

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act,
1992,

In re the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
and Securities and Exchange Board of India (Research Analyst) Regulations, 2014

In respect of

Serial no.	Name	PAN
1.	M/s Cypress Money Investment Adviser	AAKFC7589G
2.	Mr. Anubhav Kandpal	BYMPK2765H
3.	Ms. Saumya Kala	CDXPK7038J
4.	Ms. Suman Kala	DOGPK1878M

CASE FACTS

1. Securities and Exchange Board of India (“SEBI”) received a complaint on June 19, 2016 alleging that Cypress Money Investment Advisor (“Cypress Money/entity/Noticee”) is providing trading tips and investment advice and was soliciting clients under various plans. Cypress Money is a partnership firm incorporated on October 25, 2015 at Mumbai with its

office at “Office no.-420 (419), New Sonal Link Industrial Estate, Building No.2, B Wing, Linking Road, Malad West-400064”. Cypress Money has 3 partners, viz., Mr. Anubhav Kandpal (active partner), Ms. Saumya Kala (active partner) and Ms. Suman Kala (sleeping partner).

2. As part of the preliminary enquiry, SEBI vide letter and email dated August 22, 2016, sought information from Cypress Money. The entity replied vide email dated August 26, 2016 that they would provide the required documents latest by September 05, 2016. Thereafter, the entity vide email dated September 05, 2016 provided, *inter-alia*, details of package offered and fees collected from clients for these services; IT return for AY 2016-17 for Cypress Money; Bank account statement of Cypress Money for the period from January 01, 2016 to August 31, 2016; Partnership deed of Cypress Money; IT return and bank account statements of the partners of Cypress Money and Copies of audited annual accounts of Cypress Money.
3. Further, the entity also submitted that is in the business of investment advisory/research analyst since October 25, 2015 and that the entity is not registered with SEBI or any other regulators in India but they would be going for fresh registration as investment adviser. Cypress Money subsequently submitted their application for registration as an investment adviser with SEBI on September 16, 2016.
4. Subsequently, SEBI conducted a preliminary examination of the activities of Cypress Money, with a view to ascertain possible violations of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“**IA Regulations**”) and Securities and Exchange Board of India (Research Analysts) Regulations, 2014 (“**RA Regulations**”).
5. *Prima facie findings/allegations in brief:* Pursuant to the examination, SEBI passed an interim order dated June 1, 2017, against M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala (“**Noticees**”), wherein the following *prima facie findings/allegations* were recorded.

- a) It is mentioned on the website of Cypress Money (<http://cypressmoney.com>), that
“CypressMoney is India’s best stock advisory firm backed by Professional

research team of Chartered Market Technicians (CMT). We provide Investment advice in Indian equities & derivatives to individual investors, HNIs, brokers, corporate players. We perform research on stocks from short term, midterm to long term investment horizon. We are here to help our prestigious clients to maximize their returns from trading and investing in Indian stock market by offering outstanding research and advice..... CypressMoney is one of the few organizations providing research and information on Indian Equity Market mainly based on Technical and Fundamental Analysis and enjoys a strong reputation amongst investors, brokers and researchers. Our team is highly skilled with experienced analysis. Our efforts are to provide you more & more profit in every trade.”

- b) The entity is in the business of investment advisory/research analyst since October 25, 2015 as per their own submission and they have mentioned a pricing schedule for their services with its monthly, quarterly and yearly rates for equity market, futures market, options market and commodity market packages which has been summarized as under:-

Name of the package	Fee charged (Rs.)		
	3Months	6 Months	1 Year
Stock Rich	19,900	29,900	39,900
Future Plus	19,900	29,900	39,900
Trend Rider	19,900	29,900	39,900
HNI Pack	49,900	74,900	99,900

- c) It is further observed that during the period from October 2015 to August 2016, Cypress Money provided investment advisory and Research Analyst services to 90 clients and collected a total of Rs. 14,69,581 as fees from these clients. The details of the same are as below:

Name of the package	No of Clients
Stock Rich	41
Future Plus	46
Trend Rider	2
HNI Pack	1

- d) Cypress Money and its partners were, *prima-facie*, engaged in providing investment advisory services to investors on payment of fees that fall under the definition of “investment adviser” as defined by Regulation 2(1)(m) of the IA Regulations.
- e) Cypress Money and its partners, *prima-facie*, were offering stock recommendations and technical and fundamental calls, as observed which fall under the definition of “research analyst” as defined by Regulation 2(1)(u) of the RA Regulations.
- f) In order to ensure that no investor is defrauded, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct his activities in accordance with the provisions of SEBI Regulations. In this context, it was noted that Cypress Money and its partners were not registered with SEBI in any capacity, neither as an investment advisor or research analyst or portfolio manager nor as a broker or sub-broker affiliated to any brokers and the characteristics and features of the business activity carried out by Cypress Money, *prima facie*, lead to the conclusion that Cypress Money was providing services of an investment adviser as defined in Regulation 2(m) of the IA Regulations and the services of a research analyst as defined in Regulation 2(u) of the RA regulations.

- g) An unregistered Investment Advisor/ Research Analyst, like Cypress Money can put investors at great risk by misleading them. Further in case of default by Cypress Money in meeting of its obligation to investors, the normal remedies available to investors while dealing with SEBI registered intermediary such as invoking the grievance redressal mechanism, referring the matters to appropriate forums such as arbitration etc. are not available in this case which can put investors at peril. Thus, the activities of Cypress Money were, *prima facie*, in violation of section 12(1) of SEBI Act, 1992 read with Regulation 3 of the IA Regulation and Regulation 3 of the RA Regulation.
6. In view of the *prima facie* findings on the violations, the following directions were issued in the said interim order dated June 1, 2017 against the Noticees with immediate effect:
- a. *cease and desist from acting as an investment advisor or research analyst and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;*
 - b. *not to divert any funds raised from investors, kept in bank account(s) and/or in their custody;*
 - c. *immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, etc. in relation to their investment advisory and research analyst activity or any other unregistered activity in the securities market.*
7. The interim order stated that the Order shall be treated as a show cause notice and M/s. Cypress Money Investment advisor and its aforementioned partners may show cause as to why the investment plans and existing schemes identified in this Order should not be held as "Investment Advisory Services" and "Research Analyst Services" in terms of respective Regulations, and why appropriate directions, under Section 11 and 11B of the SEBI Act, 1992 and relevant SEBI Rules/Regulations including directions, prohibiting them from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for a particular period and to refund the amount collected from the

investors/clients/partners for its existing schemes should not be issued against them. The Noticees were advised to file their reply, if any, to this Order within 21 days from the date of receipt of this Order and also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.

8. *Service of interim order and hearing notice:* The interim order dated June 1, 2017 was sent to the Noticees vide letter dated June 2, 2017. Mr. Anubhav Kandpal vide letter received on June 2, 2017 submitted that they wish to file reply and to avail opportunity of hearing on June 6, 2017 and are complying with the directions issued in interim order. Shri Anubhav Kandpal vide letter received on June 29, 2017 reiterated his previous submissions and sought hearing on July 3, 2017. Vide public notification dated October 15, 2017 published in Times of India, Lokmat, Dainik Jagran and The Pioneer and vide email dated October 23, 2017, the Noticees were granted an opportunity of personal hearing in the matter on November 29, 2017 at the venue and time mentioned therein. However, the Noticees sought adjournment of the hearing vide email dated October 23, 2017. Accordingly, the Noticees were given one more opportunity of hearing on January 18, 2018.
9. *Hearing and submissions:* Mr. Anubhav Kandpal and Ms. Saumya Kala appeared for the hearing for themselves as well as for Cypress Money Investment Adviser and Ms. Suman Kala and filed written submissions. They stated that they were the managing partners of Cypress Money Investment Adviser and Ms. Suman Kala was the sleeping partner and that they were educated persons and have tried to comply with the rules and regulations, however, had misunderstood the provisions of SEBI (Investment Adviser) Regulations, 2013 regarding registration and exemptions provided therein. Further, they submitted that they also approached SEBI for clarity and after receiving SEBI mail, they had applied for registration as Investment Adviser with SEBI and also cleared an NISM exam and that the complainant who complained about them had spoken to them and sought additional settlement amount. They also submitted that their business is over and are not in a position to pay a hefty penalty. Accordingly, hearing was concluded in respect of all the Noticees.

10. The Noticees in their written submissions have stated, *inter-alia*, the following:

- Mr. Anubhav Kandpal and Ms. Saumya Kala were the managing partners of the firm. Mr. Anubhav Kandpal is an MBA graduate in Financial Markets from BSE Institute Ltd. (subsidiary of BSE) and an affiliate member of Worldwide recognized professional body CMT Association, New York, USA. Ms. Saumya Kala also did her PG Diploma in Banking and Finance from the same Institute with two years work experience in Broking Industry.
- They denied the allegations. In 2015, Mr. Anubhav Kandpal started with providing classes on technical analysis since he had in-depth knowledge in the field of Technical Analysis so he decided to create a business model where he could share his knowledge and learning and for the same he would charge them fees. After a couple of months he started getting regular suggestions from his students where he could tell them the implementation of theoretical knowledge of whatever he taught them in his class.
- During the R&D stages he used to make tabular representation of his virtual entry and exit in the market and took free trials from other advisories so as to understand the business and create a consultancy firm which would be very unique and unlike other advisories who mislead the clients by using terms like guarantee, assured return etc., his aim was to create a firm where he could implement and share his technical knowhow and rationale behind entering any stock.
- They had a very appropriate educational background but were lacking financial support as they come from service class family and lacked resources in terms of finance and professional guidance like CA/Lawyers and in a way misinterpreted a few of points in IA Regulations like the proviso to regulation 3 to mean that while applying for registration, they can continue to do business for six months from incorporation of the firm. Further, in regards the exemption in the same provision, when they did research on the topic, they could not find the list of any other professional bodies and that he is an affiliate member of CMT Association which is a globally recognized professional body for Technical Analysis, USA. Since SEC has given exemptions to candidates who have cleared level 1 & 2 of CMT program to

become Research Analyst and in his case he had cleared all three levels of CMT, he thought that this body will also be accepted. They were running the business taking into consideration these two factors in mind.

- They were unclear about the registration process so they clearly mentioned in the website in the disclaimer page that the research calls made herein were for informational purpose and are not recommendations to any person to buy or sell securities and they are not liable for any loss incurred due to action taken on such calls and that investing in securities market involved some risk.
- They also informed their clients the status of registration with SEBI, hence did not mislead the clients and always co-operated in all enquiries with SEBI. After receipt of email from SEBI in August, 2016, they submitted all documents and also filled form A of IA Regulations. Later, they also sent DD of Rs. 5000 which was duly submitted.
- They were under the idea that their registration was under process because nowhere in the email it was written to stop all activities, yet being a responsible person they did regular follow up but did not get revert. If they would have received an email asking to stop all activities they would have done so as they did on June 1, 2017 on receipt of the interim order.
- Their client was doing some immoral practise like extorting money, threatening them for conditional settlement and complaining to SEBI in different names and has taken personal grudges rather than solve the matter at a professional level.
- Their intentions were very pure and their understanding of provisions was an honest mistake. They have never violated the rules of the notice nor have repetitive nature of violating the instructions of the Notice. They have no source of income from June 2017 till present and have run out of savings and business.
- Requested to consider the case on special grounds and pardon them from charges, if any and they are not in a financial position to pay hefty penalty, hence requested to

close the case and make them run their career by revoking the ban and grant them registration.

- In regards the registration license, they approached SEBI for clarity. Their activities were only in the nature of educative.

11. Subsequently, Mr. Anubhav Kandpal forwarded the NISM series certificates. Further, SEBI was in receipt of mail from one, Mr. Anil Srivastava seeking status on refund of his Rs. 35,000 which was also forwarded to the Noticees seeking clarification from them. Mr. Anubhav Kandpal informed that they clarified to Mr. Anil Srivastava that they will process the things after the outcome of the hearing. Mr. Anubhav Kandpal also sought guidance in regards the obtaining waiver letter from erstwhile clients and he was informed that he was at liberty to consult their legal adviser on the existence of investors right to waive at this stage prior to passing of any order, however, it may be noted that the remedial measure of repayment to investors is to be decided by an order of the quasi judicial authority while deciding the merits of the case.

12. I have considered the allegations, and materials on record. On perusal of the materials on record, the following issues arise for consideration. Each question is dealt with separately under different headings:

- i. Whether M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala were involved in unregistered investment advisory and research analyst activities.
- ii. If so, whether M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala have violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations and regulation 3 of RA Regulations.

Issue no. 1: Whether M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala were involved in unregistered investment advisory and research analyst activities.

13. I have perused the interim order dated June 1, 2017 for the allegation of unregistered investment advisory and research analyst activities. I note that though the Noticees have generally denied the allegations against them, they have themselves submitted vide letter received on September 6, 2016 that they have been in the business of investment advisory/research analyst since October 25, 2015.
14. On perusal of the website of Cypress Money (<http://cypressmoney.com>), I note the following: *“CypressMoney is India’s best stock advisory firm backed by Professional research team of Chartered Market Technicians (CMT). We provide Investment advice in Indian equities & derivatives to Individual investors, HNIs, brokers, corporate players. We perform research on stocks from short term, midterm to long term investment horizon. We are here to help our prestigious clients to maximize their returns from trading and investing in Indian stock market by offering outstanding research and advice..... CypressMoney is one of the few organizations providing research and information on Indian Equity Market mainly based on Technical and Fundamental Analysis and enjoys a strong reputation amongst investors, brokers and researchers. Our team is highly skilled with experienced analysis. Our efforts are to provide you more & more profit in every trade.”*
15. In view of the above, I find that Cypress Money has on its website has declared that it provides investment advice in Indian equities & derivatives to individual investors, HNIs, brokers, corporate players and performs research on stocks from short term, midterm to long term investment horizon, declaring itself to be an Investment Adviser and Research Analyst. I also note from the website of Cypress Money that it provides research and information on Indian Equity Market mainly based on Technical and Fundamental Analysis. I note from the website dated December 22, 2016 that they provided buy advice on stocks indicating target return and also put up technical report on stocks.

16. I also note that that Cypress Money is in the business of investment advisory/research analyst since October 25, 2015 as per their own submission received on September 6, 2016 and they have mentioned a pricing schedule for their services with their monthly, quarterly and yearly rates for equity market, futures market, options market and commodity market packages which has been summarized as under:-

Name of the package	Fee charged (Rs.)		
	3Months	6 Months	1 Year
Stock Rich	19,900	29,900	39,900
Future Plus	19,900	29,900	39,900
Trend Rider	19,900	29,900	39,900
HNI Pack	49,900	74,900	99,900

17. It is further observed from their submissions received on September 6, 2016 that during the period from October 2015 to August 2016, Cypress Money provided services to 90 clients and collected a total of Rs. 14,69,581 as fees from these clients. The details of the same are as below:

Name of the package	No of Clients
Stock Rich	41
Future Plus	46
Trend Rider	2
HNI Pack	1

18. Therefore, I find that Cypress Money was providing Investment Advisory services in exchange of consideration at least from October, 2015 to August, 2016. I also find that Cypress Money was offering stock recommendations and technical and fundamental calls in form of Research Analyst services. Further, as per their own admission, they have stopped all their activities only on June 1, 2017, therefore, I find that Cypress Money was providing

Investment Advisory services and Research Analyst services at least from October, 2015 to June 1, 2017.

19. I have perused the definition of investment adviser as given in regulation 2(1)(m) of the IA Regulations, which states that investment adviser means “*means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called*”. Further, I have perused regulation 2(1) (l) of the IA Regulations which defines investment advice as “*advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.*”
20. I have also perused Regulation 2(1)(u) of the SEBI (Research Analysts) Regulations, 2014, which defines “*research analyst*” as a person who is primarily responsible for, preparation or publication of the content of the research report; or providing research report; or making “*buy/sell*” hold recommendation; or giving piece target; or offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of ‘research analyst’ and includes any other entities engaged in issuance of research report or research analysis.”
21. In view of the above discussion, I find that the activities of the Noticees as brought out from the declaration on its website, bank accounts statements and their own submissions, seen in the backdrop of the aforesaid provisions clearly show that the Noticees have acted as Investment Advisers and Research Analysts.

Issue no. 2: If so, whether M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala have violated section 12(1) of the SEBI Act and regulation 3 of the IA Regulations and regulation 3 of RA Regulations.

22. I note that as a measure of investor protection, it is imperative on any person carrying out investment advisory activities and research analyst activities, to obtain registration and conduct its activities in accordance with the provisions of the SEBI Act and the IA Regulations and RA Regulations. I have perused of Section 12(1) of the SEBI Act which states that

“No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.”

Further, I note that as per regulation 3(1) of the IA Regulations, *“on and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations.”*

I also note that as per regulation 3(1) of RA Regulations, *“on and from the commencement of these regulations, no person shall act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from the Board under these regulations”*

23. Cypress Money and its partners, admittedly do not possess a certificate of registration to carry on the activities as an investment adviser and research analyst. The proviso to regulation 3 of the IA Regulations states that *“a person acting as an investment adviser immediately before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate ... within the said period of six months, till the disposal of such application.”* The IA Regulations were notified on January 21, 2013. The IA Regulations came into effect on April 21, 2013. Therefore, any person who had been providing investment advisory service before the IA Regulations came into effect can, by virtue of the proviso under regulation 3,

continue to do so without a certificate of registration till October 20, 2013, beyond which the said person would have to obtain a certificate of registration or may continue to do so till the time his application for registration is disposed of.

24. I also note that the proviso to regulation 3 of RA Regulations states that *“any person acting as research analyst or research entity before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate of registration under sub-regulation (2) within the said period of six months, till the disposal of such application.....that an investment adviser, credit rating agency, asset management company or fund manager, who issues research report or circulates/distributes research report to public or its director or employee who makes public appearance, shall not be required to seek registration under regulation 3, subject to compliance of Chapter III of these regulations.”* The RA Regulations were notified on September 1, 2014. The RA Regulations came into effect on December 1, 2014. Therefore, any person who had been providing research analyst service before the RA Regulations came into effect can, by virtue of the proviso under regulation 3, continue to do so without a certificate of registration till June 1, 2015, beyond which the said person would have to obtain a certificate of registration or may continue to do so till the time his application for registration is disposed of.

25. I note that the entity also submitted that is in the business of investment advisory/research analyst since October 25, 2015 and that the entity is not registered with SEBI or any other regulators in India but they would be going for fresh registration as investment adviser and Cypress Money subsequently submitted their application for registration as an investment adviser with SEBI on September 16, 2016. However, the aforesaid provisions of IA Regulations and RA regulations have come into effect prior to the Noticees carrying on the investment advisory and research analyst activities. In view of the above, I note that the Noticee does not fall within the scope of the proviso to regulation 3 of the IA Regulations and RA regulations, as discussed above. Therefore, I find that the Noticee could not have engaged in providing investment advisory services and research analyst services without obtaining certificate of registration from SEBI as the IA Regulations and RA regulations had

already come into effect on April 21, 2013 and December 1, 2014 respectively. Therefore, admittedly, the Noticees were providing unregistered investment advisory services and research analyst services, which is in violation of regulation 3(1) read with its proviso of the IA Regulations and regulations 3 (1) read with its proviso of the RA Regulations. I also note the submissions of the Noticee that in regards the exemption in IA Regulations, they could not find the list of any other professional bodies and since he is an affiliate member of CMT Association which is a globally recognized professional body for Technical Analysis, USA, hence, thought that this body will also be accepted. However, I do not find these submissions of the Noticee tenable as a presumption regarding the law cannot be accepted as defense for non-compliance with the law. I further find that there is no case that Cypress Money and its partners fall in any of the categories of exemption as provided under regulation 4 of the IA Regulations.

26. I also note the Noticee's submissions that that they were educated persons and have tried to comply with the rules and regulations, however, had misunderstood the provisions regarding registration and exemptions provided therein and that they were trying to seek clarity from SEBI regarding registration license and find the same not tenable as any entity operating in securities market needs to comply with rules and regulations framed therein and cannot seek protection in such excuses. Further, subsequent application of registration by Cypress Money shall also not change the violation committed by it. I note that the IA Regulations and RA Regulations have come into effect prior to the Noticees starting the investment advisory and research analyst activities. I also do not find the submissions of the Noticees that their activities were only in the nature of educative and informative, acceptable, in view of their own admission in regard to the amount of money collected by them in the form of fees from the various clients and considering that as per their own website, they help their prestigious clients to maximize their returns from trading and investing in Indian stock market by offering outstanding research and advice and their efforts are to provide more & more profit in every trade. I also note that they offer target return under various packages. However, I also note the submissions of the Noticees that they have co-operated in the enquiries of SEBI and find that the Noticees have been providing details about the services provided by them, details of clients etc. I also take note of the fact that the Noticees did apply for registration

even though belatedly and Mr. Anubhav Kandpal has provided NISM completion certificates of Investment Advisor Level-I and II.

27. In view of the above, I find that M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala have violated section 12(1) of the SEBI Act along with regulation 3 of the IA Regulations and regulations 3 of RA regulations.
28. In view of the foregoing, M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala are liable for the aforesaid violations of section 12(1) of the SEBI Act along with regulation 3 of the IA Regulations and regulations 3 of RA regulations. I note the submissions of the Noticee that Mr. Anubhav Kandpal and Ms. Saumya Kala were the managing partners of Cypress Money Investment Adviser and Ms. Suman Kala was the sleeping partner. However, I find that considering M/s Cypress Money Investment Adviser is a partnership firm, all the partners of the firm are jointly and severally liable for the acts of the firm. In order to safeguard the interest of the investors and their investments, and to further ensure orderly development of securities market it becomes necessary for SEBI to issue appropriate directions against M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala.
29. Since the Noticee has admittedly collected funds as fees from at least 90 investors under different categories of schemes, acting as unregistered investment adviser and unregistered research analyst, it would be reasonable that such funds collected in any name are liable to be returned to the investors. Regulation 2(g) of the IA Regulations defines “consideration” to mean “any form of economic benefit ... received or receivable for providing investment advice.” The Noticee has admitted to collecting Rs. 14,69,581/- as fees. However, I note that the said amount provided by the Noticee pertains to the period from October 2015 to August 2016. Therefore, I find that the amount collected as fees as well as the number of clients could be more than what the Noticee has provided as its Noticee’s own submission that it stopped all its activities on June 1, 2017. Therefore, I find that the Noticee has collected at least an amount of Rs. 14,69,581/- from at least 90 clients which has to be refunded to investors. The said amount of refund can be more subject to the availability of material on

the fees collected by the Noticee between August, 2016 and June, 2017. Mr. Anubhav Kandpal also sought guidance in regard to obtaining waiver letter from erstwhile clients and he was informed that he was at liberty to consult their legal adviser on the existence of investors right to waive at this stage prior to passing of any order, however, it may be noted that the remedial measure of repayment to investors is to be decided by an order of the quasi judicial authority while deciding the merits of the case. It is further noted that the remedy of refund, in this case is a public law discretionary remedial tool under section 11B of the SEBI Act, unlike a mandatory requirement of refund imposed by statute, such as section 73(2) of Companies Act, 1956. Once there is crystallization of the liability of the Noticees to refund the money which creates a corresponding public law right to the receipt of payment against the Noticees, this can be enforced by and is recoverable only by SEBI in view of section 28A of the SEBI Act. It follows that the direction to refund in this case does not create a private cause of action for enforcement but envisages a public enforcement of (by SEBI) remedy of refund. Therefore, it appears no private law right which can be waived has been created in this case. However, this does not prevent any other recourse available to the investors, as per law, by way of affirmation of their intent not to receive the fees paid by them, if they are otherwise satisfied. The same will eventually stand as evidence, at the proceedings for enforcement of directions of this order, in case of non-compliance of the directions of this order.

30. In view of the discussion above, appropriate action in accordance with law needs to be initiated against M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala. The interim order has contemplated issuance of directions against the Noticees including prohibiting them from buying, selling or otherwise dealing in securities market, and to refund the amount collected from the investors/clients/partners for its existing schemes.

31. Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus,

power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude.

32. Section 11B and Section 11(4) of SEBI Act are functional tools in the hands of the Board. In effect, Section 11B and Section 11(4) SEBI Act are some of the executive measures available to SEBI to enforce its prime duty of investor protection. SEBI is empowered to issue directions in the interests of investors of any person or class of persons referred to in Section 12 of the SEBI Act or associated with the securities market.

ORDER

33. Therefore, I, in exercise of the powers conferred under section 19 of the SEBI Act read with sections 11(1), 11(4) and 11B of the SEBI Act, hereby issue the following directions:

- a. M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala, shall forthwith refund the money received from its clients as fees/profit sharing/compensation in any other form, in respect of its unregistered investment advisory and unregistered research analyst activities.
- b. M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- c. The repayments to the clients shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as “Non-Transferable” or through any other appropriate banking channels with clearly identified beneficiaries.
- d. M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above.

e. After completing the aforesaid repayments, M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala shall file a report of such completion with SEBI, within a period of three months from the date of this order, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution.

i. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI") holding such certificate.

ii. For the purpose of this Order, in case of affirmation of intent as mentioned in para 29 of this order, if the same are produced by the clients, the peer reviewed Chartered Accountant shall, in his report, certify the affirmation of intent carrying the full description of clients' identity, address and amount involved in the affirmation of intent, on verification of the original document of executed client agreement or any other document carrying the signature of the noticees and the clients evidencing the creation of relationship as client of noticee, with an original document of proof of identity, address and signature issued by the State/Central Government to the clients and a statement in Chartered Accountant's certificate to the effect that he has made the above said verification enclosing copies of verified documents.

f. In case of failure of M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order, may recover such amounts, from M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala as specified in paragraph 33(a) of this Order, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.

g. M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala are directed not to, directly or indirectly, access the securities market, and are prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, till the expiry of 3 years from

the date of refund. The above said persons are also restrained from associating with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI in the capacity of Director/Promoter/Senior Management till the expiry of 3 years from the date of refund.

h. M/s Cypress Money Investment Adviser and its partners, Mr. Anubhav Kandpal, Ms. Saumya Kala and Ms. Suman Kala shall not undertake, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws, after the expiry of period of debarment as mentioned in paragraph 33(g).

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

35. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories, and registrar and transfer agents, for information and necessary action.

-Sd-

DATE: May 3, 2018

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA