

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 23 and 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and Regulation 28 of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

In respect of:

Name of the Noticee(s)	SEBI Registration No.	PAN
Chetan Kalubhai Dhokiya	INA000007979	BKPPD6469L

Background:

- Chetan Kalubhai Dhokiya (hereinafter referred to as “**Noticee**”) is registered as an investment adviser (hereinafter referred to as “**IA**”), in his individual capacity, with effect from July 04, 2017, having Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) Registration No. INA000007979. The registered and correspondence office address of the Noticee is 101, Vikramanagar-1, Puna to Bombay Market Road, Punagam, Surat, Gujarat, 395010. In September 2019, SEBI received an application from the Noticee seeking registration of D-Street Investment Advisor Private Limited (hereinafter referred to as “**D-Street**”) as an IA wherein the Noticee was a director and co-owner.
- Pursuant to the examination of the said application, SEBI initiated enquiry proceedings against the Noticee in terms of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”) and vide an Order dated June 29, 2021 under Regulation 24 of the

Intermediaries Regulations, had appointed a Designated Authority (hereinafter referred to as “**DA**”) to enquire into the following violations alleged against the Noticee:

- a. Regulations 13(b) and 18(1) of the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”);
- b. Clauses 1(i) and 1(iv) of SEBI Circular dated December 27, 2019;
- c. Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(k), and 4(2)(s) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2013 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A(a), (b), (c), of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”);
- d. Clauses 1 and 5 of the Code of Conduct for Investment Adviser as specified in Schedule III read with Regulation 15(9) of the IA Regulations;
- e. Non-compliance with ‘fit and proper’ criteria as per Schedule II of the Intermediaries Regulations read with Regulation 6(f) of the IA Regulations.

Enquiry by the Designated Authority:

3. The DA had issued a Show Cause Notice dated March 16, 2022 (hereinafter referred to as “**SCN**”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations, calling upon to show cause as to why appropriate recommendations for the alleged violations should not be made against him. The Noticee was also advised to submit his reply along with documentary evidence(s), if any, within 21 days from the date of receipt of the SCN. The Noticee replied to the SCN vide letter dated April 05, 2022. Personal Hearing was granted by the DA to the Noticee on May 23, 2022. Subsequently, the Noticee made additional submissions vide email dated May 24, 2022.
4. Thereafter, upon completion of the enquiry, an Enquiry Report dated May 31, 2022 (hereinafter referred to as “**Enquiry Report**”) was submitted by the DA wherein following violations by the Noticee have been established by the DA:

- a. *By not providing relevant information about his business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries on the website www.dalalstock.in, for the duration that the website was live, Noticee violated Regulation 18(1) of the IA Regulations.*
- b. *By offering a free trial facility and by not displaying complaints status regarding 6 complaints received on SCORES between January 01, 2020 and November 25, 2020 on homepage of its website in the prescribed format w.e.f January 01, 2020, Noticee violated Clause 1(i) and 1(iv) of SEBI Circular dated December 27, 2019.*
- c. *By misleading investors to subscribe to services through D-Street in a deceptive manner to the extent of Rs. 60,43,519.77, Noticee violated Regulations 3(d) and 4(2)(s) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act*
- d. *By misleading investors on the website www.dalalstock.in regarding registration status, and accepting fees in the name of D-Street prior to obtaining registration from SEBI, Noticee violated Clause 1 (Honestly and fairness) and Clause 5 (Information to its clients) of the Code of Conduct for Investment Adviser as specified in Schedule III read with Regulation 15(9) of the IA Regulations.*

5. The DA has noted that the violations by the Noticee have occurred when the Noticee has created another website associated with a corporate entity viz. D-Street Investment Advisor Limited where Noticee is a director, and made application dated September 26, 2019 to seek registration for such corporate entity. In accordance with the Intermediaries Regulations, the DA has recommended that:

- a. *Noticee may be barred from taking any new clients for a period of 6 months, or till it confirms compliance with the aforesaid circulars, whichever is later, and*
- b. *Noticee may be warned to be careful in future and to ensure compliance with applicable SEBI Circulars and Regulations.*

Post Enquiry Proceedings:

6. A post-enquiry Show Cause Notice dated July 04, 2022 (hereinafter referred to as “**Post Enquiry SCN**”) was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon him to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why actions as recommended by the DA should not be imposed against the Noticee in terms of the said Regulations. The Noticee replied to the same vide his letter dated July 19, 2022.
7. As noted above, the DA had not recommended cancellation of certificate of registration granted to the Noticee. Further, I was of the prima facie view that it is not a fit case for cancellation of certificate of registration. Therefore, in terms of Regulation 27(4) of the Intermediaries Regulations (as amended with effect from August 01, 2022), an opportunity of personal hearing to the Noticee was dispensed with.

Consideration of Issues and Findings:

8. I have considered the material available on record including the SCN, Enquiry Report and Noticee’s reply dated July 19, 2022. I now proceed to deal with each of the allegations hereunder.
9. **Allegation I – Non-updation of material change in information available with SEBI**
10. The SCN alleges that the Noticee is operating as an IA from two different places and has used two proprietary names i.e. Dalal Stock and Share Advisor and respective websites i.e. <http://www.dalalstock.in> and <https://www.shareadvisor.in/>, without informing SEBI and thereby, failed to inform material change in the information already submitted to SEBI, in violation of Regulation 13(b) of the IA Regulations.

11. Regulation 13(b) of the IA Regulations reads as follows:

Conditions of certificate.

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

(a);

(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;

12. I note that in his submissions, the Noticee has admitted that he has employed two different proprietary names viz. Dalal Stock and Share Advisor through different websites and different locations in order to expand his reach and business. The Noticee has submitted that the IA Regulations do not require him to disclose such information to SEBI. The Noticee has also submitted that, as a sole proprietor, he is allowed to operate under own name or under different trade names which do not constitute to be material change in the activity of Noticee.
13. In this regard, at the outset, I note that there is no allegation of false submission or mis-information against the Noticee. In my view, the issue to be examined is whether the information related to using two different proprietary names and websites and operating business from an additional address without informing SEBI should be considered as a violation of Regulation 13(b) of IA Regulations.
14. Regarding the allegation that the Noticee has used different proprietary names and websites to provide investment advisory services to clients, I note that the application form for registration of IA (Format specified under Form A of First Schedule of IA Regulations) requires the applicant to provide its 'Business Plan' (Point 3 of Form A) along with the 'means' of achieving the same.

15. I note that the Noticee had submitted the following details under 'proposed business plan and means of achieving the same', in his application form for registration as an IA:

"Provide investment ideas and stock recommendations as per clients risk profile and need. Advice given in equity holdings of clients, and mutual funds. Charges is levied upon this advises.

- *Business will be full time*
- *Only metro or tier II audience will be target market*
- *Business would be planned to acquire a customer base of about 50 in first 6 months and then expand further*
- *Use of social media will also be used*
- *Direct customer interaction (face to face) suggestions will also happen for geographically accessed areas."*

16. From the above, I note that except for 'use of social media', the Noticee had not stated any kind of usage of online medium or websites as a 'means' to achieve his business plan of providing investment advice to clients. The Noticee, in his submissions during these proceedings, has also stated that his business is modeled primarily on digital / online presence and hence, he has used two different websites for servicing clients.

17. I, thus, find that the 'means' of achieving business plan (social media and face to face customer interaction) stated in the registration application by the Noticee are in contradiction to the actual operations of Noticee wherein he has executed his IA activities through his own websites and different proprietary names.

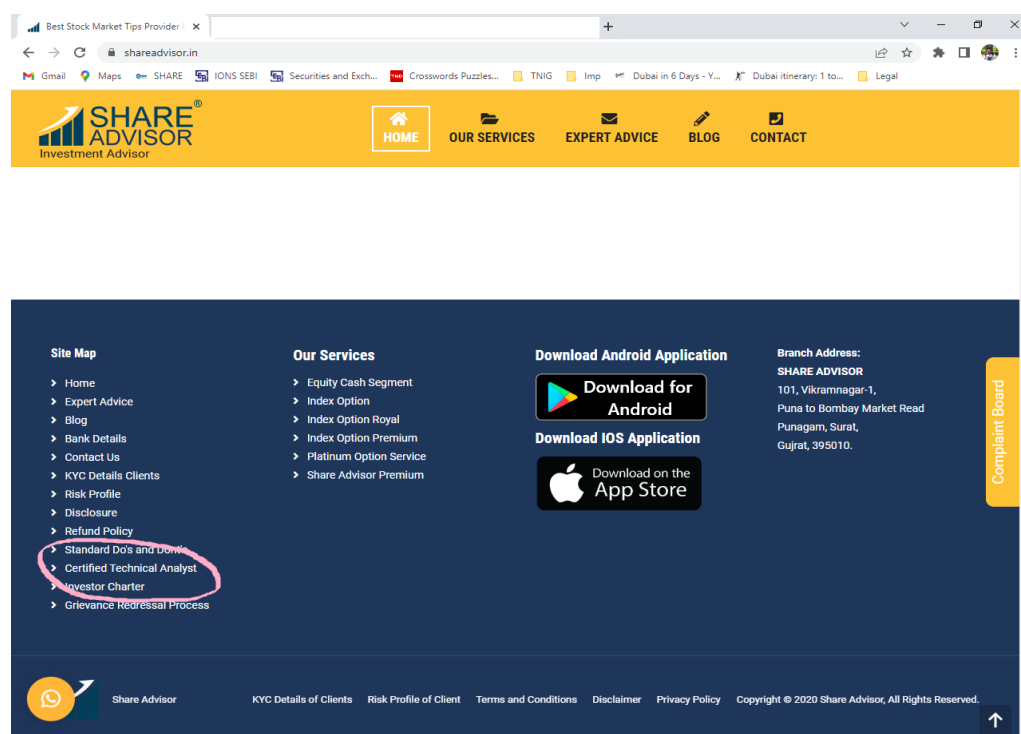
18. With respect to the allegation of operating from another address without informing SEBI, I note that an applicant is required to provide following information as specified under Form A of First Schedule of IA Regulations:

- Address of the Registered Office
- Address for Correspondence
- Principal Place of Business

19. In his registration application, the Noticee had stated that his registered office address, correspondence address and principal place of business are at the same location i.e. 101, Vikramanagar-1, Puna to Bombay Market Road, Punagam, Surat, Gujarat – 395010. Noticee has admitted that he was also operating his IA business from another address at 212, Rupa Solitaire, Mahape Business Park, Thane, Navi Mumbai, Maharashtra- 400701. I also note that vide email dated May 10, 2019, the Noticee had informed that he had been intermittently providing assistance from this second location and that such change of address shall be effective from May 11, 2019. I note that an application for change of address of the Registered Office of the Noticee was submitted on May 14, 2019 (this application was later withdrawn by the Noticee).
20. As per the records available, I note that SEBI, vide email dated April 11, 2019 sent to the Noticee, had observed that he was having a branch office in Mumbai. The Noticee was advised to visit SEBI office on April 12, 2019 to provide details and documents, inter-alia, concerning websites, platforms and addresses concerning his IA activities.
21. From the material available on record and the aforesaid sequence of events, I find that the Noticee had submitted his application or intimation about his operations from the second location subsequent to SEBI's questioning on the same. I also note that the Noticee continues to operate from the second location.
22. I find that the requirement of furnishing registered office address, correspondence address and principal place of business under the application for registration of an IA is an important factor for identification of the applicant. In terms of Regulation 13(b) of IA Regulations, any change in such information like conducting business and corresponding with clients from another address needs to be informed to SEBI. Thus, I find that the Noticee has violated Regulation 13(b) of IA Regulations by operating his IA activities from an address without informing SEBI.

23. **Allegation II – Failure to disclose material information to clients**
24. The SCN alleges that the Noticee violated Regulation 18(1) of the IA Regulations by failing to disclose his SEBI registration details like name, registration number, etc. on the websites of Dalal Stock and Share Advisor through which he was offering investment advisory services.
25. Regulation 18(1) of the IA Regulations, 2013 reads as follows:
Disclosures to clients.
18. (1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.
26. In this regard, the Noticee has submitted that he was conducting IA activity through two proprietary names viz. Share Advisor and Dalal Stock and operated respective websites (<http://www.dalalstock.in> and <https://www.shareadvisor.in/>) for the same. The Noticee has also submitted that details such as name, registration number, address etc. were disclosed on the website of Share Advisor on the home page under the link named “Certified Technical Analyst”. The Noticee also submitted that while the website of Dalal Stock is not active as of now, it can be verified from the archive pages of the website that he had made all the disclosures as per Regulation 18(1) of IA Regulations.
27. I shall firstly deal with the disclosures made on the website of Share Advisor. On a perusal of the said website, I observe the following:
- The home page of the website states that “*Share Advisor is a SEBI registered investment advisory firm based in Navi Mumbai*”.
 - The details of SEBI registered IA i.e. Chetan Kalubhai Dhokiya are displayed under a link named “Certified Technical Analyst” which is

placed at the bottom side of the home page along with several other links as per the screenshot reproduced below:



- c. Different web-pages in the website mention the name of the Noticee as a Certified Technical Analyst, Principal Officer as well as Compliance Officer.
- d. Details of three bank accounts with the payee name as “Share Advisor” are disclosed under “Bank Details” link available on the home page of the website.

28. As noted above, the declaration on the home page of the website that Share Advisor is a “SEBI registered investment advisory firm based in Navi Mumbai”. would indicate to the public that Share Advisor has been registered by SEBI as an IA and is a firm based in Navi Mumbai. I note that this is not the case as SEBI has registered the Noticee – Chetan Kalubhai Dhokiya as an IA rather than a firm named Share Advisor. As evident from the records, SEBI was in fact not even made aware by the Noticee regarding usage of the name ‘Share Advisor’ and the website as well as its operations from Navi Mumbai. I, thus, find such disclosure as incorrect and misleading to the public.

29. As observed above, I find that the details of registration are not prominently displayed on either the home page or a major link on the home page of the website of Share Advisor. I find the content of the website nowhere indicates the reality that Share Advisor is a proprietary firm of Noticee who is a SEBI registered IA. It rather gives a misleading impression that Share Advisor is a SEBI registered IA firm and Noticee is a key employee of the firm (Compliance officer, Certified Technical Analyst etc.) rather than its owner.
30. With respect to the website of Dalal Stock, I note that the same is currently inactive. I observe the following as per the records available regarding the website of Dalal Stock:
- The website mentions offering of investment advisory services and that DalalStock is a registered investment advisor.
 - The contact addresses are shown in Navi Mumbai and Surat.
 - Dipika Solanki and Mayur Patel are mentioned as compliance officers.
 - No bank account details are disclosed in the website.
31. From the aforesaid observations, I note that the website wrongly discloses that DalalStock is registered IA whereas Noticee is the registered IA. I find that the name and registration details of the Noticee are nowhere disclosed on the website.
32. I also note from the available records that bank accounts were also in the name of 'Share Advisor' and 'Dalal Stock' (details mentioned below) and credits were also received in these bank accounts from clients as part of investment advisory activity.

Bank No.	Account	Type of account	Bank name	Branch	Name in which the account is held
	2013809670	Current	Kotak Bank Ltd.	Sarthana	Dalal Stock
	918020040845652	Current	Axis Bank Ltd.	Navi Mumbai	Share Advisor
	50200035463685	Current	HDFC Bank Ltd.	Navi Mumbai	Share Advisor
	056405002750	Current	ICICI Bank Ltd.	Navi Mumbai	Share Advisor

33. I note that neither of the proprietary names i.e. Share Advisor or Dalal Stock or the websites indicate that Noticee is the proprietor. I find that disclosure of registration details, address, bank account details etc. in an adequate, prominent and clear manner is a basic requirement for an IA while dealing with the clients. I, thus, find that while operating its websites, the Noticee failed to adequately and prominently disclose material information of its registration as an IA to the clients and thus, violated Regulation 18(1) of IA Regulations.

34. **Allegation III – Providing free trial to prospective clients**

35. It is alleged in the SCN that the Noticee offered free trial through its website of Dalal Stock in violation of Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

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

“(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.”

37. Noticee has submitted that he has interpreted the aforesaid clause to mean that an IA can offer free trial after completing risk profiling of the client and ensuring suitability of the product. Noticee was thus offering free trial only after considering the risk profile of the client. It is also submitted that the free trial service was offered due to market sustainability and in the event of pre-mature termination of IA services in terms of agreement, the client is refunded the fees for unexpired period while the Noticee retained a maximum breakage fee

of not greater than one quarter fee. It is also submitted that Noticee has stopped offering free trial services.

38. In this respect, I note that IAs are prohibited from providing free trial of any products/services to prospective clients in terms of Clause 1(i) of the said SEBI circular. The objective of the said clause is to enable IAs to offer free trial of any product or service to its existing clients and to prevent misuse of free trials by IAs to solicit clients.
39. I note that though the website of Dalal Stock is inactive, the website <https://dalalstreets.com> which is a mirror copy of Dalal Stock website, is currently active and is continuing to offer free trial by seeking only basic details such as name, mobile number, email id etc. The process followed subsequently is not detailed on the website.
40. I, thus, find that although the Noticee has submitted that he has stopped offering any free trial services, the link for free trial on the website of DalalStreet (<https://dalalstreets.com/free-trial/>) is still currently active as seen from screenshot reproduced below:

The screenshot shows the 'Free Trial' registration page on the Dalal Street website. The page has a dark header with the Dalal Street logo and navigation links: Home, Free Trial, Equity and Future Tips, Nifty and Bank Nifty Tips, Ultra Short Term Tips, Wealth Creation Tips, and a 'More' dropdown. The main heading is 'Free Trial'. Below it is a 'Call me' section with a form containing fields for First Name, Last Name, Mobile Number, Your e-mail, Select State, and Select City. There is a checkbox for 'Agree to Terms and Conditions' and a blue 'Send OTP' button. The footer is orange and contains links to Home, Equity and Future Tips, Nifty and Bank Nifty Tips, Ultra Short Term Tips, Wealth Creation Tips, Past-Performance, Money-Management, Refund Policy, Terms & Conditions, Disclosure, Risk Profile & Suitability, KYC, Environmental Policy, Social Responsibility, Disclaimer, Investor Charter, Standard Do's & Don'ts, Certified Technical Analyst, Grievance Redressal Process, Complaint Board, Contact (8454815099), and Email (help@dalalstreets.com).

41. I, therefore, find that the Noticee is in violation of Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

42. **Allegation IV – Failure to display status of SCORES complaints on website**

43. It is alleged in the SCN that the Noticee failed to display status of 6 complaints that were received on SCORES between January 01, 2020 to November 25, 2020 on his websites and thus, has violated SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

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

(iv) Display of complaints status on website

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

Number of complaints				
At the beginning of the month	Received during the month	Resolved during the month	Pending during the month	Reasons for pendency

45. I note that Noticee has admitted that due to lockdown imposed on account of Covid pandemic, he did not disclose the status of 6 complaints during the year 2020. I also note that Noticee is currently displaying the monthly status of complaints since March 2018 on both the websites of Share Advisor and Dalal Street. I also note that there is no allegation of non-redressal of complaints and the non-disclosure of 6 complaints has occurred during a period spanning across 11 months from January 2020 to November 2020.

46. Although, I find that the Noticee has violated Clause 1(iv) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019, however, I am

inclined to view the non-compliance with lenience, as the same involves only negligible non-disclosure without any allegation of non-redressal of grievances.

47. **Allegation V – Offering guaranteed returns and acting as IA without obtaining certificate of registration in violation of certain provisions of PFUTP Regulations and the Code of Conduct applicable for Investment Advisers**

48. It has been alleged in the SCN that the Noticee lured investors by knowingly concealing risks associated with securities market and promising 'Assured Profit' and '3X Return' on websites of Share Advisor and Dalal Stock, respectively. It is also alleged that the Noticee, as a director of D-Street, concealed that it is not authorized to deal in securities market and therefore, deceived and defrauded the general public to deal in securities. It is, thus, alleged that the Noticee is in violation of Regulation 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b), (c) of SEBI Act, 1992. It is also alleged that the Noticee violated Clause 1 and 5 of Code of Conduct for Investment Adviser as specified in Schedule III read with Regulation 15(9) of IA Regulations.

49. Regulation 3(a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read as follows:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or

issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

....

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

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

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

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

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

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

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

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

12A. No person shall directly or indirectly—

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

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

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue,

dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

51. Clause 1 & 5 of the Code of Conduct for Investment Adviser as specified in Schedule III read with Regulation 15(9) of IA Regulations read as follows:

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

Clause 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.

Clause 5. Information to its clients

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

52. In this respect, Noticee has submitted that adequate disclosures have been made about risks related to investing in securities market under various sections of the website of Share Advisor. The description under the heading of 'Assured Profit' on the website states that *"Pay only when you make profits"*, wherein the clients are required to pay only for the recommendations which result in profit. It has been submitted that the Noticee had wrongly assumed that since he is registered with SEBI and applied to SEBI in corporate form through D-Street where he is the Principal Officer and Director, he can receive the fees in the bank account of D-Street. The Noticee has also submitted that as soon as he came to know that this is not permissible, he stopped taking fees in the bank account of D-Street and closed the bank account on July 21, 2020. The Noticee has submitted that he has carried out his business activities without any fraudulent or wrong intention as none of the clients were forced or coerced in any manner for taking advisory services. Noticee has also denied promising assured returns to clients.
53. In this regard, I note that the Noticee has disclosed the 'Risks', 'Do's and Don't's', 'Disclaimer' and 'Product Description' to the clients under various

sections of the website of Share Advisor. I also note that under the caption 'Profit Assured' on the home page of the website of Share Advisor, it is declared that *"In this service we guarantee you for 50 profitable tips. Pay only when you make profits"*. The Noticee has contended that under the 'Profit Assured' plan, the clients pay only for recommendations that result in profit for them.

54. I also note that multiple service plans for subscription by the investors are displayed on the website of DalalStreet. One such plan is termed as '3X Return' wherein it is described that the service will expire once the investor earns 3 times return on the amount paid.
55. From the above, I find that, by using terminology such as '*Profit Assured*', '*Guarantee you 50 profitable tips*' and '*3X return*', the Noticee is soliciting clients by offering that they may achieve certain profits or particular returns on their investments. This, in my view, essentially amounts to offering an assured/guaranteed return. Noticee, being a SEBI registered IA, is well aware of the fact that investments in securities market are subject to market risk and any returns cannot be guaranteed. While the Noticee has appropriately disclosed risk factors and disclaimers on his websites, it does not refute that the Noticee has attempted to solicit clients using such nomenclature as detailed above in his offerings to the clients.
56. With regards to the allegation of misleading, deceiving and defrauding clients through D-Street, I note that the Noticee has not denied the fact that service fees were taken from the clients in the name and bank account of D-Street. The Noticee has submitted that he had acted in such a manner under the assumption that he will have to transfer his clients once his own corporate firm i.e. D-Street is registered as an IA with SEBI. The Noticee has admitted that in his 'naivety and silliness', he had started taking receipt of fees in the bank account of D-Street.

57. I note that D-Street has been incorporated on September 02, 2019. As per the records available, the bank account details and credits received in the said bank accounts of D-Street are as under:

Bank Account No.	Name of the Bank	Credit received (in INR)	Period
7413058802	Kotak Bank	86,47,307.69	October 01, 2019 till date of closure of account i.e. July 21, 2020
777705999898	ICICI Bank	60,44,519.77	July 14, 2020 to September 24, 2020

58. I note that the ICICI Bank account is currently active and no further credits were received in the said account till the end of financial year 2020-21. The Noticee has submitted that the said account is active since it is the main current account of D-Street through which paid up capital of D-Street is maintained. In view of the above, I find that the admission of the Noticee along with the material on record prove that the Noticee operated his IA activities and collected fees under the name of D-Street without taking registration from SEBI.
59. The question that arises is whether such display of 'Assured Profit' / '3X Return' on his website and conduct of IA activities through D-Street would make the Noticee liable to be charged for violations of the alleged provisions of PFUTP Regulations and Code of Conduct.
60. In this regard, I find that the Noticee has listed various plans on website of Dalal Street wherein one of the plans is '3X Return'. I also note that the details of clients who have subscribed to this plan is not available on record. I find that, except for displaying 'Profit Assured' statement and the '3X return' on his websites, no other evidence is available to substantiate that the clients were indeed induced by the same or that clients subscribed to such plans, thereby, getting deceived or defrauded as a result of such declarations made on the websites operated by the Noticee.
61. I also find that within a few days of incorporation of D-Street i.e. September 02, 2019, the Noticee had filed application for registration of D-Street as an IA

i.e. on September 26, 2019. I, therefore, find that the Noticee had intended to register D-Street as an IA. As discussed above, the breach that has been found against the Noticee is that of soliciting and receiving fees in the name of D-Street while the application of its registration was pending with SEBI. I find that these facts and circumstances indicate that the Noticee did not intend to mislead or defraud and was attempting to comply with the regulatory norms in respect of operations of D-Street.

62. In view of the above, I find that the allegations that the Noticee has violated the alleged provisions of PFUTP Regulations and Code of Conduct do not stand established. However, the Noticee needs to be cautioned and warned against indulging in such practices.

63. **Allegation VI – Non-compliance with ‘fit and proper person’ criteria**

64. The SCN alleges that, in view of the non-compliances and violations as alleged against the Noticee, he does not have adequate integrity, reputation and character which is required for an intermediary to be registered with SEBI. Therefore, the Noticee is alleged to be not ‘fit and proper person’ as per Schedule II of the Intermediaries Regulations, and does not fulfil eligibility criteria of ‘fit and proper person’ as per Regulation 6 (f) of the IA Regulations.

65. Schedule II of the Intermediaries Regulations reads as under:

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

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

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

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

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*

(c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

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

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

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

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

66. Regulation 6 (f) of the IA Regulations reads as under:

"Consideration of application and eligibility criteria.

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

.....

(f) whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008"

67. I note that based on the written reply of the Noticee and oral submissions during hearing, the DA is of the view that Noticee can take necessary corrective action to ensure compliance with required rules and regulations and thus, the DA has concluded that the said allegation does not stand established.

68. As noted in preceding parts of this order, the Noticee has been found to have violated certain provisions of IA Regulations and circulars issued by SEBI. It has been established that the Noticee has not disclosed material information or change in such material information to SEBI and to his clients. It is also established that the Noticee violated provisions of SEBI circular by offering free trial and not displaying status of complaints on his website. I also note that the Noticee has offered investment advisory through a corporate form viz. D-Street while its application of registration was pending with SEBI.

69. However, I agree with the DA that the Noticee can take appropriate remedial steps to ensure compliance with the regulatory requirements and thus, the said non-compliances by the Noticee are not grave enough to declare him as not a 'fit and proper person' in terms of the Intermediaries Regulations.

Conclusion:

70. I note that the DA has recommended that *“(a) Noticee may be barred from taking any new clients for a period of 6 months, or till it confirms compliance with the aforesaid circulars, whichever is later, and (b) Noticee may be warned to be careful in future and to ensure compliance with applicable SEBI Circulars and Regulations.”*
71. In this regard, I find from the submissions of the Noticee that he is currently active in the investment advisory business. I also note that the conduct of the Noticee has been cooperative and he has also admitted fairly to certain non-compliances. The facts and circumstances of the case give an indication that the Noticee is ready and willing to comply with the regulatory requirements. Further, as noted above, the non-compliances are such that remedial actions can be taken by the Noticee.
72. It is a matter of record that in terms of Sections 11(1), 11(4), 11B(1), 11(4A) and 11B(2) read with Section 19 of SEBI Act, 1992 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008 read with Regulation 28 of SEBI (Investment Advisers) Regulations, 2013, vide an order dated November 22, 2022, directions have also been issued by SEBI against the Noticee.
73. I am, therefore, of the view that barring the Noticee from taking new clients for a period of six months, as recommended by the DA, would suffice.

Order:

74. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12(3) of SEBI Act, 1992 read with Regulation 23 and 27 of SEBI (Intermediaries) Regulations, 2008, Regulation 28 of SEBI (Investment Advisers) Regulations, 2013 and Section 19 of SEBI Act, 1992, do hereby issue the following directions:
- a. The Noticee shall not take new clients for a period of six months from the date of this order.
 - b. The Noticee is warned to exercise due care and caution while conducting the business of Investment Adviser and ensure compliance with applicable rules and regulations.
75. This order comes into force with immediate effect.

Date: December 12, 2022

Place: Mumbai

Sd/-

GEETHA G.

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA