

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

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

In the matter of Inspection of Market Captains Investment Advisors.

BRIEF BACKGROUND

- SEBI conducted an inspection into the activities of M/s Market Captains Investment Advisor, proprietor Mr. Amit Soni (hereinafter referred to as the “**Noticee**”), registered with SEBI as an Investment Advisor having SEBI registration number INA00008358, for the period April 01, 2019 till September 22, 2020 (hereinafter referred to as “**Inspection period**”). During examination, certain *prima facie* violations of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”), SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) were observed. Based on the findings of inspection, SEBI initiated enquiry proceedings

against the Noticee under Regulation 23 of the Intermediaries Regulations by appointing a Designated Authority (**DA**).

2. The DA in its report dated March 23, 2022 (hereinafter referred to as “Enquiry Report” or “ER”) had observed the following against the Noticee:

2.1. The Noticee has not complied with SEBI directions with respect to Inspection.

2.2 The Noticee has failed to inform material information to SEBI.

2.3 The Noticee has failed to act as “fit and proper person”.

2.4 The Noticee has committed Irregularities regarding Risk Profiling and suitability Assessment.

2.5 The Noticee failed to act responsibly in fiduciary capacity.

2.6 The Noticee has failed to resolve investor grievances and to submit ATR in a time bound manner.

2.7 The Noticee failed to display the complaints status on website.

2.8 The Noticee Handled trading/demat account of clients and incurred losses.

2.9 The Noticee provided investment advice on free trial basis to clients.

2.10 The Noticee Promised high returns to clients on their investment.

3. Based on the aforesaid findings, the DA held that the Noticee has violated the following provisions of law during the Inspection Period:

3.1. Regulations 13(a),15(12), 25(1) and (2) read with Regulation 24(3) and clause 8 of Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations;

3.2. Regulation 13(b) of IA Regulations;

3.3. Regulation 16(b) (iii) and 16(d) (ii) of IA Regulations;

3.4. Regulation 15(1),17(a), (b), (c), (d) and (e) of IA Regulations; Clauses 1, 2, 6 and 8 of Code of Conduct as mentioned in Third Schedule read with Regulation 15(9) of IA Regulations; Regulation 3(a),(b),(c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act;

- 3.5. SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations;
- 3.6. SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and clause 8 of Code of Conduct for IA as specified in Third Schedule with Regulation 15(9) of IA Regulations;
- 3.7. Regulations 15(1), 15(3) and 22(b) of IA Regulations; Clause 1 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and;
- 3.8. SEBI Circular No. SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 read with Regulation 13(a) of IA Regulations;
- 3.9. Regulation 15(1) of IA Regulations; clauses 1, 2, 5 and 8 of Code Of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations; Regulation 3(a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act.
- 3.10. 'Fit and proper' criteria as provided in Schedule II of the Intermediaries Regulations read with Regulation 7(2) (e) of Intermediaries Regulations and Regulations 6(f) and 13(a) of IA Regulations.

4. The DA in its report has also made the following recommendation:

"In view of the facts and circumstances of the case, material placed before me and the violations as brought out above, I am of the view that the violations by the Noticee are grave in nature and the acts of the Noticee are detrimental to the interest of the investors in the securities market. Further, the Noticee failed to fulfil criteria for being fit and proper, cooperative to board, and is carrying out fraudulent activities which make it unfit to continue as registered intermediary. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend cancellation of the certificate of registration granted to the Noticee i.e. Mr. Amit Soni (Proprietor of M/s. Market Captains Investment advisor, SEBI registration no. INA00008385) as Investment Advisor."

5. A Post Enquiry Show Cause Notice dated March 31, 2022 (hereinafter referred to as “**SCN**”) was issued by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to the Noticee under Regulation 28(1) of the Intermediaries Regulations calling upon it to show cause as to why action as recommended by the DA or any other direction / penalty as deemed fit should not be issued / imposed on it in terms of Regulation 28 (1) of the Intermediaries Regulations. The SCN enclosed with it the Enquiry Report dated March 23, 2022 of the DA.
6. As stated above, a SCN along with the Enquiry Report was issued to the Noticee by way of an email to info.marketcaptain@gmail.com and through SPAD on two Addresses at viz. 1. Plot No. 73, PU-4, Scheme No. 54, Behind C-21 Mall, Vijay Nagar, Indore, Madhya Pradesh-452010 and 2. 38, Bafrani Nagar, MR-9 Indore, Madhya Pradesh - 452001. SCN sent on the first address returned undelivered while SCN was served on the Noticee at the second address. Thereafter, a personal hearing was granted to the Noticee on September 06, 2022. However, vide email dated September 05, 2022, the Noticee requested for Inspection of Documents and sought adjournment of the hearing scheduled. Accordingly, the Noticee was granted an opportunity of Inspection of documents on September 16, 2022 and the scheduled hearing was adjourned to September 27, 2022. Vide email dated September 26, 2022, the Noticee sought for additional documents alongwith a request to adjourn the hearing scheduled on September 27, 2022. The documents, as requested were provided to him by way of an email dated September 29, 2022 and another opportunity of hearing was granted to the Noticee on October 06, 2022. Vide letter dated October 03, 2022, the Noticee requested for a physical hearing which was acceded to and the opportunity of hearing which was scheduled on October 06, 2022 was adjourned to October 18, 2022 at SEBI Bhavan II, BKC. The Noticee submitted its preliminary replies to the SCN vide emails dated September 05, 2022 and September 26, 2022 and a detailed reply vide letter dated October 15, 2022.
7. In its replies, the Noticee has made the following preliminary submissions –

- i. In the ER, it was alleged that the Noticee had violated various regulations of IA Regulations, Intermediaries Regulations, SEBI Circulars, Regulation 3(a),(b),(c),(d) ,4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a),(b) and (c) of the SEBI Act. The said violations are grave in nature and the acts of the Noticee were detrimental to the interest of investors in the securities market. Further, it was also alleged that the Noticee failed to fulfill criteria for being fit and proper, cooperative to board and were carrying out fraudulent activities which makes the Noticee unfit to continue as registered intermediary.
- ii. The Noticee mentioned that the aforesaid matter pertains to the Inspection ordered vide Order dated 17.09.2020. However, the Noticee has stated that no inspection was ever conducted in respect of their books of account/business activity.
- iii. With respect to present status of their business, the Noticee submitted that:
 - a) It had not taken any new clients w.e.f. March 2020. In fact, since March 2020 their business has come to a standstill.
 - b) It had closed their Bank account maintained with HDFC Bank and Axis Bank.
 - c) On perusal of the website i.e. www.marketcaptains.com as on date, it is submitted that the domain name [marketcaptains.com](http://www.marketcaptains.com) has expired which *inter alia* indicates that the website is not operational.
- iv. In view of the aforesaid, the Noticee has decided to close their business, consequently surrender the certificate of registration. It is stated that vide letter dated 28.09.2022, the Noticee had submitted the application for surrender of registration to Ld. Investment Management Department. The Noticee has provided the copy of said letter dated 28.09.2022 as Annexure-1 to its reply.

Preliminary submissions made by the Noticee:

- v. The Noticee has stated that their activities of Investment Advisory were carried out in due compliance with all the statutory provisions of law including registration as Investment Advisor with SEBI under Investor Advisor Regulation, 2013.
- vi. At the time of getting registration, the Noticee had disclosed all the facts about the nature of activities and after proper scrutiny of all the documents and on consideration of business profile, it was granted certificate of registration as an Investment Advisor.
- vii. The Noticee had rendered the services to thousands of clients and most of them appreciated the Advisory services provided by them and had been benefited on implementing and executing transactions on the said advisory.
- viii. They had a proper system and control to ensure that the services rendered by them are in fulfilment of rules/regulations and guidelines as prescribed by SEBI.

Business Model adopted by the Noticee:

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

- i. Training
- xi. Their IT team emphasis on various strategies to generate traffic on their website through various campaigns.
- xii. **Risk Profiling:**
- a) **Basis on which service is offered based on Risk Profiling:**
- The Risk profiling process comprised of 21 Questionnaire for ready reference. The Noticee had provided the copy of risk profiling form of one of their client Ms. Sunita Deshpande. On the basis of the answers of the aforesaid and personal discussion with the clients, the Noticee assigns Risk category to the clients. The Risk categories are Low, Medium and High Risk.
- b) Out of the 21 questions, 14 questions pertain to the weights on which the basis of products offered in provided to the client.
- c) Basis on which service is offered based on Suitability Assessment/Basis of classification:
- To ensure that the advice given to the client is suitable for the clients, the Noticee ensured that all investments on which investment advice is provided is appropriate to the risk profile of the client by categorizing client as low risk appetite, medium risk appetite and high risk appetite.
 - A similar classification is done for products after considering the risk and reward of the services offered and various SEBI guidelines in this regard. Client with Medium risk appetite is recommended to subscribe medium risk services only and client with high risk appetite is recommended to subscribe either to low, medium or high risk services.
 - Risk profile of the client is communicated to the client after risk assessment is done and the Information provided by clients and their risk assessment is updated periodically. They had a comprehensive

Risk Tolerance Questionnaire form which has to be filled before doing any investment so that we can access the client risk tolerance category.

- xiii. The Noticee has provided the details in respect of the risk based classification of the services and the basis of classification at Annexure – 3 of the reply.
- xiv. In view of the aforesaid, the Noticee has submitted that they have a proper process of doing business which is in the best interest of the clients and as per the preview and the provisions of Law. The Noticee has provided a copy of the proposed Business model of Market Captains as submitted to SEBI at the time of registration at Annexure – 4 of the reply.
- xv. The Noticee has stated that as a SEBI registered Investment Advisor w.e.f 01.09.2017 bearing no. INA000008358, they have been carrying out the activities of Investment advisory Services in due compliance within the Rules, Regulations and statutory provisions as applicable to them.
- xvi. The Noticee has stated that proper disclaimer of their policies are made to the clients which is also evident from their website (disabled presently). Hence it is submitted that the Noticee had always kept the client informed about their policies.
- xvii. The Noticee has stated that on reviewing couple of other orders against investment advisors from Indore wherein, the firms (sole proprietors), are saddled with grave complaints from clients and operated either without IA registration or submitted false information when obtaining registration, the Noticee strongly feels that the allegation in SCN read with ER are excessively harsh in light of their findings when compared with the grave negligence and findings of other investment advisors. The Noticee also stated that there may be other factors that may be a basis for the order that are unknown to them, but in light of the findings mentioned in the SCN read with ER, the Noticee honestly felt they had been subjected to a much higher alleged proposed

restrictions/ punishment compared to orders where findings are more grave in nature.

- xviii. The Noticee has submitted that the Ld. Designated authority had issued the ER without hearing on the subject matter. Therefore, the ER is an Ex-Parte Report and passed in casual manner. Thus, the ER is in gross violation of the basic principles of 'audi alteram partem'.
- xix. The Noticee has denied all the allegations made in the SCN read with ER point-wise which have been dealt in detail in the paragraphs below.

- 8. On the scheduled date of hearing i.e. October 18, 2022, the Authorized Representative (AR) of the Noticee, Adv. Kushal Shah appeared on behalf of the Noticee. The AR reiterated the submissions made by the Noticee vide its letter dated October 15, 2022. Post the personal hearing, on request, the AR was given additional time till October 31, 2022 to make further written submissions in the present matter. However, no additional submissions have been made by the Noticee till date.

CONSIDERATION OF ISSUES AND FINDINGS

- 9. I have carefully perused the post Enquiry SCN dated March 31, 2022 including the ER served on the Noticee, documents / information submitted by the Noticee vide its reply dated October 15, 2022 and other relevant material available on record. After considering the allegation levelled against the Noticee in the instant matter, as spelt out in the post Enquiry SCN, the following issues arise for my consideration-

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

Issue no. II: Whether the Noticee failed to inform material information to SEBI and failed to act as a fit and proper person and therefore, violated Regulation 13(b) of IA

Regulations and 'fit and proper' criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2) (e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations?

Issue no. III: Whether the Noticee committed Irregularities regarding Risk Profiling and suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b)(iii), 16(d)(ii) of IA Regulations and Regulation 15(1), 17(a), (b), (c), (d) and (e) of IA Regulations, clauses 1, 2, 6 and 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations & Regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act?

Issue no. IV: Whether the Noticee failed to resolve investor grievances promptly and also failed to submit ATR in time bound manner and therefore, violated SEBI circular No. CIR/OIAE/2014 dated December 18, 2014 & Regulation 21(1) read with Regulation 28(f) of the IA Regulations?

Issue no. V: Whether the Noticee failed to display the complaints status on website and therefore, violated provisions of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019?

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

Issue no. VII: Whether the Noticee has provided investment advice on free trials to its clients in violation of SEBI Circular No. SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 read with Regulation 13(a) of IA Regulations and Clause 8 of the Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations?

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

10. I shall now proceed to deal with each of the issues individually.

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

11. I note from the ER that SEBI, vide letter dated September 22, 2020, had informed the Noticee that an inspection of its books of accounts / records and other documents pertaining to its registration as an investment adviser will be carried out by SEBI. Accordingly, the Noticee was advised to send its reply to the pre-inspection questionnaire (**PIQ**) latest by October 06, 2020. The aforesaid letter and pre-inspection questionnaire was also sent to the Noticee vide email dated September 22, 2020. I note that the Noticee, vide email dated October 06, 2020, had informed that it was unable to compile the data as required within the time allotted and therefore, had requested further extension of 10-15 days' time for furnishing the information. Accordingly, vide SEBI email dated October 07, 2020, the Noticee was granted extension till October 16, 2020 for filing its reply in the said matter. The Noticee was also informed that no further extension would be provided. As Noticee did not submit any reply to PIQ, vide email dated October 22, 2020, the Noticee was once again requested to file its reply by October 23, 2020. However, no reply was received from the Noticee. No reply was received from the Noticee to the aforesaid SEBI letter dated September 22, 2020 and email dated October 22, 2020. Therefore, a site visit was made to IA's office at plot No.73, PU-4, Scheme No. 54, Behind C-21 Mall, Vijay

Nagar, Indore on December 02, 2020 around 3:30 PM. It was found that the office was closed.

12. Based on the above, the DA has found that the Noticee is in violation of the provisions of Regulation 13(a), 15(12), 25(1) and (2) read with Regulation 24(3) and Clause 8 of code of conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

13. In this context, the Noticee in its reply dated October 15, 2022 has submitted as below:-

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

(b) With respect to site visit done by SEBI officials, the Noticee in its reply has submitted that aforesaid address was the principal place of business and the Noticee had closed the business since March 2020; hence the principal place of business was closed. Further, he has submitted that the registered office was at 38, Barfani Nagar, MR-9, Indore and office on that address was open and place

is not vacated by Mr.Amit Soni till date. The address of registered office can be verified from their certificate of registration, which was provided by the Noticee as an Annexure-6A to his reply.

- (c) With respect to non-response to the PIQ, the Noticee has submitted that a Special Investigation Team (SIT) incorporated by Police Department in Indore that had conducted raids at various Investment Advisors offices/business including their office. The raid was conducted at their principal place of business in August 2019 after complaint by one of their clients Mr. Amit Patel. In fact, the Noticee has stated that at the time of the raid by the SIT Team, all their database, servers etc. were seized by the police officers and the same are still in their custody. Further, the Noticee has stated that as all their database, servers etc. has been seized by the police officials, they were unable to access to the database. Hence, the Noticee was unable to file their detailed response to the PIQ.
- (d) The Noticee, vide email dated October 22, 2019, informed SEBI that the documents and other data have been seized by the Madhya Pradesh, Police Department and therefore, they were unable to provide the data as required by SEBI. The Noticee reiterated the said submissions before me vide its email dated September 17, 2022.

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

SEBI Investment Advisers Regulations, 2013

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

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

25(1) *It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to*

produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

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

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

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

Third Schedule

Code of Conduct for IA

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

15. I note that the Noticee has in its reply dated October 15, 2022 submitted that he does not have the documents and the data as the same have been seized by the SIT incorporated by the Police Department in Indore in the month of August, 2019 after receiving a complaint from one of the Noticee's client viz. Mr. Amit Patel. The Noticee has even submitted that the database, servers, etc. are still in Police custody. However, I note that the Noticee, voluntarily had undertaken to provide the data / information w.r.t PIQs within 20 - 25 days in each of the email communications available in the file during the period of examination. Also, in one of the email communications dated October 22, 2019, the Noticee had stated that it will be seeking the data from the concerned judicial authorities for submitting the same to SEBI and had sought for 20-25 days to submit the requisite data. Vide email dated September

17, 2020 i.e. after almost one year from the last communication date, again the Noticee sought time to submit data. However, no data was provided by the Noticee. The same displays inconsistency in the approach adopted by the Noticee and contradicts its own submissions in the reply dated October 15, 2022. Further, the Noticee has not produced any proof before me to show that he had made efforts to obtain the documents from the authorities as sought by SEBI which failed. I note that till date, the Noticee has not furnished the information as sought by SEBI.

16. I find that sufficient opportunities have been given to the Noticee to provide the information sought by SEBI for the purpose of inspecting the Noticee's books of accounts. Further, it has been submitted by the Noticee that its proprietor was tested COVID Positive on 18.10.2020 and was hospitalized on 20.10.2020. In support of the said submission, the Noticee has provided the copy of the COVID-19 test report dated 18.10.2020 showing positive result and the Discharge Summary of the hospital dated 24.10.2020. Upon perusal of the discharge summary as annexed to the reply, it is noted that the said discharge documents have not been signed by either the Doctor In-charge or the Patient getting discharged i.e. Mr. Amit Soni. Therefore, the same cannot be considered as valid documents in support of the said claim. Even if the said submission of the Noticee is taken to be true, if the Noticee intended to provide SEBI with the requisite documents, the said exercise could have been undertaken by any of the employees of the Noticee in the absence of the proprietor due to his medical condition. Further, I also note that it is only during the post enquiry stage before the Competent Authority that the Noticee is making this submission. The fact on record clearly establishes that the Noticee did not make any effort to provide SEBI with the requisite documents despite reminders.

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

of Conduct for Investment Adviser as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

Issue no. II: Whether the Noticee failed to inform material information to SEBI and failed to act as a fit and proper person and therefore, violated Regulation 13(b) of IA Regulations and 'fit and proper' criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations?

18. I note from the ER that SEBI, vide letter dated July 28, 2020, requested Crime Branch, Indore to provide the copies of the FIRs registered against Investment Advisers including the Noticee. In this regard, the Crime Branch had, *inter-alia*, provided a copy of the FIR dated July 27, 2019 against Proprietor of Market Captains (Mr. Amit Soni) & others. It was observed that the Noticee did not inform SEBI about the aforesaid FIR filed against it, which is a material information.
19. As per the aforesaid FIR registered against Mr. Amit Soni & others under Section 154 of Cr.P.C., charges under Section 420 (Cheating and dishonestly inducing delivery of property), 406 (Punishment for criminal breach of trust) and 34 (Acts done by several persons in furtherance of common intention) of IPC have been leveled against the Proprietor of the Noticee (Mr. Amit Soni), Mr. Puneet Tomar, Head of Quality Team and Accounts department. The said FIR, *inter alia*, alleges the following:
- Mr. Amit Vinodbhai Patel got engaged as a client with the Noticee with a small amount on July 23, 2018.
 - Thereafter, they took from him a sum of Rs. 16,94,966/- by promising him high returns of which receipt of only Rs. 13,94,766/- was provided to him.
 - They gave him receipt of Rs. 6,79,766/- in his name and Rs. 7,15,000/- in the name of his wife. The rationale provided by them for giving two receipts is that due to SEBI audit they cannot give him a single receipt of such huge amount.
 - Further, they also handled his demat account and executed trades on which they made him suffer a loss of Rs. 7,44,000/-.

- 20.** It is noted that Indore Police has levelled serious charges in the FIR against Proprietor of the Noticee (Mr. Amit Soni). Further, during examination, SEBI also observed fraudulent activities by the Noticee and its Proprietor Mr. Amit Soni, which are discussed at length in the subsequent paragraphs.
- 21.** In view of the above, it has been observed by the DA in the ER that the Noticee was in violation of Regulation 13(b) of IA Regulations and 'fit and proper' criteria as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2)(e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations.
- 22.** With respect to the above, the Noticee in its reply dated October 15, 2022 has submitted as under-
- a. As per the FIR, Mr. Amit Patel was the Noticee's client and lured him to make payment of Rs. 16.94 Lakhs (Approx.) in return of promise for higher returns. Further, the Noticee handled his DEMAT accounts and executed trades on which he suffered a loss of Rs 7.44 Lakhs. Out of the total amount of Rs 16.94 Lakhs (Approx.) paid by him, the Noticee only gave him receipts worth Rs. 13.94 Lakhs (Receipt of Rs 6.79 Lakhs in his name and receipt of Rs 7.15 Lakhs in his wife's name).
 - b. The Noticee has stated that the first service as provided to Mr. Amit Patel was from July 26, 2018. The following were the services that were provided to him:

Table No. 01

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

- c. The Noticee has submitted that the services provided to Mr. Amit Patel were of Rs 6,79,766/- and not of Rs.13.94 Lakhs or Rs.16.94 Lakhs. Further, with respect to the discrepancies in services sold to Mr. Amit Patel and his wife Mrs. Swati Patel, the Noticee has stated that the clubbing of invoices of Mr. Amit Patel and his wife Mrs. Swati Patel is untenable. Mrs. Swati Patel paid the Noticee using the online payment gateway and also provided them with the KYC and other details. The Noticee provided services on her number which was registered in her KYC. The KYC, risk profile, welcome mail was all provided by/ to Mrs. Swati Patel. In fact separate records of Mrs. Swati Patel were maintained. The services provided to her were different than that of Mr. Amit Patel. The Noticee has provided copy of risk profiling done of Mrs. Swati Patel as Annexure-14 and KYC verification snapshot of Mrs. Swati Patel as Annexure-15 to its reply.
- d. The Noticee has stated that there was no mechanism in place to state that a client is the family member or relative of another client. Further, there was also no regulation in place to state that such clients cannot be accepted/ tagged along with the family member. The KYC and other details were separately maintained. As Payment gateways do not share the account through which they have received payment, the Noticee is unable to comment on the same. Pertinently, after verifying the KYC details, it can be seen that she is actively involved in trading since 2017. Her Contact number is 9879727998, which is provided in the KYC

and Payment Gateway information while the contact number of Mr. Amit is 9727742219 as also verified from his KYC and the Welcome Email. In fact, the addresses of both these clients are different in their KYC Form as mentioned herein under:

Address of Amit V Patel

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

Address of Swati Naginben Patel

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

- e. The Noticee has stated that the services provided to Swati are separate and cannot be tagged along with the present matter. In the entire FIR, there is no allegations/role of whatsoever nature assigned/mentioned to Mr. Amit Soni. In fact, the only role is mentioned of Mr. Punit Tomar who was the Head of the Quality and Accounts team. Further, there is no proof provided by Mr. Amit Patel as to in what manner the Noticee promised him high return or traded on his behalf.
- f. The Noticee has stated that a SIT incorporated by Police Department in Indore conducted raids at various investment advisors firms including Noticee's firm in August 2019 in respect of a complaint of Mr. Amit Patel. In fact, an FIR was registered and a few employees were arrested while Mr. Amit Soni, proprietor of the Noticee was not arrested. Mr. Amit Soni then applied for anticipatory bail and was granted bail at the lower court. In fact, the matter is still under investigation and no charge sheet has been filed against any employee or proprietor i.e. Mr Amit Soni. Pertinently, there is no specific allegation in the FIR about Mr. Amit Soni.
- g. Further, in the FIR, Mr. Amit Patel has referred to SEBI SCORES complaint bearing reference no. SEBI/MP19/0000035/I. In this regard, the Noticee has stated that in its reply dated 11. 09. 2019 to the said complaint on SCORES they have, *inter alia*, stated that "*the client has initiated legal proceedings against us*". Further, by their reply dated 30.09.2022 they had, *inter alia*, stated that "*Dear Sir, Please find the required attachment of this complaint. He already filed a case*

against the company in the Court and Case is under Judicial proceedings for further resolution of his complaint. We request you to please close this complaint on your behalf. You can verify this from the client. We are attach related documents". After considering the same, the complaint was closed from the SEBI SCORES Portal considering that the matter is sub- judice. Thus, the aforesaid facts indicate that the Noticee informed SEBI about the FIR and also provided the relevant documents.

h. Vide email dated 22.10.2019, the Noticee informed SEBI that the documents and other data have been seized by the Madhya Pradesh, Police Department, thus indicating that there was no intention of hiding this information from the SEBI Officials.

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

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

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

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

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

(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;

***SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008
Schedule II***

“Criteria for determining a ‘fit and proper person’

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

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

Consideration of application

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

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

Schedule II;

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

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

25. The Noticee has further stated that the name of the proprietor has not been mentioned in the FIR and in fact the name of one Mr. Puneet Tomar, who was the Head of the Quality and Accounts team is mentioned in the FIR against the Noticee. Here, it is pertinent to note that in case of a proprietorship concern, only the proprietor can be held liable for the actions undertaken on behalf of the proprietorship firm as there is no separate legal entity created. The proprietor of the firm has unlimited personal

liability as there is no distinction between the owner and the business. The Hon'ble Supreme Court in the case of **Raghu Lakshminarayan Vs. M/s Fine Tubes (2007) 5 SCC 103**, while examining the liability of a proprietor in a proprietorship concern, held that,

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

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

27. I note that a SEBI registered investment advisor is cast with a responsibility of providing financial advice to the investors at large so as to guide them to deal in the securities in a better manner. The investment advice provided by such intermediary has financial implications and therefore, any blot on the character or reputation of such

intermediaries impacts the decision of the investors at large to deal with them. Considering the fact that an FIR with the charges of cheating, dishonesty, criminal breach of trust, intention to defraud investors, etc. has been filed against the Noticee, non-disclosure of the same to SEBI would disqualify the Noticee as a 'fit and proper' person.

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

29. Therefore, I am constrained to agree with the finding of the DA that the Noticee, by not disclosing the information to SEBI relating to an FIR being filed against it for serious charges under IPC, which is a material information, has violated the provision of Regulation 13(b) of IA Regulations. Further, I find that in order to determine whether an intermediary is a fit and proper person, the intermediary, amongst other criterions, has to be a person with integrity, reputation and character. Thus, by not disclosing the material

information of an FIR being filed against it alleging serious charges of cheating, dishonesty, breach of trust, etc., the Noticee is in violation of the provisions as prescribed in Schedule II of Intermediaries Regulations read with Regulation 7(2) (e) of Intermediaries Regulations and Regulation 6(f) & 13(a) of IA Regulations.

Issue no. III: Whether the Noticee committed irregularities regarding Risk Profiling and suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b)(iii) and 16(d)(ii) of IA Regulations and Regulation 15(1), 17(a), (b), (c), (d) and (e) of IA Regulations, clauses 1, 2, 6 and 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations & Regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act?

- 30.** The DA in the ER made the following observations on perusal of the Risk Profiling Form (hereinafter referred as 'RPF') of the Noticee during the examination.
- 31.** Question on investment goal in the risk profile, features 03 answer options, 1) Capital Appreciation, 2) Regular Income and 3) Capital Appreciation and Regular Income. The weights assigned to such answers are 0, 2 and 1, respectively. No weights or 0 weights are assigned if a client is interested in capital appreciation. Regular Income is generally associated with debt products. Any risk averse investor would choose regular income, as it is generally associated with debt products. However, as per the risk profile methodology adopted by the Noticee, if a particular investor opts for 'Regular Income', he would be assigned 2 points. Assigning higher points to an investor would enable the Noticee to categorize such a client in 'High Risk' category. Further, as per the product list for high risk clients, the Noticee can sell advices in all products including Futures & Options segments. This leads to an inference that the Noticee has misrepresented to clients that products in the Futures & Options segment give regular income.

- 32.** Risk profile of the Noticee included the following 03 questions to ascertain the risk appetite of the clients:
- i. What is your preference w.r.t. securities with low risk, low return over high risk, high return?
 - ii. When market is not performing well do you prefer to buy risky investments and sell less risky investments?
 - iii. What is your risk tolerance?
- 33.** The total weights assigned to the aforesaid 3 such questions are 6 out of 24 i.e. 25% of total weights. Regulation 16(b)(iii) of the IA Regulations provides that the process of assessing the risk of a client appropriately interpret clients' responses to questions and should not attribute inappropriate weights to certain answers.
- 34.** The question mentioned above at 32(i) is a leading question. The expression "securities with low risk, low return over high risk, high return" would inevitably lead the client to respond that he can bear high risk as it is associated with high return. Instead of stating "high risk, high return", the correct question should have been "high risk involves greater chances of large amount of losses". Had the IA made the client aware that taking high risk would mean chances of large amount of losses in the investment, it would have allowed the client to better understand the risks associated with a high risk product.
- 35.** The questions mentioned in the Questionnaire of risk profile have been framed in such a manner so that it would be difficult for the clients to understand and provide an appropriate response. The questions have been framed to make the clients fall in the high risk category so that they can be offered complex products such as derivatives. It is also observed that few questions are leading questions and prompts the clients to respond to the questions in a certain way.
- 36.** I note from the ER that as per the RPF, clients were classified only in three categories i.e. low risk, medium risk and high risk clients with respective scores up to 8, 9 – 16,

17 – 24, respectively and accordingly product was recommended. Risk based classification of the services is as under –

Table No: - 02

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

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

38. Client Name: Ms. Sunita Madhukar Deshpande: It was observed from RPF of Ms. Deshpande that she was assessed as 'medium risk' client. RPF of Ms. Deshpande was provided to the Noticee as Annexure-7 to the SCN. The documents submitted by Ms. Deshpande in support of her complaint was provided to the Noticee as Annexure-8 to the SCN. The following table shows the services sold to Ms. Deshpande for the service period from February 1, 2019 to June 28, 2021.

Table No: - 03

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

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

leveraged products and are generally not meant for investors having 'medium risk' appetite.

- 40.** From the above table, it is seen that 'Option HNI' service were sold with extended duration of two years extending up to June, 2021. It can also be seen from the above table that IA sold multiple services with overlapping period to Ms. Deshpande. For instance, for the period from February 07, 2019 to March 28, 2019 'Cash Basic' and 'Cash HNI' services which appear to be services of similar nature that were active for the client at the same time.
- 41.** From the risk profile of Ms. Deshpande, it was observed that even though the proposed investment amount of the client was below Rs. 1 lakh and gross annual income was Rs.1 – 5 lakh, fees of Rs. 3.44 lakh was charged from the client in four months i.e. from January 31, 2019 to May 23, 2019.
- 42.** Client Name: Mr. Amit V. Patel: It was observed from RPF of Mr. Patel that he has been assessed as 'high risk' client. RPF of Mr. Patel was provided to the Noticee as Annexure-9 of the SCN. The following table shows the services sold to Mr. Patel for the service period from July 26, 2018 to August 31, 2018:

Table No: - 04

| Sr. No. | Invoice Date | Invoice No. | Product name | Duration of service | Amount (Rs.) |
|----------------|---------------------|--------------------|---------------------|----------------------------|---------------------|
| 1. | 26.07.2018 | DAFS/18-19/5593 | Basic Cash | 24.07.2018 – 31.07.2018 | 51,100 |
| 2. | 28.07.2018 | DAFS/18-19/5534 | Basic Cash | 01.08.2018 – 31.12.2018 | 1,02,000 |
| 3. | 30.07.2018 | DAFS/18-19/5518 | HNI Option | 01.08.2018 – 31.10.2018 | 1,00,000 |
| 4. | 30.07.2018 | DAFS/18-19/5529 | HNI Option | 01.08.2018 – 31.12.2018 | 66,666 |
| 5. | 31.07.2018 | DAFS/18-19/5478 | HNI Option | 31.07.2018 – 31.12.2018 | 2,00,000 |
| 6. | 31.07.2018 | DAFS/18-19/5468 | BTST Option | 31.07.2018 – 29.10.2018 | 30,000 |
| 7. | 31.07.2018 | DAFS/18-19/5483 | BTST Option | 31.07.2018 – 29.10.2018 | 60,000 |

| | | | | | |
|--------------|------------|-----------------|--------------|-------------------------|------------------|
| 8. | 01.08.2018 | DAFS/18-19/5455 | BTST Future | 01.08.2018 – 30.10.2018 | 40,000 |
| 9. | 02.08.2018 | DAFS/18-19/5450 | Nifty Option | 02.08.2018 – 31.10.2018 | 30,000 |
| 10. | 14.08.2018 | DAFS/18-19/5361 | BTST Option | 14.08.2018 – 08.02.2019 | 1,00,000 |
| 11. | 14.08.2018 | DAFS/18-19/5365 | HNI Option | 14.08.2018 – 13.08.2019 | 2,75,000 |
| 12. | 31.08.2018 | DAFS/18-19/5183 | HNI Future | 31.08.2018 – 31.08.2020 | 3,40,000 |
| TOTAL | | | | | 13,94,766 |

- 43.** From the above table, it is observed that the client has been sold 12 services with a period of around one month. Further, IA has sold multiple services over the same (i.e. the period of the period services are overlapping). For instance, at Sr. no. 4 and 5, for the period August 1, 2018 to December 31, 2018, two 'Option HNI' service were active for the client at the same time. Similarly for the period July 31, 2018 to October 29, 2018 two 'BTST Option' were active at the same time (refer Sr. no. 6 and 7 of table no. 4 above).
- 44.** Further, it was observed that the Noticee charged arbitrary/ disproportionate amount for similar service and for similar duration i.e. at Sr. no. 4 and 5, the IA has charged Rs. 66,000 and Rs. 2 lakh for 'HNI Option' service having similar duration of three months. Similar instances can be observed at Sr. no. 6 and 7 wherein the Noticee has charged Rs. 30,000 and Rs. 60,000 for 'BTST Option' service having similar duration i.e. July 31, 2018 to October 29, 2018.
- 45.** In the risk profile of Mr. Patel, it is observed that even though the proposed investment amount of the client is Rs. 2 - 5 lakh and gross annual income is Rs.1 – 5 lakh, fees of Rs. 13.94 lakh was charged from the client in around one month i.e. from July 26, 2018 to August 31, 2018.
- 46.** It is noted that if advisory fees itself is more than the proposed investment amount, then client would not earn any returns on his investments. These acts of the Noticee

are in complete disregard to the responsibility entrusted on it under the provisions of IA Regulations to act in a fiduciary capacity and in the best interest of its clients.

47. The Noticee did not sell products to clients as per the risk category and tolerance level of the clients. Even if the risk category of the client was medium, products from high risk categories were sold to the client. IA has not considered the clients experience and knowledge while selecting products for the clients. Further, the service charged is multiple times to the proposed investment amounts and therefore, the client's investment objectives were impaired. Therefore, by paying such high advisory fees, which are multiple times that of the proposed investment amount, clients may not be able to generate any profit or accomplish its financial objective.

48. In view of the above, it was observed by the DA in the ER that by framing questions in the risk profile form in vague, ambiguous and misleading manner, the Noticee was in violation of Regulation 16(b)(iii) and 16(d)(ii) of the IA Regulations. Further, IA has not ensured 'Suitability' and by acting in the said manner is in violation of Regulation 15(1), 17(a), (b), (c), (d) and (e) of the IA Regulations, Clauses 1, 2, 6 and 8 of the Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of the IA Regulations. In addition, it has been observed in the ER that the above acts of the IA were done with the sole purpose of enhancing income of the IA thereby defrauding its clients. Such acts of the Noticee prima facie are fraudulent and covered within the definition of "fraud" as defined in Regulation 2(1)(c) of the PFUTP Regulations. Accordingly, the Noticee has violated Regulation 3(a), (b), (c) and (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of the SEBI Act.

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

Basis of classification:-

| | | |
|------------|---------------|-------------|
| Low | Medium | High |
|------------|---------------|-------------|

| | | |
|----------------|---------------|-------------------------------|
| Mutual Fund | Equity market | Future, Options and Commodity |
| Periodicals | | |
| Financial plan | | |

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

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

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

52. According to the Noticee, the SCN therefore, infers that "Regular Income is generally associated with debt products". However, while issuing the SCN, SEBI has not taken into cognizance the fact that from the list of services offered by them none of the services pertain to the debt products (Mutual fund advice may remotely pertain to debt products). In fact, when no services that pertains to Debt Products is provided by the Noticee, it is untenable to allege that the Noticee has tried to associate Regular Income with Debt Products. Additionally, in the RPQ it is clearly mentioned that all the F&O related services belong to high risk category. Regular income here indicates intraday trading/ trading in F&O. Hence, they are more riskier and hence the weight has been assigned as 2. However, capital appreciation indicates long term investment which is generally equity market related and less risky. Hence, weight has been assigned as 0.

53. The Noticee has submitted that on perusal of screenshots/snapshots of their website provided by SEBI in the SCN and during the course of inspection and prices of proposed services as mentioned by them at the time of application of registration made to SEBI, it is submitted that the pricing range of high risk services are same as medium risk services. Hence, there is no plausible objective for escalating any client

or potential client to high risk category. The Noticee has stated that the price for cash and option basic is same.

54. It is pertinent to mention that before introducing the risk profiling questionnaire for clients, the Noticee has submitted the same to SEBI along with Form A dated 28.11.2016. The Noticee assumed the same as correct in fact and in law, as no response was received from SEBI regarding the same. Pertinently, even at that point in time no discrepancies were raised by SEBI for the same.

55. The bifurcation of the types of Risk Profiles are in the following three categories:

- High
- Medium
- Low

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

56. Further, with respect to questions mentioned above, the Noticee has submitted that these 3 questions are very important to check the mind -set of the investor and his risk appetite, risk tolerance capacity and his way of thinking towards equity markets or financial markets. Subsequently, in all three questions if a conservative person ticks all low category answers, then he will get only 0 mark. In fact, the score of the question is just in the right side to that of the question. In case, he would have incorrectly selected the same, it could have been cross verified from the scores obtained by them.

57. In fact, all the three questions are direct questions which have been allotted weightage according to the rationale associated with them. The SEBI regulations require them to formulate simple and direct questions, which has been done and approved by SEBI. Despite of direct questions they have not decided the risk profile based on one answer of the client e.g. if the client selects high risk, high return services over low

risk, low return services, he has not been directly offered high risk services but only allotted a higher weightage, thus giving them an opportunity to measure his/ her actual risk appetite.

58. As per risk profiling of clients, Ms. Sunita Madhukar Deshpande obtained score of 12 and accordingly rated as 'Medium Risk' client and Mr. Amit V Patel obtained a score of 17.5 and was rated as 'High Risk' client. The Noticee has produced an email dated May 05, 2019 showing that the risk profiling done by the Noticee for Mrs. Sunita Deshpande was duly accepted by her.

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

SEBI Investment Advisers Regulations, 2013

Risk profiling.

16. Investment adviser shall ensure that,-

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

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

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

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

CHAPTER III GENERAL OBLIGATIONS AND RESPONSIBILITIES

General responsibility.

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

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

Suitability.

17. Investment adviser shall ensure that,-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

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

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

6. Fair and reasonable charges

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

8. Compliance

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

PFUTP REGULATIONS, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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

- 61.** With respect to such methodology of risk profiling adopted by the Noticee, I note that while assigning weights to questions in risk profile, the Noticee has assigned weight of 2 to clients who wanted Regular Income, 1 to those who were looking for Capital Appreciation and Regular Income and 0 to the clients looking for Capital Appreciation. Thus, higher risk weights were given to those who were looking for medium or lower risk. Even though the Noticee was not offering any debt product services, the clarification provided by the Noticee with respect to risk profiling is not tenable. It is clearly seen from the RPQ that the Noticee while giving weights to the services was not assigning higher weights to higher risks.
- 62.** Upon perusal of the RPF of Ms. Sunita Madhukar Deshpande, I note that at question no. 2 of the RPF, the regular income option in the Investment Goal section is given the weightage of 2 points which is the highest in the section, contrary to the fact that the investment goal oriented towards regular income is a low risk investment viewpoint. Further, in question no.16, the phrase “securities with low risk, low return over high risk, high return” may lead the client responding to RPF to state that he can bear high risk as it is associated with high return. The link between high risk and high loss is concealed, due to the manner in which the question is formulated. Such leading questions may influence a low risk client to choose a high risk option while answering the questions of the RPF.
- 63.** The Noticee initially categorized Ms. Sunita Madhukar Deshpande as ‘medium risk’ client. However, she was subsequently sold ‘high risk’ services viz. ‘Option HNI’ which was not suitable to her (basis her risk categorization). I note that the Noticee has provided the RPF of Ms. Sunita Madhukar Deshpande as an annexure to its reply. However, the Noticee has not provided any documentary evidence showing the risk assessment parameters adopted by it to do the profiling of the said client in a particular way. I note that the Noticee has also sold multiple services with overlapping period to Ms. Sunita Madhukar Deshpande. From February 07, 2019 to March 28, 2019 ‘Cash Basic’ and ‘Cash HNI’ services were active for the client at the same time. From the risk profile of Ms. Sunita Madhukar Deshpande, I note that even though the

proposed investment amount of the client was below Rs. 1 lakh and gross annual income was Rs.1 – 5 lakh, fees of Rs. 3.44 lakh was charged from the client in four months i.e. from January 31, 2019 to May 23, 2019.

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

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

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

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

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

"21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and conduct, 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...."

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

69. Regulations 16 and 17 of the IA Regulations envisage that Risk profiling should be communicated to the client so that the client can assess his risk profile before agreeing to accept the advice. Further the purpose of risk profiling can be meaningful only when the Investment adviser verifies the information necessary for risk profiling. I find that the Noticee has not been fair and transparent in its dealing with clients regarding the fees charged to the client. It has adopted unethical business practices to deceive the clients into buying/ subscribing multiple packages. By acting in the above manner with an objective to maximize its fees and with an objective of keeping its own interest ahead of its client's interest, the Noticee has completely disregarded the responsibility entrusted on it under the provision of the IA Regulations to act in fiduciary capacity and in the best interest of its clients. Such misrepresentation and concealment regarding services provided, fees charged and risk profiling by the Noticee amount to 'fraud' as defined in regulation 2(1)(c) of PFUTP Regulations.

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

71. In view of the above, I concur with the findings of the DA and find that the Noticee committed Irregularities regarding Risk Profiling and suitability Assessment and failed to act in a fiduciary capacity and therefore, violated Regulation 16(b) (iii) and 16(d) (ii) of IA Regulations and Regulation 15(1), 17(a), (b), (c), (d) & (e) of IA Regulations, clauses 1, 2, 6 & 8 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations & Regulations 3 (a), (b), (c) & (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

Issue no. IV: Whether the Noticee failed to resolve investor grievances promptly and also failed to submit ATR in time bound manner and therefore, violated SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014 & Regulation 21(1) read with Regulation 28(f) of the IA Regulations?

72. The ER observed that SEBI received number of complaints on its SCORES portal against the Noticee. SEBI received 58 complaints against the Noticee during the period from April 1, 2019 till November 30, 2020. Out of these 58 complaints, 36 were from unique complainants, details of which are as follows:

Table No:-05

| Financial Year | Complaints from unique complainants | Complaints pending (as on November 30, 2020) |
|---------------------------------------|--|---|
| 2019-20 | 30 | 4 |
| 2020-21 (01.04.2020 to 30.11.2020) | 6 | 5 |
| Total | 36 | 9 |

73. During examination, various documents and information such as RPF, KYC, invoices, emails, agreements, etc., were sought from the Noticee and the complainants. Based on the availability of evidence, the following complaints were examined:

Table No: - 06

| Sl. No. | Name of Complainant | SCORES Reg. No |
|----------------|----------------------------|-----------------------|
| 1. | Sunita Madhukar Deshpande | SEBIP/MP19/0000400/1 |

| | | |
|----|--------------------|----------------------|
| 2. | B. Anil Kumar | SEBIE/MP20/0001750/1 |
| 3. | Narasappa Hosamani | SEBIE/MP20/0000636/1 |
| 4. | Raviraj Chaitanya | SEBIE/MP20/0000226/1 |
| 5. | Tushar P. Desale | MINHA/E/2020/1176/1 |
| 6. | Amit V. Patel | SEBIE/MP19/0000035/1 |

74. On perusal of various complaints, it was observed that most of the complainants alleged that the Noticee promised huge returns on their investment, however, the Noticee failed to provide accurate calls and made them suffer losses on their investments.

75. I note that the Noticee had failed to provide documents sought from it during inspection. Hence, due to non-co-operation by the Noticee, documents/ information including KYC, Risk Profile Forms, invoices, call recordings, email communications, etc. were sought vide emails dated October 29, 2020 from the aforesaid complainants and Mr. Aman Srivastava (SCORES Reg. No. SEBIE/MP19/0002600/1), substantiating their allegations.

76. From the details available on the website of the Noticee, the following was observed:

- a. The advisory business of the Noticee is based on 'subscription model';
- b. The fees charged is based on the service subscribed and the subscription period for the services is monthly/ quarterly/ half-yearly and yearly;
- c. In the name of advice, the Noticee provides tips/ calls to its clients in cash and derivatives segment of Equity, Commodity and F&O segments;
- d. The tips/ calls are given to clients through SMS only.

77. The Noticee offers services namely Cash Basic, Options Basic, Futures Basic, Cash Premium, Options Premium, Futures Premium, BTST Cash, MCX Basic, MCX Premium and Agri Power Tips to its clients as part of its advisory activity. The charges for the aforesaid packages depends upon the period of subscription. The advisory fee varies from Rs. 8,000/- monthly to Rs. 2,00,000/- yearly.

78. During examination, it was found that 9 complaints were pending against the Noticee as on November 30, 2020 in SCORES Portal. Out of these complaints, it was observed that in 05 complaints, the Noticee has failed to file ATR within prescribed timeline of 30 days, thereby violating the directions given in the SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014.

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

Table No: - 07

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

80. In view of the above observations, the DA concluded in the ER that the Noticee by failing to resolve the investor grievances and submit ATR in a time bound manner is

in non-compliance with the SEBI Circular No. CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of the IA Regulations.

- 81.** The Noticee in its reply has submitted that as on 19.12.2019, it had initiated a campaign named "Rapid Complaints Redressal Mission" ("RCRM"). The Noticee has provided the copy of snapshot of website page as on 21.12.2019 along with the pop up of RCRM content. The said RCRM campaign was initiated on 19.12.2019 to 15.01.2020. The objective of this campaign was to resolve the complaints as soon as they were received and to seek information from investors if they had any grievance. The contents/ extract of RCRM is as under:

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

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

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

To share your complaint

Please call us at: 9691273568

Write to us at: support@marketcaptains.com"

- 82.** The Noticee informed that as on 19.12.2019, there were 5 complaints as per SEBI SCORES pending in all, within the range of 90 days and ATRs were filed within a couple of days. Pertinently, on 13.01.2020, there were only 3 complaints pending for which all ATRs were filed. Further, it is pertinent to mention that on 19.12.2019 complaint of one Mr. Aman Shrivastav ("Aman") was appearing on their SEBI SCORES dashboard with pending days as 39 days. Subsequently on 13.01.2020, Mr. Aman's complaint was not appearing on their SEBI SCORES dashboard while on 04.02.2020, his complaint appears on their dashboard with already 86 days passed.

Such errors were frequent, and hence they should not be held responsible for such errors.

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

Table No:-09

| <i>Sr.No.</i> | <i>Name of Complainant</i> | <i>Excessive time above 30 days</i> | <i>Clarification</i> |
|---------------|-------------------------------|-------------------------------------|--|
| 1. | Raviraj Chaitanya ("Raviraj") | 262 | <p>1. The original complaint was filed by Mr.Raviraj on 05.09.2019.The reason for complaint was for losses incurred by him.</p> <p>2. We mutually accepted a resolution where we were required to pay Rs 2, 55,000 in trenches. It was also agreed that after payment of first tranche the client would send an agreement stating the resolution. The First installment of Rs 80,000 was paid within the decided time frame. The client provided the acknowledgment for the same based on which the complaint was closed on SCORES Portal on 26.12.2019.</p> <p>3. Subsequently, he did not provide us with the agreement and rather asked us to pay second installment after which he would provide us with the settlement agreement. We paid installment also amounting to Rs.40, 000/- . After receipt of this amount the client did not provide us with the settlement agreement.</p> <p>4. Since the client is not willing to provide this agreement we tried reaching him on email to which he</p> |

| | | | |
|----|-----------------------|-----|---|
| | | | <p>replied that he will provide the agreement only after receipt of full amount as agreed. We have therefore not paid the amount. We are still willing to refund the amount as discussed but only after receipt of the agreement from him.</p> <p>5. Further, w.r.t the complaint dated 21.01.2022 we humbly submit that we have filed the ATR in a timely manner and the said complaint was merely re- opening of previous complaint. In fact, in the Action taken Mr. Raviraj was informed that "Dear client, As you updated that company had made forceful settlement for the complaint raised by you. As it was mutual concern over phone and mail about the settlement of the complaint. We had already transferred two installments into the bank account provided Now we only looking for the agreement for the complaint closure. Kindly follow the procedure of the company so that we will also close the complaint as soon as possible". A copy of Action History of Raviraj Chaitanya is provided as Annexure-24.</p> |
| 2. | Sunanda Roy chowdhury | 261 | <p>1. The complaint was received by us on 17.02.2020. We tiled ATR on 18.02.2020. Various resolutions were tried but the client was adamant on refund or the fees and the losses she claimed incurred due to services. A copy of Action history of Sunanda Roy Chowdhury is provided as Annexure - 25.</p> <p>2. Her complaint was about not receiving advice on time and the accuracy or the services. She than</p> |

| | | | |
|----|---|-----|--|
| | | | <i>issued us a legal notice and we have replied to the same accordingly. The matter was closed by SEBI.</i> |
| 3. | <i>Mohan Vishwanath Bapat</i> | 252 | <ol style="list-style-type: none"> 1. <i>The complaint was received on 22.02.2020. In fact prior to the aforesaid we had received direct complaint from the client which was responded on 05.02.2020. A copy of complaint details is provided as Annexure - 26.</i> 2. <i>Even pursuant to the receipt of complaint on SEBI SCORES timely ATR was tiled. A copy of Action History of Mohan Vishwanath Bapat is provided as Annexure-27.</i> |
| 4. | <i>Narasappa Hosamani ("Narasappa")</i> | 236 | <ol style="list-style-type: none"> 1. <i>On 03.03.2020, Mr. Narasappa filed the complaint which was relied on 04.03.2020. Mr. Narasappa and our Organization had reached an amicable solution for his complaint, where we were required to refund some money in tranches.</i> 2. <i>He was then adamant to take the entire amount in lump sum only. We stated that due to COVID-19 affecting the business we are unable to provide this amount.</i> 3. <i>We then tried to reach another resolution with Mr. Narassappa but to no avail. We requested Mr. Narasappa to provide evidences for the allegations made by him. He did not provide even single evidence however, only demanded refund of money.</i> 4. <i>We were then left with no alternate but the recourse of law. On 23.08.2021. We raised the complaint in the court of law, where the client has not provided</i> |

| | | | |
|----|-----------------|-----|---|
| | | | any evidence or even replied till elate. A copy of Order passed by the Lei. Civi I Judge, Indore is enclosed hereto provided as Annexure - 28. |
| 5. | Anilkumar Banda | 293 | <ol style="list-style-type: none"> 1. The complaint was raised on 11.09.2020, the complaint was forwarded to us on 29.09.2020. 2. The allegation made in the complaint pertains to high fees paid by the client. No allegation regarding high returns promised or losses incurred due to services was made by the client. 3. The client simultaneously filed a complaint with Cyber Crime, Indore on 23.09.2020. We discussed with Mr. Banda and an amicable solution was worked out, the client and our organization reached a resolution. We were continuously in touch with client. 4. We mutually decided to resolve the complaint and finally on 06.10.2021, the agreement was signed by both the parties. Since we did not notice the complaint on SEBI, we did not file the ATR at SCORES Portal but the complaint was resolved and the same was taken up with the complainant. 5. We updated the same on SCORES on 16.09.2022, which is almost 1 year after the complaint was actually resolved. The agreement is provided as Annexure – 29. |

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

IA Regulations, 2013
Redressal of client grievances

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

Liability for action in case of default.

28. *An investment adviser who –*

(a).....

(b).....

.....

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

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

SEBI Circular dated 18.12.2014

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

(relevant portions)

9. *All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.*

10. *The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES.....*

11. *Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.*

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

85. I note that as on November 30, 2020, 05 complaints out of the 09 complaints were pending against the Noticee in SCORES Portal and the Noticee was observed to have failed to file ATR in respect of 04 complaints and did not file the ATR within the prescribed timeline of 30 days for 1 complaint. The Noticee has submitted that it had

initiated a campaign named RCRM with an objective to resolve the complaints as soon as they were received and to seek information from investors if they had any grievance. The said submission of the Noticee has no relevance for the fact that 05 out of the 09 complaints were pending with the Noticee for more than 30 days and that there was a failure on the part of the Noticee to file ATR in case of 04 complaints out of the said 05 complaints and delayed filing of ATR in case of 01 complaint.

86. Based on evidence on record, I find that the Noticee has not actually redressed the client's grievances within the prescribed timelines. I also note that the Noticee has not produced any documentary evidence on record to show that the Noticee had resolved the grievances of the complainants within the stipulated timelines. The fact that the Noticee itself has submitted that the complaint filed by one Mr. Aman Shrivastav was showing pending for 39 days on SEBI SCORES dashboard appearing on its website clearly establishes that the said complaint was not redressed by the Noticee for more than 30 days. Also, the submissions of the Noticee for not filing the ATR within the stipulated timeline for the 05 complaints as mentioned at para 83 above cannot be taken into consideration as the material on record clearly establishes the delay which is running into 262, 261, 252, 236 and 293 days on the part of the Noticee. The said delay cannot be treated leniently and condoned on the basis of the submissions of the Noticee.

87. In view of the aforesaid, I find that the Noticee has not complied with SEBI Circular no. CIR/OIAE/2014 dated December 18, 2014 read with Regulation 21(1) read with Regulation 28(f) of the IA Regulations by not resolving the complaints in a time bound manner and failing to submit the ATR within the prescribed timelines.

Issue no. V: Whether the Noticee failed to display the complaints status on website and therefore, has violated provisions of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019?

88. The ER observed that as per the SEBI Circular No. SEBI / HO / IMD / DF1 / CIR / P / 2019/ 169 dated December 27, 2019 (w.e.f. January 01, 2020), the Noticee is required to display the complaint status on its website.

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

Table No:-08

| Number of complaints | | | | |
|-------------------------------|---------------------------|---------------------------|---------------------------------|--|
| At the beginning of the month | Received during the month | Resolved during the month | Pending at the end of the month | Reasons for pendency |
| 3 | 0 | 2 | | 1 customer ATR submit/2 clients in follow up |

90. Thus, the Noticee did not display the correct number of pending SCORES complaints on its website.

91. The Noticee in its reply has submitted that SEBI has relied on a website called www.archive.org which takes screenshot at different intervals. In case of its website, the said website has taken the screen shot on 24.02.2020 and then in October 2021 (when the site was not active). It is pertinent to mention that since March 2020, the Noticee has not operated business or website, thus the requirement to display the complaint status on website as mandated was not applicable since there was no website in use. It can also be verified from the website www.archive.org that there were no snapshots from March 2020 to October 2021 (which also shows site not active). The last status displayed pertains to January 2020 (to be displayed since 07.02.2020, as mandated by circular) which is as mandated and correct to last details. The Noticee has provided the snapshot of their website page as on 24.02.2020 and October 2021 as downloaded from www.archive.org to prove his claim.

92. The relevant portion of the SEBI Circular dated December 27, 2019 is reproduced as under:

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019. Measures to strengthen the conduct of Investment Advisers (IA)

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

(i).....

(ii).....

(iii).....

(iv) Display of complaints status on website

In order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, IAs shall display the following information on the homepage (without scrolling) of their website/mobile app. The information should be displayed properly using font size of 12 or above and made available on monthly basis (within 7 days of end of the previous month):

| Number of complaints | | | | | |
|-------------------------------|---------------------------|---------------------------|---------------------------------|----------------------|--|
| At the beginning of the month | Received during the month | Resolved during the month | Pending at the end of the month | Reasons for pendency | |

93. I note that there were 08 complaints pending against the Noticee as on October 30, 2020. However, I note from the screenshots of the website that the Noticee has displayed only 02 complaints pending as on November 30, 2020. The submissions of the Noticee that as the website was inoperational and had stopped carrying out its business as an investment advisor does not absolve it from complying with the statutory obligations cast on it being a SEBI registered intermediary. Rather, from the material available on record, I note that the screenshots of the website of the Noticee as on April 12, 2020 showed that the said website was still active. In terms of the SEBI Circular dated December 27, 2019, in order to bring more transparency and enable

the investors to take informed decision regarding availing of advisory services, the Investment Advisers are mandated to display the number of complaints at the beginning of the month, received during the month, resolved during the month, pending at the end of the month and the reason for pendency. Therefore, for the month of November 2020, the total number of complaints pending at the beginning of the month should have displayed are 09 complaints instead of 03 complaints.

94. In view of the foregoing, I find that the Noticee by failing to display the correct information regarding number of pending complaints on its website, has violated the provision of the SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

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

95. The ER observed that Mr. Aman Srivastava in his SCORES complaint (Regn. no. SEBIE/MP19/0002600/1), *inter alia*, alleged that the Noticee operated his demat account and accordingly incurred losses in almost all trades.

96. In this regard, during inspection, to substantiate the allegations made by Mr. Srivastava, trade details, including IP addresses from which trades were executed in the client's account were sought from Angel Broking Pvt. Ltd. ('Angel') for the period from September 1, 2019 till November 24, 2020. From the trade details received from Angel, it was observed that from October 04, 2019 to October 18, 2019, the trades were executed from IP addresses - 27.62.229.201, 27.56.198.169, 27.56.202.103, 171.61.29.232, 27.56.206.81 and 27.56.204.245 through mobile application. The IP address location was found out from the website "IP Locator" and it is observed that most of the trades were executed from Indore, Madhya Pradesh where the Noticee's office is located whereas Mr. Srivastava's location as per the KYC received from Angel

is Rewa (Madhya Pradesh) which is 670 kms (approx.) from Indore. The trade details obtained from Angel and few IP Locator screenshots were provided to the Noticee.

- 97.** In view of the above actions, the DA in the ER had concluded that the Noticee, by providing execution services to its clients has violated the provisions of Regulation 15(3) and 22(b) of the IA Regulations. Further, it was also concluded that by failing in its responsibility to act in fiduciary capacity which is entrusted upon the IA under Regulation 15(1) of the IA Regulations, the Noticee has violated the provisions of Clause 1 of the Code of Conduct for the IA as provided in Third Schedule read with Regulation 15(9) of the IA Regulations.
- 98.** The Noticee in its reply has submitted that the complaint was received on 10.11.2019 and in response to the same Reply/ATR was filed. After discussing with Mr. Aman and resolving his queries on 20.08.2020, the Noticee replied that *“.....we agreed for closure by offering you a refund is because we wanted to expedite the process of resolution of complaint. Another objective was to ensure that satisfaction of client. Please also note that this settlement is no way means that we were at fault because to determine fault will require detailed study and analysis of all the evidences and circumstances prevailing at the time of incident.....”*
- 99.** The client i.e. Mr. Aman replied to their aforesaid reply which, *inter alia*, stated that he was willing to accept and close on the conditions that no legal action shall be taken by them post refund of amount. They agreed to the terms and the matter was amicably resolved. The complaint was closed from SEBI SCORES portal on 01.10.2020. The Noticee has provided the copy of Action History of Mr. Aman as downloaded from the SEBI SCORES portal.
- 100.** With regard to the finding that as per the IP address in respect of trades executed by Mr. Aman were from Indore, Madhya Pradesh i.e. where the Noticee's office is located, the Noticee has submitted that the client i.e. Mr. Aman was residing in Indore / Dewas as he is from Madhya Pradesh. The Noticee is aware of the same as the client visited their office premises and informed the same to the Noticee. The Noticee

has clarified that Dewas is only 39 kilometres away from Indore. Thus, the trades ought to have been entered by the client himself and not by any of the Noticee's executives. The Noticee further has stated that it is not registered as a sub-broker or broker hence, does not have access to the terminals or any broker. The ID and password of client's trading or demat account were never demanded by the Noticee. As general work ethics, the Noticee stated that it used to inform each and every client to not share their demat account or bank account IDs and password.

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

IA Regulations, 2013

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

"Segregation of execution services.

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

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

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

102. I note that the Noticee has not adduced any evidence to show that the client, Mr. Aman stayed in Dewas. Also, the KYC details with the broker i.e. Angel show that the location of the client was Rewa, Madhya Pradesh. However, I find that there is no material available on record to establish that the trades were executed by the Noticee on behalf of the client. The IP address locator only states that the IP addresses from which the trades were executed were located in Indore, Madhya Pradesh but does not specify whether the said IP addresses were that of the Noticee's address or of the address of the Broker i.e. Angel. There is nothing available on record to establish that the Noticee, in addition to providing investment advice was even executing trades in the demat account of Mr. Aman Srivastava. The IP addresses location shown as Indore, Madhya Pradesh alone cannot be an evidence to conclude that the trades

were executed by the Noticee on behalf of its client without knowing the accurate location of the terminal from which the trades were executed and / or without having any evidence to show that the user ID and password of the complainant was shared with the Noticee.

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

Issue no. VII: Whether the Noticee has provided investment advice on free trials to its clients in violation of SEBI Circular No. SEBI/HO/IMD//CIR/P/2019/169 dated December 27, 2019 read with Regulation 13(a) of IA Regulations and Clause 8 of the Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations?

- 104.** The ER observed that the Noticee continued to give free trials for any products/ services to prospective clients in violation of SEBI Circular no. SEBI/HO/IMD.DF1/CIR/P/2019/169 dated December 27, 2019. However, on perusal of the website of the Noticee i.e. www.marketcaptains.com as on November 27, 2020, it is observed that the Noticee was still continuing to offer advice on free trial basis.
- 105.** The Noticee in its reply submitted that screen shot of the website as provided by SEBI to them during the course of investigation pertains to dates ranging from 17.02.019 to 22.09.2019. These snapshots relate to the period prior to the circular issued by SEBI. The Noticee has submitted that the SEBI Circular restricting Investment Advisors to provide free trial was dated December 27, 2019. In this regard, the Noticee stated that as per the snapshot of their website of December 20,

2019, Free Trial Tab was available to the clients. However, pursuant to this circular dated December 27, 2019, the Noticee has removed the said tab of free trial from their website.

106. It is pertinent to reproduce the relevant portion of the SEBI circular titled "*Measures to strengthen the conduct of Investment Advisers (IA)*" dated December 27, 2019:

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".

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

"Usefull Links

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

- 108.** I note from the finding of inspection that upon clicking 'Free Trial' link mentioned above, the link is directed to the web which directs the user to 'Free Trial' page. Thus, the submissions of the Noticee that it had removed the tab of 'Free Trial' after the issuance of the SEBI Circular dated December 27, 2019 is not tenable and is incorrect considering that even as on April 12, 2020, the 'Free Trial' tab was active on the Noticee's website. I also note that the Noticee in his submissions has stated that its website has been inoperative since March 2020. However, from the material available on record, it has been clearly brought out that the Noticee's website was operational even on April 12, 2020. Therefore, the Noticee's claim is incorrect.
- 109.** The SEBI Circular dated December 27, 2019 directs the IAs not to provide free trial for any product/ services to prospective clients. Thus, the Noticee, despite the said restriction provided under the said Circular continued to provide free trials to its clients which is in violation of the said circular and the IA Regulations.
- 110.** In view of the above, I find that that Noticee has promoted free trials to its clients and thereby violated the provisions of SEBI Circular SEBI/HO/IMD/DF/CIR/P/2019/169 dated December 27, 2019 read with regulation 13(a) of IA Regulations and Clause 8 of the Code of Conduct for the IA as specified in Third Schedule read with Regulation 15(9) of the IA Regulations.

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

- 111.** The ER observed that on perusal of the website of the Noticee viz. www.marketcaptains.com, it was noticed that the Noticee had lured clients by using following phrases on its website which signify high returns on investments:

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer

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

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

“A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular

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

- 118.** In view of the above, I am unable to accept the Noticee’s contention that the extracts provided by SEBI (showing samples of phrases which promised high returns to investors) pertain to only premium services. From the material available on record, it is clear that even in Agri product services which do not fall under the premium services offered by the Noticee, the Noticee has promised high returns and highly accurate advice. The Noticee, being a SEBI registered intermediary, is very well aware that any investment by clients based on the advice given by it is subject to market risk and by assuring any kind of return to the client from investment in the securities market, the Noticee has not acted in the best interest of the clients. Therefore, I find that the Noticee was advertising high returns on its website and luring the clients to get investment advices from the Noticee for the fees charged.
- 119.** Regulation 4(2)(k) of the PFUTP Regulations states that disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of the investors dealing in securities market is a fraudulent practice. I note that the act of assuring accuracy of recommendations and high returns from securities market by the Noticee through its website is fraudulent in nature and done with an intention to bring in more customers thereby increasing the income of the IA. Further, the aforesaid phrases

are misleading and are designed to influence the decision of investors who visits the website for dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer. Therefore, I note that the Noticee was indeed involved in mis-selling of services to its clients by selling high risk services to clients with medium risk profile.

- 120.** The Noticee has referred to the order dated 15.05.2019 passed by the Hon'ble SAT in the case of ***Piramal Enterprises Limited Vs. SEBI and other connected Appeals*** wherein Hon'ble Tribunal held that:

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

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

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

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

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

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

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

- 122.** However, in the present case, I note that the Noticee has promised high returns thereby misleading the investors which cannot be termed as a technical violation and has serious repercussions. The said acts of the Noticee involve fraud charges which have been established as discussed in the preceding paragraphs. Thus, I note that the reliance of the Noticee on the abovementioned SAT order is misplaced and the facts of the present matter are distinguished.
- 123.** Additionally, the Noticee’s submissions in respect of the allegation that it had deceived the clients and violated PFUTP regulations, the Noticee has relied upon the order passed by Ld. Whole Time Member, SEBI dated 28.05.2021 in the case of **Tatia Global Venture Limited** wherein it is, *inter alia*, mentioned that Section 12A(a), (b), (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of the PFUTP Regulations, 2003 deals with fraud / manipulation / unfair trade practices while dealing in securities and in relation to securities market. Further, the

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

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

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

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

- 124.** I note that the WTM in the said order was dealing with violation of Section 12A(a), (b & (c) of the SEBI Act, 1992 read with Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations and findings of the WTM need to be seen in that context. However, the present proceedings deal with Regulations 3 (a), (b), (c) & (d), 4(1) and 4(2) (k) & (s) of PFUTP Regulations. Furthermore, Regulation 4(2)(k) deals with *“disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities”*.
- 125.** I note that the Noticee was promising high returns in securities market. Even though the Noticee is not involved in the issue, purchase or sale of any securities, the Noticee, being a SEBI registered intermediary is a person associated with the securities market by giving investment advices to its clients for dealing in securities, which is a serious responsibility as the Noticee is a registered investment advisor. The acts of the Noticee in giving investment advice by promising higher returns, luring the clients, etc. were acts by way of which clients were getting induced. As observed by the Hon'ble Supreme Court in the case of Kanhaiyala Baldevbhai Patel (Supra) *a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient* to prove the charge of fraud under the PFUTP Regulations. Therefore, the Noticee's reliance on the SEBI order in Tatia Global Venture Limited is incorrect and therefore, unacceptable.
- 126.** I find that the Noticee was promising high returns and was providing misleading information to clients thereby luring and inducing them to get advice and buy the products offered by the Noticee and therefore, the Noticee, as seen from the facts discussed in the preceding paragraphs, has violated Regulation 15(1) of IA Regulations, clauses 1 , 2, 5 and 8 of code of conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) & (c) of SEBI Act.

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

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

13(a) of IA Regulations and Clause 8 of the Code of Conduct as specified in Third Schedule read with Regulation 15(9) of IA Regulations.

- g. The Noticee by promising high returns to clients on their investment failed to act in a fiduciary capacity and therefore, violated Regulation 15(1) of IA Regulations, clauses 1, 2, 5 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.

128. It has been established above that the Noticee has, contravened the provisions of the SEBI Act, 1992 read with IA Regulations, 2013 and the PFUTP Regulations, 2003 and the various Circulars issued thereunder.

129. In view of the facts and circumstances of the case, material placed before me as discussed above and the violations as brought out above, I find that the violations by the Noticee are grave in nature and the acts of Noticee are detrimental to the interest of the investors in the securities market.

130. Therefore, I agree with the recommendations given by DA vide report dated March 23, 2022 that the certificate of registration granted to the Noticee i.e. Mr. Amit Soni (Proprietor of M/s. Market Captains Investment Advisor, SEBI Registration no.INA000008358) as Investment Advisor may be cancelled.

DIRECTIONS-

131. Therefore, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, hereby cancel the certificate of registration to act as Investment Adviser, as granted to the Noticee i.e. Market Captains Investment Advisor, Proprietor: Mr. Amit Soni (Registration No. INA000008358).

132. The above direction shall not preclude the Noticee from redressing the grievances of the clients and / or refunding the monies to its clients, wherever applicable.

133. The order comes into force with immediate effect.

134. A copy of this order shall be served on the Noticee.

Date: November 28, 2022

Place: Mumbai

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