QJA/PR/WRO/WRO/22160/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B (1) AND 11B (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF CAPITALSTARS FINANCIAL RESEARCH PRIVATE LIMITED.

IN RESPECT OF:

Noticee no.	**NAME**	**PAN**
1	Capitalstars Financial Research Private Limited	AAECC5843N
2	Mr. Amit Sharma	BUKPS0563F
3	Mr. Anirudh Yadav	ABYPY8297L
4	Mr. Abhishek Upadhyay	ABKPU2337H
5	Ms. Rishbha Sharma	AMYPB9003A

(*The above entities are individually referred to by their corresponding names/Noticee numbers and collectively referred to as the Noticees*)

BACKGROUND

1. Capitalstars Financial Research Private Limited (hereinafter referred to as **"*Noticee no. 1*"**) is registered with the Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) as an Investment Adviser (hereinafter referred to as **"IA"**) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as **"the IA Regulations"**), having the registration number INA000001647. The *Noticees no. 2 to 4* are directors of *Noticee no. 1* and *Noticee no. 5* is the Compliance Officer of *Noticee no. 1*.

2. SEBI had conducted an inspection of the books of accounts, records and other documents of *Noticee no. 1* for the period of April 1, 2018 to January 31, 2020 (hereinafter referred to as **"the inspection**

period") in order to examine the compliance of various requirements under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"the SEBI Act"**), Regulations, and circulars/ directions issued thereunder.

3. Based on the findings of the inspection, a Show Cause Notice dated May 31, 2022 (hereinafter referred to as **"the SCN"**) was issued to the *Noticees* to show cause as to why appropriate directions should not be issued under Sections 11(1), 11B(1), 11(4) of the SEBI Act read with regulation 35 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the **"Intermediaries Regulations"**) and regulation 28 of the IA Regulations and why appropriate penalty should not be imposed under Sections 11B(2), 11(4A) of the SEBI Act read with Section 15HA, 15HB and 15EB of the SEBI Act, for the alleged violations of regulation 7(1), (2), regulation 15(1), (9), (13), regulation 16(a), (b), (d), (f), regulation 17(a), regulation 19(1), (2) and Clauses 1, 2, 4, 6, and 9 of the Code of Conduct in Schedule III of the IA Regulations read with regulation 2(1)(c), regulation 3(a), (b), (c), (d) and regulation 4(1) and 4(2)(s) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as the **"PFUTP Regulations"**).

SHOW-CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. The allegations levelled against the *Noticees* in the SCN, based on the findings of the inspection, have been summarized hereunder:

a) *Noticee no. 1* had failed to carry out risk profiling of the clients in terms of regulation 16 of the IA Regulations;

b) The Risk Profiling Form adopted by *Noticee no. 1* for the period after September, 2019 (hereinafter referred to as the **"RPF-II"**) had leading and vague questions;

c) *Noticee no. 1* did not collect the supporting documents from the clients for the purpose of risk profiling in terms of regulation 16(a) of the IA Regulations;

d) *Noticee no. 1* has not communicated the risk profile and the suitability assessment to the clients in terms of regulation 16(e) of the IA Regulations;

e) *Noticee no. 1* has failed to do risk profiling for 3 (three) clients out of a sample of 40 (forty) clients, *Noticee no. 1* has collected advisory fees from 22 clients, before carrying out risk profiling of the clients, in alleged violation of regulation 17(a) of the IA Regulations;

f) *Noticee no. 1* has charged unfair/ arbitrary fees which was disproportionate to the annual income/ proposed investment amount of the clients;

g) *Noticee no. 1* has sold same advisory product/ service to its clients on multiple occasions and charged fees for the same before the completion of the tenure of the previous service;

h) *Noticee no. 1* has not maintained proper record relating to KYC, risk profiling, suitability assessment of the advice being rendered to the clients, as mandated by regulation 19 of the IA Regulations;

i) *Noticee no. 1* has not updated its Anti-Money Laundering Policy (hereinafter referred to as the **"AML Policy"**) in terms of SEBI Master Circular dated October 15, 2019 and has failed to appoint a Designated Director, in terms of the SEBI Circular dated March 12, 2014;

j) *Noticee no. 1* has been providing free trials to its prospective clients in violation of SEBI Circular dated December 27, 2019;

k) The employees of *Noticee no. 1* have been providing investment advice to the clients without having the requisite qualification in terms of the IA Regulations;

l) *Noticee no. 1* has published research reports/ call sheets, generated by other entities, as outcome of in-house research and has employed 11 (Eleven) people as research analysts without them having the adequate certifications as is required under regulation 7 of the Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (hereinafter referred to as the **"RA Regulations"**);

m) *Noticee no. 1* has provided false/ wrong information to SEBI in respect of its Compliance Officer.

5. From perusal of the records available, I note that the SCN was issued to the *Noticees* through Speed Post Acknowledgment Due. The details of the delivery of the said SCN to the *Noticees* is tabulated herein below:

Table No. 1

Noticee No.	Name Of the Noticees	Delivery of SCN	Reply, if any
1	CapitalStars Financial Research Pvt. Ltd	Delivered on June 2, 2022	Common/ Joint reply for all the *Noticees* received vide email dated June 21, 2022 from *Noticee no. 1*.
2	Mr.Amit Sharma	Delivered on June 2, 2022	
3	Mr.Anirudh Yadav	Delivered on June 2, 2022	
4	Mr.Abhishek Upadhyay	Delivered on June 4, 2022	
5	Ms.Rishbha Sharma	Delivered on June 3, 2022	

6. Pursuant to the receipt of the SCN, *Noticee no. 1*, vide email dated June 21, 2022, filed the reply to the SCN (hereinafter referred to as **"the reply"**) on behalf of all the *Noticees*. In compliance of principles of natural justice, an opportunity of personal hearing was granted to the *Noticees* on September 22, 2022 which was communicated to them vide hearing notice dated August 31, 2022. I note that the aforesaid hearing notices were served upon the *Noticees* and the proof of delivery is on record. Further, on the scheduled date of hearing, i.e., September 22, 2022, all the *Noticees*, except *Noticee no. 5,* Ms. Rishbha Sharma appeared through virtual hearing. During the course of hearing, *Noticee no. 2*, on behalf of all the *Noticees*, including *Noticee no. 5* made oral submissions in line with their earlier combined reply. Further, vide email dated September 29, 2022, the *Noticees* made further submissions.

7. For ease of reference, the combined reply of the *Noticees* dated June 21, 2022, oral submissions made by the *Noticees* during the course of hearing and the post hearing submissions made by the *Noticees* vide email dated September 29, 2022 are summarized as under:

a. **Risk Profiling Questionnaire and Suitability for the period April 28, 2014 to September 10, 2019:**

i. The *Noticees* have complied with regulation 16(a) and 16(b) of the IA Regulations as they have sought all the necessary information from the clients while doing the risk profiling such as their

age, investment objective, income details, existing investments, liability details and others, which can be seen from the Risk Profiling Forms (hereinafter referred to as **"RPFs"**) and from these RPFs, any sensible person can easily assess the client's capacity for absorbing loss and also whether he is willing to accept risk of loss of capital or not.

ii. The *Noticees* have also complied with regulation 17(a) of the IA Regulations by enclosing the Suitability Assessment of the advice along with the RPFs.

iii. Regulation 16 of the IA Regulations nowhere states that the Investment Adviser shall have a scoring methodology for assessing risk of the clients and the *Noticees* were analyzing responses to each of the Questions made in the RPF directly before offering any product to the clients. The Risk Profiling Questionnaire was approved by SEBI at the time of granting of registration and objections, if any, should have been raised at that time. The scoring methodology was introduced by the *Noticees* to simplify the risk profiling.

iv. The *Noticees* provided investment advice to the clients after proper assessment of risk capacity, however, the same was not documented as it is not mandated by the IA Regulations.

v. The fact that the *Noticees* have collected a total of Rs. 24.51 crore is factually incorrect.

vi. The *Noticees* have complied with the clauses 1 and 2 of the Code of Conduct as specified in the third schedule read with regulation 15(9) of the IA Regulations as the *Noticees* have acted honestly, fairly, diligently and in the best interest of their clients.

b. **Leading and Vague Questions in Risk Profiling Form after September 10, 2019:**

vii. The *Noticees* have emphasized that high returns come only with high risk through Question no. 18 of the RPF.

viii. Question No. 20 of the RPF is neither leading nor vague and the *Noticees* have merely cautioned the investors that trading involves higher level of risk and have just made the clients aware that trading in securities market involves risk and therefore, have not violated regulation 16(d)(i), (ii) of the IA Regulations.

c. **Non availability of supporting documents for risk profiling:**

ix. The *Noticees* are involved in offering intraday tips in the equity and derivative segments and are not involved in any kind of holistic financial planning of the clients and therefore, the need to meet clients personally does not arise. Further, the IA Regulations also do not mandate the investment advisers to meet the clients personally.

x. The *Noticees* have obtained all the information from the clients as envisaged under the IA Regulations and since the *Noticees* are not involved in comprehensive financial planning, the

need to collect the supporting documents does not arise. Further, the IA Regulations also do not mandate such collection of supporting documents.

xi. The *Noticees* have maintained each and every record as mandated by the IA Regulations in terms of regulation 19(1) for the period of five years.

xii. The *Noticees* have not violated regulation 16(a) and regulation 19(1) by not obtaining the supporting documents as there is no requirement to obtain supporting documents in the IA Regulations.

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

xiii. The *Noticees* have done the risk profiling telephonically which was later shared with the clients via email and therefore, the Noticees have not violated regulation 16(e) of the IA Regulations.

e. **Advisory services offered prior to Risk Profiling, offered Advisory Services without Risk Profiling and improper Risk Profiling:**

xiv. The *Noticees* have carried out the risk profiling of the clients at the time of onboarding the clients and the same was not just prepared for the purpose of inspection. Further, non-mentioning of the date on risk profiling form is not a non-compliance and the risk profiling was always done and assessed by the authorized representatives who were well qualified in terms of the IA Regulations.

xv. The *Noticees* have not started the services of the clients without carrying out the risk profiling which can be verified through the SMS logs maintained by the Noticees. The dates of RPF/Communication of RPF to the clients, taken by SEBI, are the dates of communication of revised risk profiling, as there were certain changes made by the clients themselves in the risk profile.

xvi. The *Noticees* have always ensured that investment advice provided to clients was always appropriate to the risk profile and in the best interest of the client.

f. **Unfair amount of fees charged from Clients:**

xvii. The clients do not fill correct income details/ don't feel safe to disclose the correct income due to taxation/ personal reasons. The *Noticees* had informed the clients that the correct information has to be filled and that false information will lead to wrong risk profiling, for which, the client will be held liable.

xviii. Since clients are able to pay higher fees, it validates the fact that their annual income and proposed investment amount is much higher than mentioned. The *Noticees* have not forced or deceived its clients and the clients have made the payments out of their own free will and consent. Further, the *Noticees* cannot be held liable if the clients fail to disclose correct details/ information in the RPF.

xix. In many instances, the clients confirm over phone that the clients have more annual income than what is stated in the risk profile and the clients increase their investment once they start earning profits.

xx. Further, what quantum of fees is fair and what is unfair is not stipulated anywhere and the same depends upon the parties to the contract. Furthermore, prior to 2021 there was no restriction or cap on quantum of fees which may be charged from the clients. The restrictions were made applicable from 1st April, 2021 and post that, the *Noticees* have duly complied with the said requirement.

g. **Charging advisory fees before expiry of tenure of existing service/ Collecting multiple payments in short period/ Improper service and Selling of advisory services with unethical intents:**

xxi. In all such cases, the clients' other service was running at that point of time, and starting another service simultaneously would not have been in the best interest of the clients, as they would not have been able to take benefit of it.

xxii. Further, there is no prohibition upon taking an advance payment for services as the client gets discount if they opt for a service in advance and such fees are charged after obtaining proper consent from the client. The said practice is adopted at an industry-wide scale and is fair and reasonable.

xxiii. Further, it would have been unfair if the services were not provided to the clients on time but the Noticees have provided the services to the clients at appropriate time and as and when the services were due.

xxiv. The *Noticees* have shared the Letter of Engagement with every client wherein complete details of the services opted by them are clearly mentioned along-with the service duration and fees charged.

xxv. Further, SEBI came up with the circular regarding restrictions for advance payment for more than two quarters on September 23, 2020 and prior to that there were no restrictions for advance payment.

h. **Non Maintenance of records:**

xxvi. The *Noticees* have maintained proper and adequate records as per regulation 19(1) of the IA Regulations for each and every client. The *Noticees* have not maintained the voice recordings as the same was not earlier mandated by regulation 19(1) of the IA Regulations and the said requirement was applicable from January 1, 2021.

i. **PMLA/AML Provisions:**

xxvii. The *Noticees* had the Anti-Money Laundering Policy in place. However, the *Noticees* missed to carry out amendments to the said policy as per the SEBI Master Circular dated October 15, 2019.

xxviii. Further, the *Noticees* had never come across any suspicious transactions wherein the requirement of reporting such transactions arose. Hence, the reporting was not applicable on the *Noticees* and there was no non-compliance.

j. **Free Trials:**

xxix. The *Noticees* have complied with clauses of the SEBI Circular dated December 27, 2019 in true letter and spirit. Further, with respect to the allegation that free trial has been offered by the *Noticees*, the *Noticees* would like to inform that they have not updated the name of enquiry form on their website and hence, the same was being shown as free trial request form. The *Noticees* have not offered any free trial to the prospective clients and the same can be verified from the SMS logs.

k. **Qualification & Certification Requirements:**

xxx. The *Noticees* confirm that only four persons, i.e., Mr. Abhishek Upadhyay, Amit Sharma, Mr. Sourabh Dubey and Mr. Krishna Tiwari were involved in research. The *Noticees* were involved in offering standardized investment tips/recommendations for intraday trades to the clients and were not involved in offering any type of customized investment advisory services and hence the *Noticees* were capable of offering services to the large number of clients.

xxxi. The *Noticees* have hired employees for business development and their work was restricted to generating the leads and they were not involved in offering any type of investment advice to the clients and hence the requirement for compliance with regulation 7(2) of the IA Regulations was not applicable to them, as they were not the authorized representatives of *Noticee no. 1*. None of the employees were offering any type of advice or were involved in activities related to investment advice and they merely used to assist the clients on the basis of their query and

requirements, they were just acting as mediator between the clients and *Noticee no. 1* to provide support.

xxxii. The investment calls shared by the employees to the clients were not generated by the employees rather the employees were just sharing the calls generated by the research department of *Noticee no. 1* and mere sharing/ intimation does not result into non-compliance of regulations 7(1), 7(2) and 15(3) of the IA Regulations.

l. **Research team of Capitalstars did not have NISM Certification mandated under SEBI (Research Analysts) Regulations, 2014:**

xxxiii. The *Noticees* clarify that the employees mentioned in table-4 of the SCN were part of the research department and were not involved directly in generating any calls or providing investment advice. They were hired in research department to assist the persons involved in research viz. Mr. Abhishek Upadhyay, Mr. Amit Sharma, Mr. Sourabh Dubey and Mr. Krishna Tiwari.

xxxiv. The said employees were duly qualified and certified to provide investment advice in terms of the IA Regulations and had NISM Certifications (X-A & X-B), which was duly submitted to the SEBI at the time of inspection.

xxxv. The *Noticees* have not perpetrated any fraud with its clients by publishing the research reports and call sheets as outcome of his in-house research conducted by it as the same was for informational purpose and no amount was charged for it. The *Noticees* have used certain software and publicly available information for its technical research. The *Noticees* have clarified that the technical analysis requires study of charts, pattern, indicators & other factors. A technical analysis involves reading the chart and understanding the movement ahead which the Noticees have done before generating any call.

xxxvi. The technical charts and advices were not taken from Sharekhan trade tiger rather the same was used for internal purposes and to guide the interns. The *Noticees* were using the official software of "*Ticker Plant*" for information and real time stock market data for which the *Noticees* had duly subscribed. The *Noticees* have maintained the proper records of the rationale behind such calls as per the IA Regulations. The *Noticees* have abided by clause 1, 2 and 9 of the Code of Conduct as mentioned in Schedule III of the IA Regulations.

xxxvii. The *Noticees* have never published research reports in television media and its website as in-house research report.

m. **False information to SEBI about the name of the Compliance Officer:**

xxxviii. The *Noticees* had initially appointed Ms. Preeti Saxena as their Compliance Officer and the same was intimated to SEBI. The *Noticees* have nowhere in any manner given any false information the SEBI about the Compliance Officer and the details of Ms. Rishbha Sharma, being the Compliance Officer was updated on the SEBI SCORES Portal.

n. **Oral submissions during the course of hearing**

xxxix. The present inspection happens to be the first audit of *Noticee no. 1* since its registration;

xl. In view of the ongoing proceedings initiated by SEBI, they have not conducted any advisory related business since November, 2021;

xli. As regard the allegation pertaining to charging advisory fees before expiry of service tenure of existing services, the *Noticees* also submitted that the said payments were taken as advance and multiple fees were not charged for the same period.

o. **Post Hearing Submissions**

xlii. The *Noticees* have not on-boarded/ taken payment from any new/ old client in almost one year;

xliii. That *Noticee no. 5* has been the Compliance Officer of *Noticee no. 1* since April, 2014 and the same may be verified from the SCORES Portal;

xliv. That no free trial has been given since January 1, 2020 to any client and the free trial form on the website was modified as *'Interested Client Form'* but the mails received by the *Noticees* on the backend were tagged as free trial.

8. In support of the submission that *Noticee no. 1* has not engaged in any advisory related business since November, 2021, *Noticee no. 1*, vide emails dated November 8, 2022 and November 15, 2022 has submitted its bank account statements.

CONSIDERATION AND FINDINGS

9. I have perused the allegations levelled against the *Noticees* in the SCN, the reply, oral and written submissions made by the *Noticees* and other material available on record. Before proceeding on to deal with the matter on its merits, I note that the *Noticees* have been alleged to have violated the provisions of the SEBI Act, IA Regulations, the RA Regulations, the PFUTP Regulations and circulars issued thereunder. Therefore, the relevant provisions, alleged to have been violated by the *Noticees*, are re-produced hereunder for ease of reference and better appreciation:

A. *"The 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;

B. *The IA Regulations*

Qualification and certification requirement

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

(a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or

(b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.

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

(a)from NISM; or

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

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Risk profiling

16. Investment adviser shall ensure that, -

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following: -

(i)age;
(ii)investment objectives including time for which they wish to stay invested, the purposes of the investment;
(iii)income details;
(iv)existing investments/ assets;
(v)risk appetite/ tolerance;
(vi)liability/borrowing details.

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

(i) assessing a client's capacity for absorbing loss;
(ii)identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii)appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(c)where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;

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

(i)questionnaire is not vague or use double negatives or in a complex language that the client may not understand;
(ii)questionnaire is not structured in a way that it contains leading questions.

(e)risk profile of the client is communicated to the client after risk assessment is done;

(f)information provided by clients and their risk assessment is updated periodically.

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;

Schedule III - Code Of Conduct For Investment Adviser

1.Honesty and fairness

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

2.Diligence

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

4.Information about clients

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

6.Fair and reasonable charges

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

9.Responsibility of senior management

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

Maintenance of records.

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

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

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

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

C. *The PFUTP Regulations, 2003*

Regulation 2(1)(c)

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

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

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market or

(d) any other matter of a like nature

whether such comments are made in public or in private;

Prohibition of certain dealings in securities

3. 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.

Prohibition of manipulative, fraudulent and unfair trade practices

4(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

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

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

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

D. ***The RA Regulations***

Qualification and certification requirement.

7(2). An individual registered as research analyst under these regulations, individuals employed as research analyst and partners of a research analyst, if any, shall have, at all times, a NISM certification for research analysts as specified by the Board or other certification recognized by the Board from time to time:

Provided that research analyst or research entity already engaged in issuance of research report or research analysis seeking registration under these regulations shall ensure that it or the individuals employed by it as research analyst and/or its partners obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.

E. *SEBI Master Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113*

1.3.2.2 To be in compliance with these obligations, the senior management of a registered intermediary shall be fully committed to establishing appropriate policies and procedures for the prevention of ML and TF and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements. The Registered Intermediaries shall:

1.3.2.2 (c) regularly review the policies and procedures on the prevention of ML and TF to ensure their effectiveness

F. *SEBI Circular CIR/MIRSD/1/2014*

In addition to the existing requirement of designation of a Principal Officer, the registered intermediaries shall also designate a person as a 'Designated Director'."

10. After having summarized the allegations levelled against the *Noticees* in the SCN, the reply and submissions made/ submitted by the *Noticees* along with the relevant provisions of law, I now proceed to deal with the contentions raised by the *Noticees* and discuss the case on its merits.

Risk Profiling Questionnaire and Suitability for the period April 28, 2014 to September 10, 2019:

11. It was alleged in the SCN that the Risk Profiling Form adopted by *Noticee no. 1* for the period starting from April 28, 2014 till September 10, 2019 (hereinafter referred to as the **"RPF-I"**), had standard questions, simple ticking methodology and did not specify any weightage to the responses of the clients and therefore, there was no appropriate process for risk profiling of the clients. Further, it was also alleged that from the date of obtaining the registration, *Noticee no. 1* collected an amount of Rs. 24.51 crore till September, 2019.

12. I note that *Noticee no. 1* has submitted that it has sought all the necessary information such as age, investment objective, income details etc. and has attached the RPF-I as a piece of evidence. *Noticee no. 1* has further submitted that *"… the Noticees or any sensible persons can easily assess the client's capacity for absorbing loss and also whether he is willing to accept risk of loss of capital or not"*. *Noticee no. 1* has also submitted that the IA Regulations do not mandate a scoring methodology and the said RPF-I was also approved by SEBI at the time of granting the registration. *Noticee no. 1* has also denied the factum of collection of Rs. 24.51 crores.

13. After analyzing the contentions of *Noticee no. 1* in depth, I note that regulation 16 of the IA Regulations casts various obligations upon the investment advisers, in order to safeguard the interest of investors, which shall be followed in letter and in spirit, by the investment advisers, qua the investors approaching such investment advisors for securities market related guidance. One such obligation envisaged under regulation 16(b) is mandatory requirement of having a *'process to assess the risk a client is willing and able to take'*. In the present matter, even if I were to accept the contention of *Noticee no. 1* that it has obtained the relevant information, as required under regulation 16(a), *Noticee no. 1* has not shown that a *'proper process'* was in place to assess the risk a client is willing and able to take, based on the input received in the RPF-I from the clients. I note that the RPF-I used by *Noticee no. 1* had a simple ticking methodology and standard questions. Further, *Noticee no. 1* did not have any process to assess the responses received from the client and did not assign any weightage to the questions in the RPF-I. In absence of such processes and the weightage, I am of the view that it is not possible to do a proper risk profiling of the clients. *Noticee no. 1* has stated that any sensible person could have assessed a client's capacity to take risk, however, such vague and bald statements without any logical explanation or evidentiary support cannot be accepted. While regulation 16(a) requires the investment advisers to obtain the information from the clients, regulation 16(b) mandates the investment advisers to put in place, an appropriate process, to assess and analyze the information obtained under regulation 16(a). *Noticee no. 1* in the present matter has failed to demonstrate that such process was in place and thus, I am of the view that the risk profiling done by *Noticee no. 1* was at cross-purposes with the spirit of regulation 16(b) of the IA Regulations. At this juncture, I would also like to refer to the statement given on oath by *Noticee no. 2,* Mr. Amit Sharma, during the course of inspection. The relevant excerpt of the statement made by *Noticee no. 2* is produced hereunder for ease of reference:

> *"**We don't do Risk scoring(marks) in the Risk Profiling for earlier September 2019**, after it onwards we have modified our Risk Profiling form and start doing Risk Scoring too. **We don't have a detailed suitability assessment policy before sep 2019** after that we have revised our Risk Profiling system and included detailed Risk assessment of clients and also **categorize the clients based on their Risk Tolerance capacity**."*
> (***emphasis supplied***)

14. I note from the above statement of *Noticee no. 2* that it was only after September, 2019, i.e., after introduction of scoring methodology, that *Noticee no. 1* started categorizing the clients based on their risk profiling. Further, *Noticee no. 2* has also admitted that they did not have a detailed suitability assessment policy before September, 2019.

15. As regards, the contention of *Noticee no. 1* that the RPF-I was '*approved*' by SEBI at the time of granting of registration, I note that though the relevant documents are reviewed by SEBI at the time of granting the certificate of registration, the same are never '*approved*' as such and therefore, *Noticee no. 1* cannot be allowed to put forth such a contention. Further, SEBI had issued a letter for approval of certificate of registration to *Noticee no. 1* on May 19, 2014. The said letter, *inter alia*, intimated *Noticee no. 1* about the issuance of certificate of registration and imposed certain conditions/ obligations which, *inter alia*, included adherence on the part of *Noticee no. 1* with the provisions of the SEBI Act and the IA Regulations. Accordingly, *Noticee no. 1* was required to constantly adhere by the provisions of the SEBI Act and the IA Regulations in its letter and spirit. Accordingly, the contention raised by *Noticee no. 1* is not tenable in law.

16. *Noticee no. 1* has also denied the factum of collection of Rs 24.51 crore from the date of obtaining of certificate of registration till September, 2019. In this regard, I note that SEBI had conducted the inspection of the books of accounts and other records of *Noticee no. 1*. The said inspection, *inter alia*, revealed the amounts raised by *Noticee no. 1* from its clients during the previous financial years. A breakup of the same, as mentioned in the IR, has been produced hereunder for ease of reference:

Table 2

Sr. No.	Financial Year	Gross Receipts (In Rs.)
1	2013-14	2,14,80,665.00
2	2014-15	2,70,52,193.00
3	2015-16	2,73,86,612.00
4	2016-17	2,42,93,659.00
5	2017-18	4,64,73,364.00
6	2018-19	6,67,92,677.00
Total Amount		21,34,79,170

17. I note from the aforesaid table that till March, 2019, *Noticee no. 1* had collected an amount of around Rs. 21.34 crores from its clients and after March, 2019, *Noticee no. 1* collected a further amount of around Rs. 3.16 crores, details of which are as under:

Table 3

Sr. No.	Month	Gross Receipts (In Rs.)
1	April, 2019	80,35,791.26

2	May, 2019	95,52,434.62
3	June, 2019	67,75,748.42
4	July, 2019	35,14,218.32
5	August, 2019	19,85,763.61
6	September, 2019	18,08,064.34
Total Amount		31,672,020.57

18. On a perusal of the above data, it is amply clear that *Noticee no. 1* has collected a sum of around Rs. 24.51 crores (21,34,79,170 + 3,16,72,020.57= 24,51,51,190) from its clients after obtaining the certificate of registration from SEBI till September, 2019. Further, in absence of any evidence to substantiate the claims of *Noticee no. 1* that the financial figures provided by SEBI are not in order, I do not see any reason to accept a plain simple statement made by *Noticee no. 1* that the data provided by SEBI is incorrect.

19. In view of the above detailed facts, I am of the view that *Noticee no. 1* is in violation of regulations 16(a), 16(b) and 17(a) read with Clauses 1 and 2 of the third schedule of the Code of Conduct of the IA Regulations.

20. That being said, at this juncture, I also note that *Noticee no. 1* replaced RPF-I with RPF-II from September 10, 2019 and has introduced a Risk Profiling Form with a scoring methodology and suitability assessment policy, as submitted during the course of inspection. Therefore, I note that *Noticee no. 1* appears to have taken corrective measures as regard the violations levelled in the SCN.

Leading and Vague Questions in Risk Profiling Form after September 10, 2019:

21. *Noticee no. 1* is also alleged to have used leading and vague questions in the RPF-II which was adopted after September 10, 2019. The RPF-II used by *Noticee no. 1*, *inter alia*, had the following questions:

1. Question No. 18 – *"Do you prefer to buy high risk investment instrument for getting higher return?"*; and
2. Question No. 20- *"Risk tolerance (only high risk investor are eligible for trading services)"*;

22. In this regard, *Noticee no. 1* has submitted that through Question No. 18 of the RPF-II, *Noticee no. 1* has only emphasized that high returns come only with high risk and that Question No. 20 is neither

leading, nor vague and that *Noticee no. 1* has only cautioned the investors that trading involves higher level of risk. *Noticee no. 1* has also submitted that it has not farced/ misled the clients; rather it has only made them aware about the risks involved in the securities markets. In this regard, I note that the contentions of *Noticee no. 1* are devoid of any merit. The expression "*Do you prefer to buy high risk investment instrument for getting higher return*", *prima facie*, leaves an impression to the investors that a high-risk investment will most certainly lead to higher returns. The usage of the term '*for*' in Questing No. 18 further strengthens the said impression and in my opinion, makes the investors believe that high-risk investments are '*for*' higher returns. In a similar way, the Question No. 20 of the RPF-II, i.e., "*Risk tolerance (only high risk investor are eligible for trading services)*" leaves an inevitable imprint upon the mind of investors that trading services are available '*only'* for high risk investors and not for other investors and thus, directly or indirectly, induces the investors to express that they have a high risk appetite, vitiating exercise of free will /choice on an informed basis. Therefore, I am of the opinion that the submissions made by *Noticee no. 1* as regards the appropriateness of the questions used in the RPF-II cannot be accepted and therefore the same are in violation of regulation 16(d) of the IA Regulations.

Non availability of supporting documents for risk profiling:

23. Regulation 16(a) read with regulation 19(2) of the IA Regulations mandated *Noticee no. 1* to obtain such information as was necessary for the purpose of giving investment advice, including age, investment objective, income details etc. with supporting documents and maintain the same for a minimum period of 5 (five) years. *Noticee no. 1* conducted the risk profiling telephonically and has been alleged to not have maintained the record of calls made to their clients. Further, vide letter dated March 2, 2020, *Noticee no. 1* has submitted that while carrying out the risk profiling, *Noticee no. 1* only obtained KYC details, PAN copy and address proof of the clients and no other relevant documents were collected.

24. In this regard, *Noticee no. 1* has submitted that *Noticee no. 1* was involved in offering intraday tips in the equity and derivative segments and not in holistic financial planning and therefore, the need to meet clients personally did not arise. *Noticee no. 1* has further submitted that the need to collect the supporting documents does not arise as *Noticee no. 1* is not involved in comprehensive financial planning and the IA Regulations do not expressly provide/ mandate collection of supporting documents. I note that such a superficial differentiation created by *Noticee no. 1* cannot be accepted. Regulation 16(a) of the IA Regulations embodies the spirit of investor protection and mandates the basic principles to be followed by investment advisers while doing the risk profiling of a client. The said provision does not discriminate on the basis of advice given or services engaged and as and when a fiduciary relationship

between an investor and an investment adviser is created, the investment adviser is bound to uphold the letter and spirit of provisions of the IA Regulations. Thus, in the present matter, irrespective of the type of advice provided by *Noticee no. 1,* it was duty bound to collect supporting documents in order to do the risk profiling of the clients properly. Further, I also place reliance on the letter dated March 2, 2020 submitted by *Noticee no. 1* to the inspection team of SEBI wherein *Noticee no. 1* has admitted that while carrying out the risk profiling, *Noticee no. 1* only obtains KYC details, copy of PAN details and a proof of address and it does not seek any supporting documents. In view of the discussion above, I find that the activities of *Noticee no. 1*, in respect of risk profiling of the investors is in violation of regulation 16(a) of the IA Regulations.

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

25. *Noticee no. 1* is also alleged to have violated regulation 16(e) of the IA Regulations. In terms of regulation 16(e) of the IA Regulations, *Noticee no. 1* was under the obligation to communicate the risk profile to the respective clients. *Noticee no. 1*, during the course of inspection, submitted that the risk profile and suitability assessment is forwarded at the time of sending the welcome email to the client. In this regard, out of a sample of 40 (forty) clients, examined during the inspection by SEBI, it was observed that *Noticee no. 1* has not sent the said welcome email to 17 (seventeen) clients and further, *Noticee no. 1* has failed to produce any documentary evidence confirming receipt of the risk profile and suitability assessment form in respect of remaining 23 (twenty-three) clients.

26. In this regard, *Noticee no. 1* has submitted that the risk profiling done telephonically was later shared with the clients over email and have accordingly submitted a few samples in support of their contentions. I note that the SCN issued to the *Noticees*, *inter alia*, provided a list of 40 (forty) sample clients out of which *Noticee no. 1* had not sent the welcome email to 17 (seventeen) clients and *Noticee no. 1* had not provided any documentary proof for 23 (twenty-three) clients. I have analyzed the samples attached by *Noticee no. 1* as a proof of welcome email sent to its clients and I note that *Noticee no. 1* has attached the copy of a welcome email sent to one of their clients, namely, Mr. PKP[1]. After analyzing the evidence put on record and the allegations raised in the SCN, I observe that Mr. PKP did not form a part of the 40 (forty) sample clients. In view of that, *Noticee no. 1* has failed to prove/ establish that the welcome emails were sent to all the clients. *Noticee no. 1* has also failed to make any submission with respect to the remaining 23 (twenty-

[1] The names of the clients of *Noticee no. 1* have been masked and only their initials have been used in the interest of customer privacy.

three) clients and has not put forth anything on record to establish that the allegations levelled in the SCN are devoid of any merit. I note that the IA while dealing with his clients failed to act honestly, fairly and in the best interest of his clients and in the integrity of the market. I also note that the IA failed to make adequate disclosures of relevant material information by not communicating risk profile to the client after their risk assessment was done. Accordingly, I note that the contentions put forth put by *Noticee no. 1* are devoid of any merit and are liable to be rejected. Therefore, I find and hold that *Noticee no. 1* is in violation of regulation 16(e) of the IA Regulations and Clauses 1 and 5 of third schedule of the Code of Conduct read with regulation 15(9) of the IA Regulations.

Advisory Services Offered Prior to Risk Profiling, offered Advisory Services without Risk Profiling and improper Risk Profiling:

27. The SCN has also alleged that out of the sample of 40 (forty) clients, *Noticee no. 1* has failed to do risk profiling for three clients and has provided investment advice and charged advisory fees without doing risk profiling of the clients. Further, the RPFs of remaining 37 (thirty-seven) clients were not signed by the employee/ representatives of *Noticee no. 1*, in absence of which, there arises a doubt in respect of authenticity of the risk profiling done by *Noticee no. 1*, as it cannot be identified that who was actually doing the risk profiling and on what date it was done. In terms of regulation 17(a), *Noticees no. 1* was required to ensure that all investment on which advice is provided is appropriate to the risk profile of the clients and as *Noticee no. 1* has provided investment advice and collected advisory fees without carrying out the risk profiling/ prior to carrying out of risk profiling, the same is in violation of IA Regulations.

28. In this regard, *Noticee no. 1* has submitted that mere non-mentioning of date on the RPF cannot be labelled as non-compliance and the risk profiling of the clients was always done and assessed by authorized representatives who were well qualified in terms of the IA Regulations. *Noticee no. 1* has submitted that they have not started the services of the clients without carrying out the risk profiling and the same may be verified from the SMS logs maintained by *Noticee no. 1*. *Noticee no. 1* has also submitted that the dates of RPF/ communication of RPF to the clients, taken by SEBI, are the revised dates of communication of the revised risk profiling, as there were certain changes made in the risk profile by clients themselves.

29. On a perusal of the material available on record, I note that it is an undisputed fact that *Noticee no. 1* have not done the risk profiling for 3 (three) clients, namely, Mr. TP, Mr. PN and Mr. RK. *Noticee no. 1*, in the reply, has not addressed the said allegations pertaining to failure to carry out the said

risk profiling. Further, during the course of hearing and in the post-hearing written submissions also, *Noticee no. 1* has failed to address the aforesaid issue and provide any oral/ documentary evidence. The responses of *Noticee no. 1* are silent with regard to the allegation of not carrying out the risk profiling for the said three clients and *Noticee no. 1* has failed to justify as to why risk profiling was not done for these clients.

30. As regards the contention that mere non-signing of the RPFs prepared by *Noticee no. 1* by its employees or non-mentioning of date would not amount to a violation and the services were started only after risk profiling of the clients, I note that under the scheme of the IA Regulations, maintaining of due records requires due knowledge of the employees performing the activity required by IA Regulations and record is incomplete without specification of date as it can lead to possibility of record keeping being compromised or susceptible to tampering or the like. Furthermore, communication of the risk profile to the concerned investors is an important aspect of investor protection as earlier noted. Thus, it becomes pertinent that such risk profile which is being communicated to the clients is complete in each and every aspect including identity of the employee performing the risk profiling and the date when it was performed. *Noticee no. 1* was hence bound to prepare the risk profiles of their clients in an appropriate and suitable manner. In the present case, *Noticee no. 1* has failed to ensure that the risk profiles were duly signed by its employees and dated, and in the absence of any signature/ authentication /dating, it is not possible for SEBI as a regulator or the investors to determine/ verify as to who performed the risk profiling and when the risk profiling was actually done. *Noticee no. 1* also failed to produce any document/ email to show that the risk profile was communicated to the clients. Thus, I note that the said contention of *Noticee no. 1* is not tenable in law and the services offered to the clients were done without proper risk profiling of the clients. Accordingly, I note that the said activity of Noticee *no. 1* is in violation of regulation 17(a), Clauses 1, 2 and 4 of third schedule of the Code of Conduct read with regulation 15 (9) of the IA Regulations.

Unfair Amount of Fees Charged from Clients:

31. *Noticee no. 1* is also alleged to have charged fees from its clients which was disproportionate to their income. The SCN has alleged that out of a sample of 40 (forty) clients, *Noticee no. 1* has charged fees which was disproportionate to the annual income/ proposed investment amount for 28 (twenty-eight) clients.

The details of fees charged by *Noticee no. 1* along with the annual income/ proposed investment amount, as available on record, is as under[2]:

Table 4 – Annual Income

S. No.	Name of the Client	Total amount charged from client (INR)	Client Annual Income as per KYC/RPF (INR)
1	KVP	24,19,733	1 to 5 lakh
2	MVRMR	20,17,500	1 to 5 lakh
3	PKSPE	15,18,114	10 to 25 lakh
4	TKM	11,81,930	10 to 25 lakh
5	MC	10,30,160	5 to 10 lakh
6	NSH	9,98,745	8,40,000
7	PAT	12,42,088	10 to 25 lakh
8	HU	9,32,222	25 lakh
9	KBP	9,15,901	5 to 10 lakh
10	HMP	9,00,945	5 lakh
11	DAV	7,05,168	10 to 25 lakh
12	DC	6,97,133	5 to 10 lakh
13	JS	6,87,202	10 to 25 lakh
14	VBR	3,05,297	5,50,000
15	GB	2,55,727	1 to 5 lakh
16	JSR	5,07,075	1 to 5 lakh
17	RJJ	4,99,550	1 to 5 lakh
18	GDD	1,45,197	less than 1 lakh
19	PR	3,21,275	1 to 5 lakh
20	RP	2,60,873	1 to 5 lakh

[2] As noted above, the names of the clients of *Noticee no. 1* have been masked and only their initials have been used in the interest of customer privacy.

21	RS	6,87,992	5 to 10 lakh
22	RRP	55,153	Not Specified
23	MNK	2,30,759	below 1 lakh
24	DKB	98,801	1 to 5 lakh
25	KKP	24,485	below 1 lakh
26	DR	75,000	Not Specified
27	JJ	3,00,782	5 to 10 lakh
28	HSJ	3,30,300	5 to 10 lakh

Table 5- Proposed Investment Amount

SI No.	**Name of the Client**	**Total amount charged from client (In Rupees)**	**Proposed Investment Amount as per RPF (In Rupees)**
1	KVP	24,19,733	5 lacs and above
2	MVRMR	20,17,500	5 lacs and above
3	PKSPE	15,18,114	5 lacs and above
4	TKM	11,81,930	1-2 lacs
5	MC	10,30,160	5 lacs and above
6	NSH	9,98,745	Below 1 lac
7	PAT	12,42,088	5 lacs and above
8	HU	9,32,222	2-5 lacs
9	KBP	9,15,901	Below 1 lac
10	HMP	9,00,945	5 lacs and above
11	DAV	7,05,168	2-5 lacs
12	DC	6,97,133	2-5 lacs
13	JS	6,87,202	2-5 lacs

14	VBR	3,05,297	Below 1 lac
15	GB	2,55,727	Below 1 lac
16	JSR	5,07,075	1-2 lacs
17	RJJ	4,99,550	1-2 lacs
18	GDD	1,45,197	Below 1 lac
19	RP	2,60,873	Below 1 lac
20	RS	6,87,992	5 lacs and above
21	MNK	2,30,759	Below 1 lac
22	JJ	3,00,782	Below 1 lac
23	CV	1,06,564	Below 1 lac
24	EA	1,76,410	Below 1 lac

32. In this regard, *Noticee no. 1* has submitted that the clients do not fill their correct income details or do not feel safe to disclose their correct income details due to personal taxation reasons. Further, the clients being able to pay the high fees validates that their annual income/ proposed investment amount is higher than the disclosed amount. *Noticee no. 1* has also submitted that the fairness as regards the quantum of fees is a matter between the IA and its clients. and the clients were in no manner forced by *Noticee no. 1* to pay the amount. *Noticee no. 1* has also submitted that as the clients start earning profits, the investment amount available to the clients also increases.

33. In this regard, I observe that although the fees charged by *Noticee no. 1* and the annual income/ proposed investment amount of the clients seems to be disproportionate, I am of the view that this factor has to be adjudged along with other connected factors. I note that no complaints from the clients of *Noticee no. 1* have been brought on record before me with respect to the amount of fees charged. In absence of any grievance between *Noticee no. 1* and its clients and any other material to show that the clients were forced / manipulated to pay higher fees, I am inclined to give the benefit of doubt to *Noticee no. 1*. Further, the restriction/ cap on the quantum of fees which may be charged from the clients came into force from April 1, 2021, i.e., after the period of inspection. Accordingly, at the time of inspection, there was no regulatory bar upon the IAs to charge a specific fee from their clients. Thus, in view of lack

of any corroborating material to support the allegations, I dispose of the allegation levelled against *Noticee no. 1* as regard charging arbitrary fees from its clients.

34. At this juncture, I deem it important to address certain submissions made by *Noticee no. 1*, i.e., the clients do not feel safe or comfortable about disclosing their correct income details due to personal taxation reasons. In this regard, I observe that there is no iota of doubt in the importance of the citizens when it comes to nation building through payment of applicable taxes. In my opinion, a law abiding citizen has no reason to feel unsafe to disclose the true income details to regulated intermediaries, as required to be obtained by such intermediaries under applicable law. Further, I also note that it is incumbent upon the securities market related intermediaries (including *Noticees no. 1*) to be clear in expectation from their clients for true and correct disclosures including as to income and its sources, and accordingly to be more vigilant to such instances and carry out the process of document verification with due diligence.

Charging Advisory fees before expiry of tenure of existing service/ Colleting multiple payments in short period/Improper service and Selling of advisory services with unethical intents:

35. *Noticee no. 1* is also alleged to have sold the same products/ services to the same clients before the completion of the tenure of the previous service. The SCN alleged that on multiple instances, the product/service were sold before completion of the tenure of the previous service by *Noticee no.1*. Further, in case of some clients, advisory fees have been charged multiple times for one single service even before the expiry of duration of that service. It was also alleged that invoices, provided to clients, did not have any mention of tenure of service for which advisory fees was charged by *Noticee no. 1*. This allegedly results in lack of transparency between an investment adviser and the clients, and clients do not know the period for which they have paid advisory fees to the investment adviser. Similarly, regulator is also frustrated from ascertaining the correct position. Further, it allowed *Noticee no. 1* to charge multiple fees in a short period of time.

36. In this regard, *Noticee no. 1* has submitted that since for all the clients mentioned in the SCN, a particular service was already running, it would not have been in the best interest of the client to start another service simultaneously. Further, *Noticee no. 1* in its reply and during the course of hearing also has submitted that the payments taken from clients were advance and nothing prohibits them from taking an advance payment for services as the clients gets discount if they opt for a service in advance. As regard the allegation that the clients were unaware about the services sold to them, *Noticee no. 1* has submitted

that a Letter of Engagement wherein complete details of the services opted by the clients along with the service duration and fees charged was shared with all the clients. *Noticee no. 1* has submitted a sample Letter of Engagement in this regard to further strengthen its argument. Further, in view of the above submissions, *Noticee no.1* has also submitted that the charge of violation of the PFUTP Regulations also do not stand.

37. I have perused the submissions made by *Noticee no. 1* in respect of allegations levelled at Para 35 above. I note from the available records that *Noticee no.1* was already providing multiple services to the clients at the same time. For instance, Mr. KKVP, one of clients of *Noticee no. 1* was availing HNI Futures services for the period starting from February 1, 2019 to May 12, 2019. The same client was also availing CPE Futures services for the period starting from February 27, 2019 to September 21, 2019. Thus, Mr. KKVP was availing multiple services at the same time. Similar is the case of Mr. MVRMR, another client of *Noticee no. 1* who was availing CPE services for the period January 15, 2019 to February 16, 2019 and CPE Futures services for the period February 1, 2019 to April 7, 2019. There are other similar instances available on record, wherein, the clients of *Noticee no. 1* were availing of multiple services at a given point of time and therefore, I am of the view that the argument of the Noticee that starting another service simultaneously would not have been in the best interest of the client is devoid of any logic (given its own instances of offering multiple services).

38. As regards the contention that the payments taken from the clients were only advance payments, I note that, *in arguendo*, even if it is accepted that the payments received from the clients were advance payments for same services, the said claim is not in tandem with the material available on record. For instance, Mr. PKSPE, one of the clients of *Noticee no. 1* paid an amount of Rs. 1,08,400 for CPC services on August 30, 2018, for the period of October 16, 2018 to November 20, 2018. The same client made another payment of Rs. 2,00,002 for CPC services only on September 13, 2018 for the overlapping period of September 14, 2018 to November 8, 2018. If the argument of *Noticee no. 1* is accepted with respect to advance payments is accepted, I do not see any explanation as to why for the same overlapping period, same service, the client has made multiple payments. If *Noticee no. 1* was taking advance payments from the clients for a particular service, the same could have been done in one transaction but multiple transactions for the same service and same tenure, in absence of any evidence in support of the contentions of *Noticee no. 1*, make an impression that multiple fees were charged by *Noticee no. 1* for the same services.

39. Further, as regards the contention of *Noticee no. 1* pertaining to providing Letter of Engagement to its clients through which it informed its clients about the services sold to them, I note that the said Letter of Engagement, at best, indicates that the said letter was sent to the clients at the time of onboarding only. There is no evidence adduced before me to suggest that the said practice was even carried out at the subsequent stages of dealing with the clients whereby the clients were categorically informed that what fees is being is charged for what corresponding period. Therefore, I find that the said Letter of Engagement which is being relied upon by *Noticee no. 1* does not cover the services opted by the clients after onboarding. Further, I note that the allegation levelled in the SCN questioned the non-mentioning of tenure of service in the invoice provided by *Noticee no. 1* to its clients and *Noticee no. 1* has not provided any response whatsoever with respect to the same. Thus, the contention of *Noticee no. 1* is liable to be rejected *sans* merit.

40. Hence, after considering the entire issue holistically, I have no hesitation in holding that the acts and conduct as narrated in detail in the preceding paragraphs are sufficient, not only to qualify as '*unfair trade practice*' but also those acts & conducts have led to further acts of dealing in securities in a fraudulent manner thereby breaching the PFUTP Regulations. Therefore, I find that the conduct of the *Noticees* as elaborated above falls, squarely into the label of a fraudulent, prohibited and unfair trade practices under the provisions of the PFUTP Regulations.

41. In view of the above discussion, I find and hold that activities of *Noticee no. 1* amount to '*fraud*' as defined in regulation 2(1)(c) of the PFUTP Regulations and therefore, are in violation of regulations 3(a), (b), (c), (d), 4(1) and 4(2)(s) of the PFUTP Regulations read with Section 12A of the SEBI Act and Clauses 1, 2 and 6 of the third schedule of the Code of Conduct of the IA Regulations. For ease of reference and better appreciation, the aforesaid provisions are reproduced hereunder:

A. The PFUTP Regulations

Regulation 2(1)(c)

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

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

(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—
(a) the economic policy of the government
(b) the economic situation of the country
(c) trends in the securities market or
(d) any other matter of a like nature

whether such comments are made in public or in private;

Prohibition of certain dealings in securities

3. 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.

Prohibition of manipulative, fraudulent and unfair trade practices

4(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

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

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following: —
(s) mis-selling of securities or services relating to securities market

B. The SEBI Act

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;"

Non Maintenance of records:

42. *Noticee no. 1* is also alleged to have not maintained the record pertaining to investment advice provided to the clients via telephone. In terms of regulation 19(1) of the IA Regulations, *Noticee no. 1* is under obligation to keep a record of documents in respect of investment advice provided by *Noticee no. 1* such as suitability assessment, message logs of the clients, voice recordings etc. However, it is alleged that *Noticee no. 1* has failed to maintain any such record. In this regard, *Noticee no. 1* has submitted that regulation 19(1) does not mandate the investment advisers to keep a record of voice recordings and such requirement was made applicable only from January 1, 2021.

43. I have perused the submissions made by *Noticee no. 1* and I note that regulation 19(1)(e) read with regulation 19(2) makes it amply clear that an investment adviser has to maintain record of the investment advice provided to its clients, whether written or oral for a minimum period of five years. In the present case, since the advice was provided orally, *Noticee no. 1* was under an obligation to maintain a record of the same. Further, the contention of *Noticee no. 1* that the obligation to keep a record of telephonic recordings came in effect only from January 1, 2021 is also misplaced. SEBI, vide Circular SEBI/HO/IMD/ DF1/CIR/P/2020/ 182 dated September 23, 2020, had, *inter alia*, clarified that the records to be maintained under regulation 19(1) would also include telephonic recordings. At this juncture, I deem it appropriate to refer to the relevant text of the said circular which reads as under:

"(vi) Maintenance of record
Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, ***it is clarified that****:*

a. IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:

i. Physical record written & signed by client,

ii. Telephone recording,

iii. Email from registered email id,

iv. Record of SMS messages,

v. Any other legally verifiable record."

(***emphasis supplied***)

44. In view of the above, I am of the opinion that the submissions made by *Noticee no. 1* do not hold any weight and cannot be accepted. Thus, I note that the allegation in the SCN that *Noticee no. 1* failed to maintain records stands established and therefore, I hold that the said failure on the part of *Noticee no. 1* is in violation of regulation 19(1) and 19(2) of the IA Regulations.

PMLA/ AML Provisions:

45. *Noticee no. 1* is further alleged to have not updated its PMLA/ AML Policies and accordingly, the SCN has alleged that *Noticee no. 1* has violated SEBI Master Circular SEBI/HO/MIRSD/DOP/ CIR/P/2019/113 dated October 15, 2019 (hereinafter referred to as the **"Master Circular"**) which, *inter alia*, requires the senior management of an intermediary to establish appropriate policies and procedures for prevention of money laundering and should regularly review such policies. *Noticee no. 1* was also under the obligation to have appropriate procedures for reporting suspicious transactions under the aforesaid master circular. Further, *Noticee no.* 1 has also failed to designate/ appoint a person as a '*Designated Director*' in terms of SEBI Circular CIR/MIRSD/2/2014 dated March 12, 2014. *Noticee no. 1* has accepted in its reply that it has missed to carry out the changes as required under the Master Circular.

46. *Noticee no. 1* has also submitted that it had never come across any suspicious transactions and hence not reported the same. In this regard, I find that the Master Circular, *inter alia*, requires the intermediaries to have '*appropriate procedures*' in place for reporting of suspicious transactions. The obligation or the duty in terms of the Master Circular pertains to having an appropriate procedure in place. *Noticee no. 1* was mandated to have '*appropriate procedures*' in place, in furtherance of which, suspicious transactions, if any, should have been reported by *Noticee no. 1*. By not having appropriate procedures in place, *Noticee no. 1* has not complied with the requirements of the Master Circular. In the absence of requisite mechanisms for recognition of the suspicious transactions as stipulated by the Master Circular, *Noticee no. 1* could not

have identified any suspicious transactions, if any, which might have happened. Therefore, the contention of *Noticee no.1* that it has not come across any suspicious transactions and hence not reported the same cannot be accepted. I therefore find that *Noticee no. 1* has violated the Master Circular and the SEBI Circular dated March 12, 2014.

Free Trials:

47. *Noticee no. 1* is also alleged to not have complied with SEBI Circular SEBI/HO/IMD/DF1/ CIR/P/2019/169 dated December 27, 2019 which, *inter alia*, puts an obligation upon the IAs to not provide free trials to prospective clients. I note from the material available on record that *Noticee no. 1* was receiving emails with subject '*Free- Trial Form*' and the content of such mails included the name, city and the services sought to be received from *Noticee no. 1*. *Noticee no. 1* has submitted that it has not updated the name of the enquiry form on its website and therefore, any enquiry was being shown as '*free trial request*' form. I have perused the material available on record along with the sample emails received from clients with the subject '*Free Trial Request Form*' and I observe that the content of the emails covers the name, email, mobile, city and the service sought to be opted by the client. Although *Noticee no. 1* has submitted that forms/ emails in question were actually enquiry forms, *Noticee no. 1* has failed to adduce any evidence in its support. Further, the said emails received by *Noticee no. 1*, with the subject '*Free Trial Request Form*', do not appear to be enquiries raised by the prospective clients. I note that nowhere in the said emails, the prospective clients have raised and sought clarification with respect to any query. Apart from personal data of the prospective clients, only information in the email pertains to the 'services' sought to be obtained by the prospective clients.

48. That being said, I note that the allegations in the SCN with respect to free trials were levelled only on the basis of emails received by *Noticee no. 1* and I have not come across any corroborating evidence/ information to inevitably reach the conclusion that *Noticee no. 1* was indeed providing free trials to its prospective clients. Thus, even though *Noticee no. 1* has not adduced any evidence to the effect that it has not provided free trials to the prospective clients, due to the lack of evidence which justifies and establishes the other side of the coin, it would not be in the interest of justice to hold *Noticee no. 1* liable on this allegation. Accordingly, I find that the allegation of providing free trials against *Noticee no. 1* is not established based on the material available on record.

Qualification & Certification Requirements:

49. It is also alleged that the employees hired by *Noticee no. 1* were providing investment advice to the clients without having the requisite NISM Certificates as mandated by the IA Regulations. I observe from the material available on record that as per the statements of *Noticees no. 2* and *4* during the course of inspection, only 4 (four) employees, namely, Mr. Abhishek Upadhyay, Mr. Amit Sharma, Mr. Sourabh Dubey, and Mr. Krishna Tiwari were involved in rendering investment advice since the inception of Capitalstars Financial Research Private Limited. I note that *Noticee no. 1* had 2,007 clients in the financial year 2018-19 and 1,128 clients in the financial year 2019-20 and *Noticee no. 1* has admitted that only the aforesaid 4 (four) employees were providing investment advice to all the clients. *Noticee no. 1* in its reply has submitted that it was only providing standardized investment tips/ recommendations for intraday trading to its clients and was not providing customized investment advisory services. This contention of *Noticee no. 1*, if accepted, would lead to the conclusion that the advisory services provided by *Noticee no. 1* were not customized as per risk profiling of the clients and the same is a flagrant violation of regulation 17(a) of the IA Regulations which requires the investment advisers to ensure that the investment advice provided is appropriate to the risk profile of the clients. Further, I also observe from the material available on record that as per the SCORES complaint SEBIE/MP19/0002999/1 filed by Mr. Rupesh Jain that an employee of *Noticee no. 1*, namely, Mr. Dipak Parmar, was directly interacting with the clients and advising to buy/sell particular scrips. The excerpt of the call recording between Mr. Rupesh Jain and Mr. Dipak Parmar is produced hereunder:

> ***"Audio recording of November 30, 2018 at 10:38:03 Mobile No. + 91 73147 70943***
>
> *Rupesh Jain (complainant/client): "Hello"*
>
> *Shri Dipak Parmar (Capitalstar employee): "Sir, NIG book Karo"*
>
> *Rupesh Jain (complainant/client): "OK"*
>
> *Shri Dipak Parmar (Capitalstar employee): "607 ke something aa raha hai thik hai. 8 Rupee aa raha Hai. Jaldi se exit karo"*
>
> *Rupesh Jain (complainant/client): "OK…. OK""*

50. The aforementioned conversation makes it very clear that Mr. Dipak Parmar was advising Mr. Rupesh Jain to make certain investments and as admitted by the *Noticees no. 2* and *4* in their statements, Mr. Dipak Parmar is not one of the 4 (four) people having the requisite NISM Certifications in terms of the IA Regulations. Therefore, I note that the contentions of *Noticee no. 1* are not acceptable and I find *Noticee no. 1* in violation of regulation 7(1), (2) and 15(13) of the IA Regulations.

Research Team of Capitalstars did not have NISM certification mandated under SEBI (Research Analysts) Regulations, 2014:

51. The SCN also alleges that the research team of *Noticee no. 1* did not have the NISM certifications and 11 (Eleven) employees of *Noticee no. 1* who were employed in the research department were allegedly carrying out market research and generating calls to provide advice to the clients without obtaining appropriate registration under regulation 7(2) of the RA Regulations. Further, on examination of a sample research report published on March 2, 2020, it was noted that the market talks session part of the research report was allegedly plagiarized from some other broker's website. *Noticee no. 1* had also allegedly published the research reports in television media (Zee Business) as outcome of its own in-house research. In its reply, *Noticee no. 1* has submitted that the said 11(Eleven) employees were part of the research department but were not involved in generating calls or providing investment advice and that the employees were duly qualified and certified to provide investment advice in terms of the IA Regulations. In this regard, I observe that during the course of inspection, vide its letter dated March 3, 2020, *Noticee no. 1* has submitted that "*None of the above employee till date have cleared NISM certification for research analyst specified by SEBI*". For clarity, it is stated that the words '*above employee*' refer to the 11 (Eleven) employees who worked in the research department without having the requisite NISM certifications. As admitted by *Noticee no. 1* itself in the letter dated March 3, 2020, I find that *Noticee no. 1* has employed people without the requisite NISM certifications, for research purposes in the research department. Thus, I find that *Noticee no. 1* was using its employees to advise a large number of clients and the claim of *Noticee no. 1* that only four employees of *Noticee no. 1* were providing investment advice to thousands of clients is very feeble and cannot be accepted.

52. The SCN also alleged that by publishing the research reports copied from other sources, without any value addition, as an outcome of its own in-house research, *Noticee no. 1* has committed fraud, in terms of the PFUTP Regulations, upon its clients. In this regard, *Noticee no. 1* has submitted that the same was not done for any commercial purpose as no amount was charged for the same. Further, the technical charts and advices were not taken from a certain website rather the same were used only for internal purposes. *Noticee no. 1* has also submitted that the allegation pertaining to publication of research reports on television media and on its website as in-house research report is factually incorrect. However, I note from the material available on record specifically vide letter dated March 3, 2020, *Noticee no. 1* has admitted that it was publishing its research reports and recommendations in television media as well as on the website.

53. Accordingly, on examination of one such report which was published on March 2, 2020, it was observed that market talk session was copied word by word from the articles published on the website of IIFL. By publishing the reports in public domain, without any value addition, *Noticee no. 1* has not done justice to its clients. In this regard, I would also like to make a reference to the statement made on oath by *Noticee no. 2* during the course of inspection wherein, on being shown the plagiarized research report, *Noticee no. 2*, offered no comments or explanations. Therefore, the contentions of *Noticee no. 1*, without any supporting evidence, that the allegations levelled by SEBI, are factually incorrect cannot be accepted and is liable to be rejected. Thus, I note that *Noticee no. 1* is in violation of regulation 7(2) of the RA Regulations and Clauses 1, 2 and 9 of third schedule of the Code of Conduct read with regulation 15(9) of the IA Regulations.

54. As regards the allegation pertaining to fraud under the PFUTP Regulations, in view of the above discussed facts, I note that *Noticee no. 1* has published plagiarized reports, as its own without any value additions. The term '*fraud*' is defined as under:

Regulation 2(1)(c)

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—
(a) the economic policy of the government
(b) the economic situation of the country
(c) trends in the securities market or
(d) any other matter of a like nature

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

55. In view of the above definition, I am of the view that by the act of publishing the plagiarized research reports on its website, as its own, *Noticee no. 1* induced the investors to deal with *Noticee No. 1* and the said act, in my opinion, falls within the definition of the term '*fraud*' as stated above. Therefore, the act of *Noticee no. 1* of publishing the plagiarized research reports in public media as well as on its website, without any value addiction, would fall within the definition of regulation 2(1)(c) and regulation 3(1)(d) of the PFUTP Regulations. Accordingly, I note that the said activity of *Noticee no. 1*, i.e., publishing the plagiarized research reports in public media and on its website has resulted in violation of regulations 3 and 4(1) of the PFUTP Regulations read with Section 12A of the SEBI Act.

False information to SEBI about the name of the Compliance Officer:

56. Lastly, the SCN alleged that *Noticee no. 1* has provided false information as regards the details of the compliance officer of *Noticee no. 1*. I observe that *Noticee no. 5*, namely, Ms. Rishbha Sharma, in her statement recorded on March 3, 2020 has submitted that she has been acting as the Compliance Officer of the company since April, 2014, i.e., from the time the company got its registration. *Noticee no. 1* has submitted that it had initially appointed Ms. Preeti Saxena as its Compliance Officer and the same was intimated to SEBI and *Noticee no. 1* has nowhere, in any manner, given any false information to SEBI about the Compliance Officer and the details of Ms. Rishbha Sharma, being the Compliance Officer was updated on the SEBI SCORES Portal.

57. I have perused the submissions made by *Noticee no. 1* and I note that vide letter dated July 10, 2014, at the time of grant of certificate, *Noticee no. 1* had submitted that Ms. Preeti Saxena is its compliance officer. It is the claim of *Noticee no. 1* that the change in compliance information was duly informed to SEBI by updating the SCORES portal. In this regard, I deem it appropriate to refer to regulation 13(b) of the IA Regulations, which, *inter alia*, states as under:

"(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;"

58. Regulation 13(b) puts an obligation upon the registered investment advisers to inform SEBI, in writing, if there is any material change in information already submitted. As regard the submission of

Noticee no. 1, I note that SCORES portal is a platform where SEBI, resolves complaints raised by the investors. The platform has the objective of resolving investor complaints and is not meant to be a platform for submission of change in material information pertaining to the intermediaries. I also note that the information pertaining to the officials of the intermediaries is only for the purpose of redressing the investor complaints, and not for updating of official SEBI records. Accordingly, any change in the material information has to be intimated to SEBI through proper means in writing as mandated by the IA Regulations. Thus, I am of the view that the contention of *Noticee no.1* is liable to be rejected.

59. At this juncture, I note that during the course of hearing, *Noticee no. 1* submitted that it has not undertaken any business in the last year in view of the ongoing proceedings against it and has been waiting for suitable instructions from SEBI. *Noticee no. 1* further submitted that it shall produce the bank statements to substantiate the aforesaid submission.

60. In this regard, *Noticee no. 1* vide emails dated November 8, 2022 and November 15, 2022 has submitted the statement of its bank accounts associated with State Bank of India, HDFC Bank, Axis Bank and IDBI Bank. The period of the said statements ranges from January 1, 2022 to November 7, 2022. On perusal of the said bank statements, I note that almost no transactions have been carried out in the said accounts for the present calendar year. Therefore, I am inclined to accept the submission of *Noticee no. 1* that it has not continued to render the advisory services.

61. Further, I note from the material available on record that the SCN was issued to the *Noticees* on May 31, 2022 and from the evidence adduced by *Noticee no. 1*, I note that *Noticee no. 1* out of its own volition has not engaged in the advisory business, from the beginning of the present calendar year.

62. I also note that *Noticee no. 1* has duly accepted the allegation pertaining updating the AML Policy and has submitted that it has missed out on carrying the amendments in terms of the Master Circular. Furthermore, the allegation against *Noticee no. 1* pertaining to providing free trials to its prospective clients does not stand good either. I also observe that the material available on record has also proven to be insufficient as regard the allegation of charging unfair fees from its clients. I also note that the SCN in the present matter was issued to *Noticees* on May 31, 2022 and on an analysis of the bank statements submitted by *Noticee no. 1*, I find that it has not indulged in the advisory business in the present calendar year. The statements submitted by *Noticee no. 1* reflect that there have been almost negligible transactions, if any, in the bank accounts since January, 2022 and therefore, the statements back the submissions made by *Noticee no. 1* showing the *bonafide* of *Noticee no. 1* that it did not engage more clients during the pendency

of proceedings. I also note that the *Noticees* have duly co-operated during the course of proceedings have provided the requisite responses promptly, as and when sought from them.

63. Before proceeding with the discussion pertaining to appropriate directions, which may be issued to the *Noticees*, I deem it important to briefly discuss the very scheme and intent of the IA Regulations. Drawing its genesis and authority from Section 30(1) of the SEBI Act, the IA Regulations were implemented to carry out the purposes of the SEBI Act. It is well-known that the SEBI Act intends to fulfill three main objectives which are, protect the interests of the investors in securities, promote the development of and regulate the securities market. In furtherance of the same, the IA Regulations, *inter alia*, intend to protect the interest of investors and maintain the integrity of the market and to provide for appropriate safeguards to ensure that the investors are saved from the claws of such investment advisers who do not act within the four walls of the IA Regulations. In this light, and in view of the objectives intended to be fulfilled by the SEBI Act, any interpretation of the provisions of the IA Regulations which causes detriment to the growth of a free and fair market, would run afoul of the intent of the IA Regulations itself read with the SEBI Act.

64. That being said, I have thoroughly analyzed the allegations levelled against the *Noticees* in the SCN along with the submissions made by the *Noticees* which includes not indulging in the advisory business in the present calendar year, and in view of the findings made in the preceding paragraphs, I am of the view that the ends of justice would be met in the present case by issuance of suitable directions and imposition of a monetary penalty, as prescribed under various provisions which have been violated by the *Noticees*. The said provisions as mentioned in the SCN are reproduced hereunder for ease of reference:

> ***"Section 15EB***
> ***Penalty for default in case of investment adviser and research analyst.***
> *15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."*
>
> ***"Section 15HA***
> ***Penalty for fraudulent and unfair trade practices.***
> *15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*
>
> ***"Section 15HB***
> ***Penalty for contravention where no separate penalty has been provided.***

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

65. In this regard I also note that Section 15J of the SEBI Act provides for the factors to be taken into account while adjudging the quantum of penalty. The said provision reads as under:

"Factors to be taken into account while adjudging quantum of penalty.
15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

66. I note that although it is on record that the Noticees have collected an amount of Rs. 24.51 Crore, the SCN or other material on record has not brought out the quantum of profit/gains made by the Noticees, if any, by collecting unreasonable amount of fees, using improper RPFs etc., along with the other violations or the loss caused to the investors, if any.

ORDER

67. In view of the detailed discussion above, in the interest of the investors and for orderly development of the securities market, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4), 11(4A), 11B (1), and 11B (2) read with of Section 19 of the SEBI Act, read with regulation 28 of IA Regulations and regulation 35 of the Intermediaries Regulations and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby issue the following directions: -

a) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of 3 months from the date of this Order;

b) The Noticees shall resolve/ redress all pending complaints as on the date of passing of this Order within a period of three months from the date of this Order;

c) The Noticees shall update the AML/ PMLA Policy in terms of SEBI Master Circular dated October 15, 2019 and appoint a Designated Director in terms of SEBI Circular dated March 12, 2014 within a period of three months from the passing of this Order;

d) The Noticees shall become compliant with the requirements/ conditions as prescribed under the SEBI Act, IA Regulations and Circulars etc., issued thereunder;

e) The Noticees, jointly and severally, are hereby imposed with the monetary penalties, as provided hereunder:

Penal Provision	**Amount of Penalty (INR)**
Under Section 15HA For violations as established in Para 40 and Para 55	Ten (10) lacs
Under Section 15HB of the SEBI Act	One (1) lac
Under Section 15EB of the SEBI Act	One (1) lac
Total	Twelve (12) lacs

f) The Noticees shall remit / pay the said amount of penalty within 45 (forty-five) days from the date of receipt of this order. The Noticees shall remit / pay the said amount of penalty either by way of a Demand Draft, in favor of "*SEBI -Penalties Remittable to Government of India*", payable at Mumbai, or through online payment facility available on the SEBI website, i.e., *www.sebi.gov.in*, on the following path, by clicking on the payment link:

Enforcement -> Orders -> Orders of Chairman/ Members -> PAY NOW.

g) In case of any difficulties in online payment of the penalty, the said Noticees may contact support at *portalhelp@sebi.gov.in*. The demand draft or the details/ confirmation of e-payment should be sent to "*The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051*" and also to e-mail id:-*tad@sebi.gov.in* in the format as given in table hereunder:

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

68. This Order is without prejudice to any other action that SEBI may initiate.

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

70. A copy of this order shall be sent to the *Noticees*, recognized Stock Exchanges, Banks, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with.

Sd/-

PLACE: MUMBAI
DATE: DECEMBER 16, 2022

PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA