/ unreasonable fees/ charges towards its services as compared to client's income/ investment amount which indicates that the Noticee has not followed the requirement of suitability advice to its clients.

92. At this stage, it is pertinent to quote the relevant provisions of law:

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.

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;

(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.

THIRD SCHEDULE

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.

...

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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.

SEBI Act:

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

...

...

...

(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;

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

...

...

...

(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.

93. In view of the above, I find that the Noticee has kept its own interest ahead of his clients' interest and has failed to take due care and diligence to ascertain risk profile of the client and to offer them suitable advice. Therefore, I find that the Noticee has violated regulations 15(1), 17(a), 17(d) and 17(e) of IA Regulations read with Clauses 1, 2 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

94. Incidentally, I also note from the complaints of the clients such as Mr. Rajput Dinesh Singh (Annexure 29 to the Inspection Report) that the Noticee and its representatives used to approach investors and brief them about the services which would give the investor a profit of certain amount. When the investor would say that he has only a certain amount, the representative would ask them to pay the said amount. Later on the representative would say that if the balance amount is not paid, the earlier invested amount would not be returned. In view of the above, I find that the practice adopted by the Noticee noted at paragraph nos. 90 and 91, operates as deceit on its clients and therefore, is liable to attract liability under section 12A (c) of the SEBI Act read with Regulation 3 (d) of the PFUTP Regulations.

Issue No. X: Whether the Noticee was charging Advisory fees before expiry of tenure of existing service/ collecting multiple payments in short period thereby violating regulation 3(a), (b), (c), (d) of PFUTP Regulations, 2003 read with section 12A(a), (b) and (c) of SEBI Act and clauses 1, 2 and 6 of Code of Conduct for Investment Advisers as provided in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations?

95. The Enquiry Report has observed that the Noticee was selling the same advisory advisory products/services to the clients before completion of the tenure of the previous service. I note from the Inspection Report along with all annexures (total 634 pages) which was shared with the Noticee during the inspection held on July 08, 2022, that with respect to the client, Mr. Ram Krishna Prabhu, before the completion of tenure of earlier service, the same service was sold to the client repeatedly and payments were received by the Noticee much earlier than the beginning of the actual service period of the product. The detailed analysis for the said client is reproduced as under:

Table No. 21

Payment Date	Service Name	Tenure Start date	Tenure End date	Paid Amount (Rs.)
02.02.2019	Morning Shiners(Cash)	05.02.2019	05.03.2019	6,608
02.02.2019	Morning Shiners(Cash)	06.03.2019	08.04.2020	50,000
09.02.2019	M2F Positional Cash	11.02.2019	23.10.2019	81,001
14.02.2019	M2F Positional Cash	24.10.2019	10.07.2020	81,001

Payment Date	Service Name	Tenure Start date	Tenure End date	Paid Amount (Rs.)
19.02.2019	Big Boys(Cash)	21.02.2019	13.05.2019	39,350
26.02.2019	M2F Positional (Future)	01.03.2019	13.06.2019	39,349
16.03.2019	HNI Intraday Bazooka(Future)	18.03.2019	18.04.2019	50,400
22.03.2019	HNI Intraday Bazooka(Future)	19.04.2019	18.06.2019	33,600
02.04.2019	HNI Intraday Bazooka(Future)	19.06.2019	09.08.2019	84,000
25.04.2019	HNI Intraday Bazooka(Future)	12.08.2019	02.09.2019	34,000
30.04.2019	HNI Intraday Bazooka(Future)	03.09.2019	03.10.2019	50,000
22.05.2019	HNI Intraday Bazooka(Future)	04.10.2019	01.11.2019	45,360
23.05.2019	HNI Intraday Bazooka(Future)	04.11.2019	19.11.2019	25,000
24.05.2019	Intraday Bazooka Index(Future)	27.05.2019	17.10.2019	25,000
29.05.2019	HNI Intraday Bazooka(Future)	20.11.2019	10.12.2019	33,000
04.06.2019	HNI Intraday Bazooka(Future)	11.12.2019	13.01.2020	50,000
04.07.2019	HNI Intraday Bazooka(Future)	14.01.2020	29.01.2020	25,000
05.07.2019	HNI Intraday Bazooka(Future)	30.01.2020	03.02.2020	5,000
Ramkrishna Prabhu Total				7,57,671

96. From the aforesaid Table, I note that on February 02, 2019, the Noticee sold the service of Morning Shiners Cash twice for the period starting from February 05, 2019 to March 05, 2019 and for the period March 06, 2019 to April 08, 2020. Similarly, on March 16, 2019 and March 22, 2019, the Noticee had sold the package of HNI Intraday Bazooka (Future) to the client for the period starting from March 18, 2019 to April 18, 2019 and April 19, 2019 to June 18, 2019 respectively. Furthermore, on February 09, 2019 and on February 14, 2019, M2F Positional Cash services were sold for the period starting from February 11, 2019 to October 23, 2019 and October 24, 2019 to July 10, 2020 respectively. I note that even before completion of one service another service was sold which would commence after at a later period.

97. In addition to the above, I note that in the months of April, 2019 and May, 2019, the Noticee has sold the package of HNI Intraday Bazooka Future six times (three times for

each month) to the client for the service period starting from June 19, 2019 till December 10, 2019. Similarly, in the months of June 2019 and July 2019, the Noticee had sold the same service i.e. HNI Intraday Bazooka Future to the same client twice, the service periods of which extended up to February, 2020. I note that even before completion of tenure of earlier service, same service was sold to client repeatedly and payments were received by the Noticee in lieu of the same in advance.

98. The Noticee in his reply dated August 29, 2022 has placed reliance on his reply dated December 09, 2021 and annexures thereto, submitted in response to the Enquiry SCN. In the said reply dated December 09, 2021, the Noticee had stated that the client Mr. Ram Krishna Prabhu was a qualified Chartered Accountant and was satisfied by the services provided by the Noticee. As regards, the Morning Shiner services, the Noticee has submitted that the client paid Rs. 6,608 and Rs. 50,000/- on February 02, 2019, as a discount was being offered on the services wherein Rs. 56,008/- would be payable by the client for a service period of 14 months. The Noticee has also submitted that as the client paid the amount in two separate instalments, separate bills were generated. However, I note that the Noticee has not produced any email/ communication sent by the Noticee conveying that such a discount package is being offered on the Morning Shiner services and acceptance of the same by the client. In the absence of the same, I am unable to agree with the Noticee's contention that the payment was for a discounted service of 14 months. Furthermore, I note that the payment of Rs. 6,608 and Rs. 50,000/- was made on the same day i.e. on February 02, 2019, and if the payment was received in lieu of the same service for 14 months, I am unable to understand the necessity of generating two invoices.
99. As regards the services of M2F Positional Call, the Noticee has submitted that the client wanted to subscribe to positional services in Cash, Futures and Options segment. The three services were provided to the client but billed under M2F Positional Cash. The Noticee has provided only a copy of email dated February 14, 2019 wherein the details of Noticee's M2F services with respect to Cash, Futures and Options segment was provided. However, I note that the Noticee has failed to provide proof of acceptance of the same by the client. In view of the above, I note that the Noticee's contention that all the three services were provided to the client but billed under M2F Positional Cash is not convincing.

100. It is also pertinent to note that the client/ complainant, Mr. Ram Krishna Prabhu in his email dated January 14, 2020 (Annexure 15 to the Inspection Report) has stated that the Noticee's representatives would force him to make payments in lieu of the services/ packages offered by it. Furthermore, the complainant has stated despite taking large sums of money from him, the Noticee discontinued his services in September 2019, which ought to have been provided till July 2020. The extract of the email is reproduced as under:

*“Atleast before 3 or 4 days to every payments (sic), the executives from this treacherous Dollar Advisory, used to call from any of the below numbers to my mobile no. *****7709 and force, embarrass me to pay the hefty amount of service charges immediately, call duration ranging from 20 minutes to 45 minutes.... They had stopped trading advice service through phone call from 06-09-2019 onwards. According to the invoices their services should have been continued till: Trading in Cash till 08-04-2022 and Trading in M2F Position Cash – Till 10-07-2020.”*

101. I note that the Noticee has adduced a satisfaction letter dated February 26, 2019 received from the client, Mr. Ram Krishna Prabhu wherein it has been stated that *“I am satisfied with the services provided by you. I am getting services as per my choice and I don't have any doubt in that. I know that execution of services will solely be my responsibility. I know very well that investment in markets are full of risk, but I also know that market are potential too.”* I note from Annexure 35 to the Noticee's reply dated December 09, 2021 that on February 26, 2019, the Customer Care team of the Noticee provided the sample Satisfaction letter to the client vide email sent at 01:30 PM. Vide his reply dated February 26, 2019, the client provided scanned copy of the signed Satisfaction Letter regarding the services at 05:01 PM. I note that by February 26, 2019, the client had made a payment of Rs. 2,97,309/-. I note that having paid a considerable amount to the Noticee, any investor would be in a vulnerable position and therefore, presumably the client, Mr. Ram Krishna Prabhu immediately on the same day provided the Satisfaction Letter to the Noticee when the same was sought from him. Therefore, the reliance of the Noticee on the Satisfaction Letter is on a weak ground and cannot be accepted in light of the contents of the email forwarded by the complainant to SEBI.

102. I also find that Noticee has failed to act honestly, fairly and diligently while dealing with clients. Hence, I conclude that Noticee has violated clauses 1, 2 and 6 of Code of Conduct

for Investment Advisers as provided in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations.

103. I find that the Noticee's practice, more specifically described at paragraph nos. 96 to 101 operate as deceit upon its clients and therefore, operates as deceit on its clients and therefore, is liable to attract liability under section 12A (c) of the SEBI Act read with Regulation 3 (d) of the PFUTP Regulations.

Issue No. XI: Whether the Noticee failed to comply with the SEBI Circulars in relation to compliance with provisions of the Prevention of Money Laundering Act and Anti Money Laundering Guidelines?

104. SEBI introduced the "Guidelines on Anti Money Laundering Standards" vide Circular dated January 14, 2006 bearing no. ISD/CIR/RR/AML/1/06 for all intermediaries registered with SEBI under section 12 of the SEBI Act. In terms of Clause 4 of the said Circular, all intermediaries have been advised to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place within one month from the date of the circular. The intermediaries have also been advised to designate an officer as 'Principal Officer' who would be responsible for ensuring compliance of the provisions of the The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA"). The Circular also stipulates that the names, designation and addresses (including e-mail addresses) of 'Principal Officer' shall also be intimated to the Office of the Director-Financial Intelligence Unit (hereinafter referred to as "FIU"), 6th Floor, Hotel Samrat, Chanakyapuri, New Delhi -110021, India on an immediate basis.
105. The Noticee vide email dated March 03, 2020 (Annexure 27 to the Inspection Report), submitted that Mr. Ravi Mohta, proprietor of Dollar was appointed as Principal Officer and intimation regarding the same was sent to FIU on August 09, 2018. I note that the Noticee was granted certificate of registration as investment adviser on December 28, 2015. Therefore, I note that there was a considerable delay of 955 days i.e. (from date of registration as IA December 28, 2015 to date of appointment of Principal Officer on

August 09, 2018) in appointment of Principal Officer and the communication of the same to FIU. I find that the same is in violation of provisions of SEBI Circular January 18, 2006 read with SEBI Master Circular dated December 31, 2010 and SEBI Master Circular dated July 04, 2018.

106. I note that SEBI vide Circular CIR/MIRSD/1/2014 dated March 12, 2014 amended the SEBI Master Circular dated December 31, 2010 whereby Clause 14.2 was inserted and the same is reproduced as under:

14.2 Appointment of a Designated Director

i. In addition to the existing requirement of designation of a Principal Officer, the registered intermediaries shall also designate a person as a 'Designated Director'. In terms of Rule 2 (ba) of the PML Rules, the definition of a Designated Director reads as under:

“Designated Director means a person designated by the reporting entity to ensure overall compliance with the obligations imposed under chapter IV of the Act and the Rules and includes —

- (i) the Managing Director or a Whole-time Director duly authorized by the Board of Directors if the reporting entity is a company,*
- (ii) the managing partner if the reporting entity is a partnership firm,*
- (iii) **the proprietor if the reporting entity is a proprietorship concern,***
- (iv) the managing trustee if the reporting entity is a trust,*
- (v) a person or individual, as the case may be, who controls and manages the affairs of the reporting entity if the reporting entity is an unincorporated association or a body of individuals, and*
- (vi) such other person or class of persons as may be notified by the Government if the reporting entity does not fall in any of the categories above.*

ii. In terms of Section 13 (2) of the PML Act (as amended by the Prevention of Money-laundering (Amendment) Act, 2012), the Director, FIU-IND can take appropriate action, including levying monetary penalty, on the Designated Director for failure of the intermediary to comply with any of its AML/CFT obligations.”

107. I note from Annexure 28 to the Inspection Report that the Noticee vide email dated March 03, 2020 has stated that he is forwarding the details of designated director as submitted to FIU. However, on perusal of the trailing email dated July 20, 2018 addressed to FIU, I note that the same is titled “online applications for Reporting entity registration”. Furthermore, the attachment to the said email dated March 03, 2020 is also in connection with reporting entity registration request. I note that the Noticee has failed to designate a person as a

“Designated Director” and therefore, I find that the Noticee has violated SEBI vide Circular CIR/MIRSD/1/2014 dated March 12, 2014.

108. I note that in terms of SEBI Circular dated January 14, 2006 bearing no. ISD/CIR/RR/AML/1/06, all intermediaries registered with have been advised to ensure that a proper policy framework as per the Guidelines on anti-money laundering measures is put into place within one month from the date of the circular. Vide email dated March 02, 2020 and March 03, 2020, the Noticee was asked to furnish details with regard to PMLA policy, date of training, subject of training, number of participants, materials distributed, attendance sheet of employees, etc. The said information was also sought from the Noticee on March 06, 2020 during recording of his statement on oath wherein the Noticee had undertaken to submit its PMLA policy within seven days. Further, vide emails dated March 17, 2020 and March 24, 2020, the Noticee was again advised to furnish the details in this regard. I note that it is only in response to Enquiry SCN that the Noticee vide its reply dated December 09, 2021 (Annexure 40) has provided its “Anti – Money Laundering Policy”. I note that sufficient time had elapsed since the time the PMLA policy was sought by the Noticee and the same was provided by the Noticee after the lapse of a long period. Therefore, I am unable to believe that the Noticee had a policy framework in place in connection with PMLA policy and SEBI Circular. Therefore, I find that the Noticee has violated SEBI Circular dated January 14, 2006 bearing no. ISD/CIR/RR/AML/1/06 read with SEBI Master circular dated December 19, 2008, as amended vide SEBI Master Circular dated February 12, 2010, December 31, 2010, July 4, 2018 and October 15, 2019, w.r.t. Guidelines on Anti Money Laundering measures.
109. I note that as per Clause 13.2 of the SEBI Master Circular ISD/AML/CIR-1/2008 dated December 19, 2008, all intermediaries are required to provide training to employees with respect to Anti-Money Laundering (hereinafter referred to as “AML”) and Combating Financing of Terrorism (hereinafter referred to as “CFT”) procedures.

13.2. Employees’ Training

Intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures. Training requirements should have specific focuses for frontline staff, back office staff, compliance staff, risk management staff and staff dealing with new customers. It is crucial that all those concerned fully understand the rationale

behind these guidelines, obligations and requirements, implement them consistently and are sensitive to the risks of their systems being misused by unscrupulous elements.

110. The Noticee has submitted that it has followed provisions related to PMLA/ AML. In this regard, the Noticee has submitted that at the time of training and induction of the employees, training pertaining to the provisions of PMLA and AML was also provided. The Noticee has relied on Annexure 39 to its reply dated December 09, 2021 which was submitted in response to the Enquiry SCN. The said Annexure 39 contains an “Employment Declaration” on a non-judicial stamp paper of value of Rs. 100/- of one Mr. Sandeep Kumar Malviya who is purportedly appointed as a “FM”. The Noticee has relied on point no. 8 therein which stated that “I will report immediately to management if I found any suspicious details from client or other employee in terms of money laundering or terrorist activity or illegal monetary transactions.” I note that the Non – Judicial Stamp Paper neither contains the inked stamp carrying the “Serial Number & Date” nor the details of the vendor providing the non – judicial stamp paper. Furthermore, I note from the list of employees forwarded by the Noticee vide email dated February 19, 2020, that the name of Mr. Sandeep Kumar Malviya does not appear as an employee in the said list. Therefore, the reliability of the said document is questionable. The Noticee has also provided letter of appointment of one Ms. Sapna Kotiya as Senior Team Member. The said letter has enclosures viz., Service Agreement, Terms and Conditions of Employment, Employee’s Compensation and Summary of terms and conditions. Clause 17 of the Terms and Conditions of Employment titled “General Conditions of Work” therein states that “The employee will report immediately to management if he found any suspicious details from client or other employee in terms of money laundering or terrorist activity or illegal monetary transactions.” In this regard, I note that the SEBI Circular dated January 18, 2006 states that every intermediary including investment adviser shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules notified under the PMLA. Such transactions include: (a) all cash transactions of the value of more than Rs 10 lakhs or its equivalent in foreign currency, (b) all series of cash transactions integrally connected to each other which have been valued below Rs 10 lakhs or its equivalent in foreign currency where such series of transactions take place within one calendar month and (c) all suspicious transactions whether or not made in cash. Furthermore, implementation of AML/CFT measures requires intermediaries to demand

certain information from investors which may be of personal nature such as documents evidencing source of funds/income tax returns/bank records etc. The aforesaid Clause 17 of the Terms and Conditions of Employment does not capture the essence of the Circulars mentioned hereinabove, and cannot be said to be a substitute for a training programme as mandated under Clause 13.2 of the SEBI Master Circular ISD/AML/CIR-1/2008 dated December 19, 2008.

111. I find it is relevant to reproduce Clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III of IA Regulations:

“8. Compliance

An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

9. Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.”

112. In view of the above, I find that the Noticee has violated SEBI Circular January 18, 2006 and Circular CIR/MIRSD/1/2014 dated March 12, 2014 read with SEBI Master Circular ISD/AML/CIR-1/2008 dated December 19, 2008, SEBI Master Circular dated December 31, 2010 and SEBI Master Circular dated July 04, 2018, read with Clauses 8 and 9 of Code of Conduct for Investment Advisers as mentioned in Schedule III of IA Regulations read with regulation 15(9) of IA Regulations.

Issue No. XII: Whether the Noticee failed to redress the grievances of investors and thereby violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21(1) of IA Regulations?

113. I note that Regulation 21 (1) of the IA Regulations states that an IA shall redress client grievances promptly. I also note that SEBI vide Circular CIR/OIAE/2014 dated December 18, 2014 titled “Redressal of Investor grievances through SEBI Complaints Redress System(SCORES) Platform” states that SEBI registered intermediaries, to whom

complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, the said circular has stated that in case of failure by SEBI registered intermediaries to file Action Taken Report (hereinafter referred to as “ATR”) under SCORES within thirty days of date of receipt of the grievance, it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance.

114. I note that as on March 02, 2020, 10 unique complaints were pending on SCORES portal. The summary of the complaints is given below:

Table No. 22

Sr. No.	Name of the complainant	Date of receipt of the complaint	SEBI Complaint number in SCORES
1	K. Nayeem Taj	23.10.2018	SEBIE/MP18/0004436/1
2	Kushalnagar Masoor Ahmed	10.11.2018	SEBIE/MP18/0004546/1
3	V. Balashanmugam	16.03.2019	SEBIE/MP19/0000666/1
4	Hirdesh kumar Tiwari	05.07.2019	SEBIE/MP19/0001648/1
5	Vikram Ahir	19.08.2019	SEBIE/MP19/0001983/1
6	Rajput Dinesh Kumar Jayprakash Singh	23.09.2019	SEBIE/MP19/0002269/1
7	Anwar Ali Shaik	09.10.2019	SEBIE/MP19/0002370/1
8	CA. Ramakrishna Prabhu K	30.11.2019	SEBIE/MP19/0002815/1
9	Soumit Pal	03.12.2019	SEBIE/MP19/0002867/1
10	Sujay Suman	04.01.2020	SEBIE/MP20/0000336/1

115. Out of the said 10 complaints, I note that with respect to 3 complaints, the Noticee had filed the ATR (first reply) after more than 30 days. The details of complaints along with the ATR is as under:

Table No. 23

Sr. No.	SCORES Complaint number	Name of Complainant	Date of receipt of complaint	Date of forwarding the complaint to IA (X)	Date of receipt of initial reply from IA (Y)	Delay details (X – Y)	Date of last communication*
1	SEBIE/MP18/0004436/1	K. Nayeem Taj	23.10.2018	23.10.2018	30.11.2018	38	11.01.2020
2	SEBIE/MP19/0001983/1	Vikram Ahir	19.08.2019	23.09.2019	19.11.2019	57	14.01.2020

3	SEBIE/MP19 /0002269/1	Rajput Dinesh Kumar Jayprakash Singh	23.09.2019	25.09.2019	19.11.2019	55	03.02.2020
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116. I note that the Noticee in his reply has stated that the complaint at sr. no. 1 was being resolved. In case of complaint at sr. no. 2, the Noticee has stated that the complainant's previous two complaints had been resolved and the complaint in the table above was his third complaint. As regards the complaint at sr. no. 3, the Noticee has submitted that there was a delay as the Noticee's office was not fully operational.
117. The Noticee has submitted that vide emails dated January 09, 2020 and March 09, 2020, the Noticee sought SEBI's guidance as regards provisions of regulation 21 (4) of the IA Regulations. I note that regulation 21 (4) of the IA Regulations states that any dispute between the investment adviser and his client may *inter alia* be resolved through arbitration. On perusal of the agreements entered into between the Noticee and its clients, I note that the said agreements do not contain an arbitration clause to enable the parties to settle their disputes through arbitration. However, I note that the fact the Noticee sent the aforesaid emails seeking guidance on arbitration reflects the willingness of the Noticee to redress its investors' grievances.
118. In view of aforesaid observations, I am inclined to take a lenient view in the matter and therefore, I am unable to agree with the DA's finding that the Noticee has violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and regulation 21(1) of IA Regulations.

Issue No. XIII: Whether the Noticee traded on behalf of its clients and thereby violated regulation 15(1), clauses 1 and 2 of Code of Conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations?

119. The Enquiry Report has observed that an IA is in the business of providing investment advice in respect of securities and investment products, and it is outside the scope of its

activities to trade on behalf of its clients. In view of the dealings of the Noticee with respect to trading on behalf of its client, the DA observed that the Noticee has violated regulation 15(1), clauses 1 and 2 of Code of Conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

120. In this regard, I note that from the call records provided by the complainant Shri K. Nayeem Taj that the Noticee has traded on their behalf. The following is the transcript reproduction of one of the call recording between Client- Mr. K. Nayeem Taj and representative of Dollar namely Ms. Gareema:

Table No. 24

<u>Client:</u> Hamare teeno plano ke mera Mansoor ka dono ka matlab jo trading punch ho rahi hai matlab wo kaun kar raha hai
<u>Dollar Representative (Ms. Gareema):</u> Dekhiye apka jo 2.5 wala plan hai na isme jo support lag raha hai wo researcher support hai Suraj ji ka aur unke isme jo working ho raha hai wo software trade ho raha hai 2.5 wala ye farak hai
<u>Client:</u> Wo trading matlab punch to matlab kaun kar rahe hai matlab wo Dollar advisory hi kar rahi hai wo usko
<u>Dollar Representative (Ms. Gareema):</u> Aapka trade apke bolne par yaha se punch ho raha hai
<u>Client:</u> Barabar na mera aur Mansoor ka matlab trade wahi se punch ho raha hai
<u>Dollar Representative (Ms. Gareema):</u> Haan apki requirement ke hisaab se
<u>Client:</u> Matlab hum log to trade nhi kar rahe hai na trading
<u>Dollar Representative (Ms. Gareema):</u> Ji nahi sir aap nhi kar rahe ho aap chahte ho kya karna

* Call recording named D.A. Gareema Service plan- Call Time- 1.27 to 2.12

121. Further, I note from the Enquiry Report that in order to substantiate and ascertain the aforesaid observation, trade details of the complainants were sought from the stock brokers. It may be noted here that these clients are located across India but on analyzing the trade details received, it was observed that the Demat/broking accounts of some of these clients were accessed from Indore, Madhya Pradesh where the office of the Noticee is located. Some of these instances are reproduced below:

(i) Ms. Kausar Banu

Ms. Kausar Banu has her trading account with stock broker, Angel Broking P. Ltd. From the trade details provided by the stock broker (Annexure- 31 to the Inspection Report) it is noted that from February 23, 2018 to May 31, 2018, transactions were done through online mode from Indore, Madhya Pradesh (IP address is 150.129.145.78) where the office of the Noticee is located whereas the location of

the client is Bangalore (Karnataka). The Noticee in his reply dated December 09, 2021 has admitted that it uses one Static IP address of 150.129.145.78. Therefore, I have no doubt in holding that the trades in the account of Ms. Kausar Banu were carried out by the Noticee.

(ii) Mr. Aditya Gour

Mr. Aditya Gour has his trading account with stock broker, Angel Broking P. Ltd. From the trade details provided by the stock broker (Annexure- 32 to the Inspection Report) it is noted that from April 06, 2018 to May 10, 2018 transactions were done through online mode from Indore, Madhya Pradesh (IP address is 150.129.145.78) where the office of the Noticee is located whereas the location of the client is Ghaziabad (Uttar Pradesh). Admittedly, the said IP address is used by the Noticee, and therefore, I find that the trades in the account of Mr. Aditya Gour were carried out by the Noticee.

(iii) Mr. Vikram Ahir

Mr. Vikram Ahir, has his trading account with stock broker, Angel Broking P. Ltd. From the trade details provided by the stock broker (Annexure- 33 to the Inspection Report) it is noted that on various dates between February 02, 2018 to May 16, 2019, transactions were done through online mode from Indore, Madhya Pradesh (various IP addresses pertaining to Indore have been identified) where the office of Dollar is located whereas the location of the client is Durg (Chhattisgarh). One such IP address was 150.129.145.78 which was admitted used by the Noticee. Therefore, I find that the trades in the account of Mr. Vikram Ahir were carried out by the Noticee.

122. The Noticee in his reply dated December 09, 2021 has stated that with initial emails and SMS, the Noticee informs each and every client not to share their demat account or bank account credentials. The Noticee has also stated that its employees through their appointment letter are informed that they shall never ask any confidential information such as bank's ID, password, PIN etc., from the clients. The Noticee's has submitted that even

in its disclaimer email, the Noticee recorded that it will not be responsible for execution and wrong interpretation of advice and recommendation. I note that the reply of the Noticee only deals with its standard operating procedures on paper, however, I note that the Noticee has not made submissions regarding the trades that have taken place from its IP address.

123. In view of the above, I agree with the DA's finding that the Noticee did not provide any material to counter the allegation and therefore, I conclude that that Noticee has violated regulation 15(1), clauses 1 and 2 of Code of Conduct as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

Issue No. XIV: Whether the Noticee failed to comply with SEBI Circular dated December 27, 2019?

124. The Enquiry Report has observed that Noticee failed to comply with Clause 1.1. of SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019. The relevant provisions of the said Circular are reproduced as under:

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

(i) Restriction on free trial

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

125. From the screenshot of the website of the Noticee as on April 29, 2020 (Annexure 34 to the Inspection Report), I note that the same displayed that the Noticee was providing facility of 02 days' free trial to its prospective clients. The Noticee has submitted that on boarding of new clients had stopped since September 2019 and the same was communicated to the Noticee vide email dated January 04 2020. In the said email, the Noticee had attached a copy of the screenshot of its website wherein the following message is displayed:

“Respected Client

This is to inform to all clients of Dollar Advisory and Financial Services that our Firm is not accepting fees in form of renewals after completion of your services. Please do not deposit/ pay any amount for renewal of services. We are not accepting any payments from our Old/ New Client as well....”

126. In view of the above, I am unable to agree with the Enquiry Report’s finding that the Noticee failed to comply with Clause 1.1. of SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

127. The Noticee in his reply has placed reliance on the orders of Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in the following appeals wherein the Hon’ble SAT has observed that the purpose of carrying out an inspection is not punitive and the object is to make the intermediary comply with the procedural requirements and that minor discrepancies, irregularities are not culpable:

- A. *Religare Securities Limited vs. SEBI* (Appeal No. 23 of 2011, date of order – June 16, 2011)
- B. *UPSE Securities Limited vs. SEBI* (Appeal No. 109 of 2011, date of order – July 25, 2011)
- C. *DSE Financial Services Limited vs. SEBI* (Appeal No. 153 of 2012, date of order – September 11, 2012)

128. In this regard, I am inclined to reproduce the relevant portion of the order of the Hon’ble SAT in ***Religare Securities Limited v. SEBI***:

*“5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant. **This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent.**”*

129. I note that in the aforesaid order relied upon by the Noticee, the Hon'ble SAT itself has added a caveat to the effect that SEBI is not precluded from taking action against a delinquent in case of serious lapses. From the preceding paragraphs, I note that the Noticee has carried out the following violations which ought to be considered serious in nature:

- At the time of Risk Profiling, by requiring the investors/ clients to answer vague questions/ providing options containing double negatives, the Noticee engaged in a practice that would operate as deceit upon the investors.
- Noticee has failed to communicate the client's risk profile to them.
- Noticee has devised multiple packages (which are essentially offering same service) and is offering the same at different prices to earn huge amount of service fees from its clients.
- Noticee's act of selling its products and charging advisory fees from the clients without undertaking risk profiling of client attracts regulation 4(1) of PFUTP Regulations which states that no person shall indulge in an unfair trade practice in securities market.
- Noticee has selected and sold package/ product/services without any regard to the financial situation, risk tolerance level/ loss absorbing capacity of the client. The Noticee has also ignored the amount, the client is willing to invest as well as annual income of the client while selling advisory products to the clients. Furthermore, the Noticee has charged disproportionate/ unreasonable fees/ charges towards its services as compared to client's income/ investment amount which indicates that Dollar has not followed the requirement of suitability advice to its clients.
- Noticee's act of selling same advisory products/services to the clients before completion of the tenure of the previous service with the purpose of defrauding the clients and to earn maximum fees is in violation of regulation 4(1) of PFUTP Regulations which states that no person shall indulge in an unfair trade practice in securities market.

130. Therefore, I note that the Noticee's case cannot be considered leniently as there have been major lapses/ violations committed by the Noticee. In view of the same, I note that the Noticee's reliance on the aforesaid judgments of the Hon'ble SAT is misplaced.

131. The Noticee has relied on the order of the Hon'ble SAT in *Piramal Enterprises Limited v. SEBI* (Appeal No. 466 of 2016, date of Order – May 15, 2019) wherein the Hon'ble SAT has observed that imposition of penalty even meagre will leave an indelible mark and leave a blot on the appellant's spotless image. The Hon'ble SAT also observed that if there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive. However, in the present matter, the Noticee has committed grave and serious violations which cannot be remedied through warning.

CONCLUSION:

132. I note that the DA vide Enquiry Report dated May 06, 2022 recommended cancellation of the certificate of registration of the Noticee as an Investment Advisor in terms of regulations 23 and 26 of the Intermediaries Regulations read with regulation 28 of the IA Regulations.
133. During the hearing on August 30, 2022, the Noticee submitted that vide letter dated November 11, 2021 requested SEBI to consider its application for surrender of its certificate of registration as an Investment Advisor. In this regard, the Noticee relied on the order of SEBI dated February 24, 2020 in the matter of *Altius Finserv Pvt. Ltd.* to state that when the certificate of registration has expired, any order suspending or cancelling the certificate of registration would be infructuous. I note that in the facts of the aforesaid case, the Certificate of Registration granted to the Noticee, by SEBI, to act as a Merchant Banker, had expired on June 09, 2015. However, a post enquiry SCN dated May 29, 2018 i.e. after the expiry of the certificate of registration, communicating the findings of the DA appointed therein was issued. It was in this context that SEBI passed an order observing that any order suspending or cancelling the certificate of registration would be infructuous at this point. In the present matter, I note from the SEBI website that the validity of the Noticee's certificate of registration is "perpetual". In view of the same, I note that the observations of SEBI in *Altius Finserv Pvt. Ltd.* are not applicable to the facts of the present case.

134. I note that for the reasons mentioned in the preceding paragraphs, I find myself in agreement with the findings of the DA that the certificate of registration of the Noticee be cancelled.

ORDER:

135. I, in exercise of the powers conferred upon me under Section 19 read with Section 12(3) of the Securities and Exchange Board of India Act, 1992 and Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby direct as under:

- A. The Certificate of Registration granted to the Noticee, Dollar Advisory and Financial Services (Proprietor: Mr. Ravi Prakash Mohta) (SEBI registration number INA000003882) shall be cancelled forthwith.
- B. The direction for cancellation of certificate of registration of the Noticee, Dollar Advisory and Financial Services (Proprietor: Mr. Ravi Prakash Mohta) at paragraph 135 (A) hereinabove, shall not preclude it from redressing the grievances of its clients, or refund monies to such clients, as the case may be.

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

137. A copy of this Order shall be served on the Noticee and on all recognized Stock Exchanges and Depositories.

November 24, 2022
Mumbai

Sd/-
DR. ANITHA ANOOP
CHIEF GENERAL MANAGER
QUASI JUDICIAL CELL 1
SECURITIES AND EXCHANGE BOARD OF INDIA