

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

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

**In Re: Violation of provisions of Securities and Exchange Board of India (Investment
Advisers) Regulations, 2013 and SEBI (Prohibition of Fraudulent and Unfair Trade
Practices) Regulations, 2003**

In respect of:

Sr. No.	Name of the Entities	Registration Number	PAN
1	Zoid Research (Proprietor Mr. Tabrez Khan)	INA000001282	BBQPK0436A

Background:

1. Zoid Research, proprietor Mr. Tabrez Khan (hereinafter interchangeably referred to as "Zoid Research / IA / Mr. Tabrez Khan/ Noticee") is registered as an Investment Adviser ("IA") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "IA Regulations") with effect from March 20, 2014. It has its registered office at 202, Mangal City Mall, Plot No. A-1 PU 4, Commercial Scheme 54, Opposite Vijay Nagar Police Thana, Vijay Nagar, AB Road, Indore - 452010. Its website address is www.zoidresearch.com.
2. Securities and Exchange Board of India ("SEBI") had received large number of complaints against the Noticee alleging, *inter alia*, non-meeting of profit commitment by the Noticee,

non-disclosure of complete charges, extraction of money from clients under different pretexts, etc. Preliminary examination of the material on record led to the following observations:

- a. The Noticee was offering unrealistic and assured returns to investors. The Noticee was fully aware of the fact that his advice related to investments in stocks, derivatives, commodity derivatives, etc., which are subject to market risk.
- b. Investors were initially lured and inducted as clients with payment of smaller amounts for a basic package. Once partial payment was made, strict deadlines were put on clients for the remaining payment. In case of delay in payment, the clients were told that they will not be entitled to receive service for the subscribed package. In certain cases, the clients were also told that the package they had subscribed to is no longer available and they will have to subscribe to a higher package with a higher investment and service fee.
- c. The clients were enticed to take new packages by making higher profit commitment in new packages, and thereafter, the same tactics were applied by putting pressure on them to pay the remaining amount within deadlines and often their respective packages were upgraded without their consent thereby, charging higher service fee.
- d. In certain cases, money was extracted from clients in the garb of various types of fees (not disclosed at the time of initial subscription), such as, server fee, file handling fee, etc.
- e. The Noticee and its representatives in their interactions/ communications with clients gave names of fake/ non-existent employees to the clients, while introducing them as the service team/ personnel assigned for rendering service to them. The agreements entered into with the clients did not contain any name of the authorized person of the Noticee.
- f. The proprietor, Mr. Tabrez Khan, was functioning as an IA without possessing the requisite NISM certification (a pre-requisite for acting as an Investment Adviser) from April 4, 2018 till July 14, 2018.
- g. The Noticee has not redressed the huge number of investor complaints filed against it citing unacceptable reasons such as client's mobile number not being on records, complaints sent to client for comments, etc.

- h. Further, the sole proprietor, Mr. Tabrez Khan, in whose name the certificate of registration has been granted by SEBI, was, *prima facie*, not a party to any of the Investment Advisory Services Agreements entered into between the Noticee and its clients; however, he was controlling all the payments made by clients in all the bank accounts held in the name of the Noticee, which were opened with his PAN as the sole proprietor.
 - i. The Noticee did not comply with the requirement of risk profiling of its clients, in line with the requirements of IA Regulations, which is, *prima facie*, evident from the fact that it sold pre-fixed plans promising unrealistic profit commitments to the clients and also upgraded the packages offered to them without their consent.
 - j. The Noticee did not have any documented process for selecting investments based on client's investment objective and financial situation. Instead a majority of the clients have been sold pre-fixed plans promising unrealistic assured returns irrespective of their financial situation, investment objective, etc., with the sole purpose of extracting more and more service fee from the clients.
3. In view of the above observations, it was found, *prima facie*, that the Noticee had violated the following provisions:
- a. Section 12A(a), (b) and (c) of the SEBI Act, 1992 and regulations 3 (b), (c) and (d) and 4(1) and 4(2) (k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").
 - b. Regulation 7(2) of the IA Regulations.
 - c. Regulation 16 of the IA Regulations.
 - d. Regulation 17 of the IA Regulations.
 - e. Regulation 21 of the IA Regulations read with SEBI Circular CIR/OIAE/2014 dated December 18, 2014.
 - f. Clause 1, 2, 3, 4, 5, 6 and 8 of the Code of Conduct for Investment Advisers read with Regulation 15(9) of the IA Regulations.

4. In view of the, *prima facie*, violations of the provisions of securities laws and the findings against the Noticee, SEBI, vide an *ad interim ex parte* order dated February 08, 2019, passed the following directions against the Noticee:
- a. *The Noticee is restrained from buying, selling or dealing in the securities market or associating himself/itself with securities market, either directly or indirectly, in any manner whatsoever, till further directions.*
 - b. *The Noticee and any other employee/person working under him/it in his/its investment advisory activity shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.*
 - c. *The Noticee is directed to provide a full inventory of all assets held in his name or in the name of Zoid Research, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.*
 - d. *The Noticee is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets, held in his name or in the name of Zoid Research, including money lying in bank accounts except with the prior permission of SEBI.*
 - e. *The depositories are directed to ensure that till further directions no debits are made in the demat accounts, of the Noticee held, jointly or severally.*
 - f. *The banks are directed to ensure that till further directions, no debits are made in the bank accounts held by the Noticee, jointly or severally.*
 - g. *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of the Noticee, jointly or severally, are not transferred.*

Service of the interim order and filing of replies by the Noticees:

5. The interim order was served on the Noticee and same was appealed before the Hon'ble Securities Appellate Tribunal ("SAT"). Vide an order dated February 20, 2019, the Hon'ble SAT disposed of the appeal filed by Noticee directing it to file its objections, if any, with application to vacate the interim order before SEBI. The Hon'ble SAT also directed SEBI to decide the matter after providing an opportunity of hearing. Accordingly, the Noticee filed its reply before SEBI along with an application for stay of the interim order. As the detailed submissions were voluminous in nature and required requisite appreciation, SEBI filed an application before the Hon'ble SAT seeking extension in time. The Hon'ble SAT disposed of the appeal with the observation that SEBI, after providing an opportunity of hearing, shall decide the application for stay of the interim order filed by the Noticee within a week thereafter.
6. Thereafter, on February 27, 2019, the Noticee was heard in respect of its submissions on the prayer for stay of operation of the interim order. The Noticee made prayers for the following reliefs:
 - (i) *Impugned Order dated 08.02.2019, be quashed and set aside.*
 - (ii) *Effect, implementation and operation of the Impugned Order dated 08.02.2019, be stayed.*
 - (ii) *I may be allowed to render services as Investment Advisor.*
 - (iv) *Direct the banks to allow using the funds from our bank accounts.*
 - (v) *For such further or other reliefs as this Hon'ble Tribunal deems just and fit in the facts and circumstance of the case."*
7. The application for stay and submissions/ undertaking made by the Noticee at the time of the hearing were considered by SEBI and as adequate grounds were not found to stay the operation of the interim order, vide order dated March 01, 2019, the application of the Noticee for stay of the interim order was disposed of accordingly.

Prayers made by the Noticee:

8. Thereafter, the Noticees, vide letters dated April 02, 2019 and May 25, 2019, submitted their reply along with annexures and made the following prayers:

- 1. Interim order dated February 08, 2019, be quashed and set aside.*
- 2. The Noticee may be allowed to render services as an Investment Adviser to its existing clients.*
- 3. Relief of restriction put on its employees from doing job with any other Investment Adviser till further direction.*
- 4. Direct Banks to allow use of funds from bank accounts to mitigate their fixed expenses which are running, even though their business is stopped.*
- 5. Allow us to shift their registered office within local limit as present registered office is very big and they cannot afford to pay rent to the owner.*
- 6. Any other relief as deemed fit.*

Hearing:

9. The Noticees and its authorized representatives were also given an opportunity of personal hearing on July 02, 2019, wherein they reiterated their earlier submissions and submitted additional documents. During the personal hearing, the Noticees were advised to submit detailed reply with proof and evidence against each allegation of the interim order. They were also advised to submit the documentary evidence in support of their claims and to do so before August 02, 2019. The reply of the Noticees has been received vide letter dated August 26, 2019, on August 27, 2019.

Replies and Submissions of the Noticee:

10. The replies and submissions, oral and written, of the Noticee are summarized as under:

a. Investor Grievances and their redressal:

- i. The Noticee has submitted that it has rendered services to approximately 5000 clients from the date it for registered with SEBI till January 31, 2019. It has a four person team for redressal of investor grievances. It has a separate email ID and mobile number for client to give the complaint. It replies instantly to the client and provides them the solution to their complaint. Further, for the period January 01, 2015 till February 08, 2019, the Noticee has received 185 complaints (153 unique complaints) and not 223 complaints, as mentioned in the interim order. Hence, less than 5% of its client base have complained against it and that majority of the clients are satisfied with its services. Further, as on date of the order, only 43 complaints were pending for resolution as per the SEBI SCORES Portal. SEBI has failed to note that 145 complaints have been resolved in a timely manner. SEBI has also failed to note that ratio of satisfied clients against aggrieved clients is 4812:188.
- ii. The complaints mentioned in the interim order have been successfully resolved by it. SEBI has also closed these complaints on the SCORES Portal. The Noticee has submitted details of 15 complaints which have been resolved after the passing of the interim order to the satisfaction of the complainants.
- iii. With respect to the complaint of Mr. Mangesh Bhawar, which has been mentioned in the interim order, it has replied that it could not find the client in its system due to multiple clients having the same name; hence, the Noticee replied that the client should provide his registered mobile number so that they can find him.

- iv. The Noticee has submitted that as on February 09, 2019, there were ten complaints pending against them. In the case of two complaints, they had not submitted the Action Taken Report, while they had replied for the remaining eight complaints and the same were pending, either at the end of SEBI or the client.
- v. The Noticee does not provide commitment for guaranteed return and it is also the responsibility of the client to read all the documents carefully. Further, clients who have complained to SEBI, have enjoyed its services for a long period of time and have then complained to SEBI.

b. Promising assured/ guaranteed returns to its clients:

- i. The Noticee has never made any assured profit commitment to anyone as it is a universal fact that capital/ security market is subject to market risk. A disclaimer stating the following has been placed on its website:

“Stock & Commodity investments are subject to market risk, Please read the offer document and before registering check all the terms and conditions on the website, Zoid Research do not provide any profit sharing services, guaranteed services, DMAT facility..., if any person try to sell such type of product kindly call on (+91)-9039073611.”

- ii. Further, through various seminars, investor awareness programme, publicity, etc., it is categorically conveyed that “Investments in Equity market is full of risk and do not believe in guaranteed return.” Therefore, for any investor to make allegation of guaranteed return is absurd and reliance on such complaint by SEBI is strange and astonishing.
- iii. Acknowledgment is taken from client during every payment and at the time of making payment, client sends one acknowledgement SMS where it is mentioned that he/ she

has read all the terms and conditions and guidelines mentioned on its website, he/ she agrees with the same, he/ she willingly take our service and from which date he/ she wants to start the service.

- iv. SEBI has misinterpreted and misconstrued the following clause which is part of the agreement signed with the clients:

“Here ‘Party 1’ offering to ‘Party 2’ is giving ‘Party 2’ the services for a particular return INR (X Amount), instead of particular time period against service charge INR (X amount). (If you invest X Amount in your trading account).”

The Noticee has submitted that the same is not a commitment but a service plan which was supposed to be served to clients for indefinite period till the client earns ‘X amount’ i.e., the Noticee was offering its clients continual services without any further service charge. A onetime fee is charged to the client and it renders services to the client for an undefined time period and the service will expire after attaining the profitable amount as stated in the agreement with the client. The Noticee has never given any time frame for a particular profit to the clients and therefore the services for such a plan will expire after the profit has been attained. In case client has a loss, the Noticee continues to provide the services to the client and does not stop the services. They provide full service for his/ her paid amount. The same practice is followed in case the client makes a profit; however, in such cases, they do inform the client of their higher packs.

- v. The Noticee submitted details of the investment message logs and the profit/ loss calculation for ten clients to substantiate its above claims.

c. Extracting money from clients:

- i. The Noticee has submitted that it provides a free trial to clients to start with. The advisory service is started even with partial service fees to pass on benefits of lower charges to investors and not to lure investors, as has been alleged in the order. It has denied the allegation that it put strict deadlines on the clients for making remaining payments. It has submitted that clients are required to pay the balance service charges on a timely basis after receipt of services as it cannot provide clients higher services for lower fees; however, if client does not pay the balance charges, it continues to provide the services for the amount which he/ she has given.
- ii. The Noticee has denied the charges of pressuring the client to pay the remaining amount or threatening that the earlier slot would be rejected or the agreement / services in respect of which payment was made earlier would be discontinued. It has submitted that they have sent many reminders to clients before putting deadlines on them. It has denied that deadlines for making payments are so stringent that most clients are unable to meet them and that the clients are enticed to take new package by claiming higher profit in new package. They have communicated the facts to the clients with the options available to them for payments and services/ plans. As regards upgradation of plans, it does not have access to the bank account of the client. The charges and upgradation of plans are informed to the client in advance before asking for money and before switching plans. The plan is switched and payment of further service charges are made only with the wish, consent and knowledge of the client. Further, the Noticee has mentioned that without any oral or written consent of clients, they do not enter into different packages.
- iii. It has a certain standard framework in pricing policies which was displayed on the functional website and there is no extra fees on account of server fee, file handling fee, etc., charged from any client. In lieu of non-payment of fees to Zoid, clients make inappropriate complaints for extra charges fees.

d. Misrepresentation by employees of the Noticee:

- i. The proprietor, Mr. Tabrez Khan, himself was not offering the advice or communicating with all the clients. Mr. Shailesh Barmaiya, Superintendent Research Analysis, who holds required qualification of NISM Level 1 & 2 was offering services of research analysis for the said period. The proprietor was in to administration and management part and accordingly not even a party to the agreements between the Noticee and the clients. The proprietor has given authorization to Mr. Mohammed Shahid (Compliance Officer) and Ms. Subhi Sahu (Chief of Divisional Officer) to sign agreements on behalf of the Noticee. The proprietor has not shown any unrealistic profit commitment to the clients.
- ii. The Noticee has denied that it has ever communicated with any of its clients with fake names. As it has more than 100 employees, in case client forgets the name of the person with whom he/ she communicated, then it is not the fault of the Noticee. The Noticee has submitted the details of the salary paid to its employee's along with the incentive paid to them.

e. Violation of Regulation 7(2) of the IA Regulations:

- i. The Noticee has submitted that the Proprietor, Mr. Tabrez Khan, was holding a NISM Certification, except for the period April 04, 2018 till July 13, 2018 and the same was renewed only on July 14, 2018. Mr. Tabrez Khan has submitted that his NISM Level 2 certification had expired and he could not renew the same due to his own health issues and some family circumstances. He submitted that he was about to attend CPE programs organized by NISM for renewal of Level 2 certification and had enrolled for the same before the expiry of the certificate. He has submitted that he has renewed his NISM Level 1 certification before its expiry. This violation inadvertently took place due to unawareness/ misinterpretation of the applicable provisions of the Regulations.

- ii. Further, he, himself was not offering the advice or communicating with all the clients of the Noticee. Mr. Shailesh Barmaiya, Superintendent Research Analysis, who holds required qualification of NISM Level 1 & 2 was offering services of research analysis for the said period. The proprietor was in to administration and management part.

f. Violations of Regulations 16 and 17 of the IA Regulations:

- i. The Noticee has submitted that it has an appropriate process for risk assessment of the clients in the form of risk profiling, which is always available on its website. The prospective client has to answer a specific questionnaire before subscription of trial or paid services. Each client gets assigned a score based on these answers and then each client is classified as Low risk bearing, Medium risk bearing and High risk bearing and accordingly services/ advice is provided to them. The scores are also communicated via messages to every client and the same is also confirmed by the client by replying to the message. It has submitted the risk profiling forms of some of its clients to substantiate its claim.
- ii. The Noticee has further submitted that the risk profiling has been always done by the experienced research/ marketing team which undertakes the intensive exercise of assessment through computer aided software and technology by question answer round on phone calls which are simultaneously punched/ entered by team member in computer and based on which one report is generated identifying the risk profiling capacity of the client. The Noticee has submitted that it does not provide services to clients having low profile.
- iii. The Noticee has submitted that it sends a welcome email to the client which consists of guidelines and terms and conditions of the services. The Noticee also follows a standard practice of obtaining confirmation/ acknowledgement from clients before starting the services and risk profiling - client sends a message from registered mobile number that he/ she has read all the terms and conditions and guidelines, he/ she agrees

with the same, he/ she willingly take our services and from which date he/ she wants to start the service.

iv. The Noticee has submitted that it obtains a declaration from clients in the form of an agreement when the client wants to take any service from it. The declaration includes:

- 1. Choice of client's service segment.*
- 2. Marks obtained during risk analysis as per questionnaire on website.*
- 3. Willingness to pay the amount for advisory services.*
- 4. Investment amount to invest in our services.*
- 5. Agreements of services start date.*
- 6. Agreement of read and understand Zoid products, services and support given to client.*
- 7. Agreement of discloser and transparency of services through visiting our past performance on website by client.*
- 8. Agreement of read our terms of use policy, privacy policy, given guidance in our website, no refund and conciliation policy and disclaimer.*
- 9. Client's acknowledgement of no refund policy.*
- 10. Client's agreement for awareness of involves risk in market and in our services.*

g. Violation of provisions of the PFUTP Regulations:

With regard to allegation of violation of PFUTP Regulations, the Noticee has submitted the following:

- i. It has never indulged in any act, expression, omission, knowingly or unknowingly, directly or indirectly, which induce another person or his agent to deal securities, whether or not there is any wrongful gain or avoidance of loss.

- ii. It has never made misrepresentation of the truth or concealment of any material fact in order that another person may act to his detriment. It has never made any suggestion as to a fact which is not true. It has never made a promise without any intention of performing it. It has never made reckless and careless representation.
- iii. It has never indulged our self in to deceptive behavior by a person depriving another of informed consent or full participation. It has never made any false statement without reasonable ground for believing it to be true.
- iv. It provides investment advice backed on fundamental, technical, market research, trade analysis, market sentiment and major updates which are available to public at large. It has denied that they have indulged in manipulative, fraudulent and unfair trade practices and has denied that it has directly or indirectly involved itself in any kind of manipulative or deceptive device or contrivance in contravention of the SEBI Act or the Rules and Regulations made thereunder.
- v. It has contended that the nature of the complaints received against it are basic in nature and do not fall within the ambit of the PFUTP Regulations.

h. Other Submissions:

- i. The Noticee has submitted that investment advisory is a kind of business model, which operates in the service industry and which requires marketing to reach prospective customers who want to invest in security market. The Noticee has an in-house marketing team in the form of a call center to interact with clients. The Noticee has marketed its plans over telephone, SMS, email, etc., and that these modes are legal and permitted under the IA Regulations.
- ii. The Noticee has not committed any harm by claiming to its investors that it is a SEBI registered intermediary. The same was meant to create trust in investors and clients.

- iii. The Noticee, vide its letter dated May 25, 2019, has also submitted a new proposed business products policy along with pricing structure.
11. As regards the directions against the proprietor Mr. Tabrez Khan, it has been submitted that these directions should not continue against him on the following grounds:
- a. There is no allegation in the order with regard to his buying, selling and dealing in the securities market.
 - b. He has not dealt in the securities market at all.
 - c. He does not have a demat account.
 - d. He does not carry out any activity even in off-market.
 - e. No purpose will be served by these directions.
12. As regards the directions issued to Mr. Tabrez Khan to not dispose of or alienate any assets in his name or in the name of Zoid Research and the directions given to the Banks, Depositories, Stock Exchanges and Registrar and Transfer Agents, it has been submitted that these directions are beyond the jurisdiction and scope of SEBI as they are depriving the Noticee and his family of the right to livelihood. As such, the interim order is ultra vires the Constitution of India.
13. As regards the directions issued against the employees of the Noticee, it has been submitted that the employees are creating enormous pressure for clearing their dues and payments. Emails from a few employees in this regard have been submitted.

Consideration of Issues:

14. I have considered the replies / oral submissions / written submissions filed by the Noticees. The issue to be considered at this stage is as follows:

Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Noticees in response thereto, the directions issued against the Noticees vide the interim order need to be confirmed, revoked or modified in any manner?

Whether in light of the facts and circumstances of the case, the findings of the interim order and the submissions of the Noticees in response thereto, the prayers of the Noticee need to be granted or denied?

15. The consideration of the issues in light of the oral/ written submissions made by the Noticee is contained in subsequent paragraphs.

16. Investor Grievances and their redressal:

I note that the Noticee claims to have serviced around 5000 clients since its registration in 2014. It claims to have received only 185 complaints from January 01, 2015 onwards and that at the time of interim order, only 43 complaints were pending for resolution. The Noticee has further submitted that the nature of the complaints received against it are basic in nature.

The nature of the complaints made against the Noticee pertain to non-disclosure of complete charges to clients, extracting money from clients under different pretexts, commitment of profit, allegations of fraud and poor service, etc., and I note that the same are not basic in nature. Further, on the observation regarding delay in sending an Action Taken Report (ATR) to SEBI, the Noticee has merely submitted that it has sent the ATR to SEBI and the same is pending either with SEBI or with the client. I find that the Noticee has not commented on the cause of delay in sending the ATR to SEBI.

The Noticee has submitted details of certain complaints it has claimed to have resolved and from the same, the following is observed:

- a. The complaint of Mr. RK Rabindranath was sent to the Noticee on October 25, 2018, for resolution. The Noticee has forwarded the complaint to the investor after one month seeking clarification on the complaint. The first communication to the complainant has been sent on November 23, 2018, i.e., around a month after receipt of the complaint.
- b. The complaint of Mr. Mehar Singh was sent to the Noticee on July 09, 2018, for resolution. The Noticee has forwarded the complaint to the investor on August 23, 2018, i.e., after more than a month for some clarifications.
- c. The complaint of Mr. Mukesh Kumar was sent to the Noticee on October 11, 2018, for resolution. The Noticee has forwarded the ATR to SEBI on November 26, 2018, i.e., more than a month after receipt of the complaint.
- d. The complaint of Mr. Bachubhai Surani was sent to the Noticee on July 10, 2018, for resolution. The Noticee has forwarded the ATR to SEBI on September 03, 2018, i.e., almost two months after receipt of the complaint.

From the above, I note that the Noticee has taken more than one month in resolving the complaint and sending an ATR to SEBI. The Noticee has also submitted that the clients who have complained to SEBI are the ones who have enjoyed its services for a long period of time; however, no evidence to substantiate this claim has been provided by the Noticee. Further, from the details of the complaints claimed to have been resolved after the interim order, the following is observed:

- a. It is pertinent to note that all these resolution emails have been obtained from the clients after the interim order has been passed.
- b. It appears that the Noticee and/ or its representatives have settled the matter with the complainant and have made the complainant send an email to them stating that the grievance has been resolved. Details of how the grievance has been resolved have not been

provided. Further, it appears that the clients have been persuaded to send an email that the Noticee is not involved in giving false commitments.

- c. The Noticee and/ or its representatives have repaid a certain amount to the complainant and appear to have promised to refund the balance amount as well.
- d. The Noticee and/ or its representatives appear to have promised the complainants that once they start functioning, the losses will be recovered. It appears that in order to get the resolution email, the Noticee and/ or its representatives have committed to the clients that their losses will be recouped.

It is clear from the above observations that the Noticee has not made any genuine efforts to resolve the grievances. Instead it has made further commitments to the complainants in order to obtain emails stating that the complaints have been resolved.

While SEBI has closed certain complaints received against the Noticee, the same does not imply that there is no delay on the part of the Noticee in resolving the complaint/ sending an ATR to SEBI. In fact the nature of the complaints and the delay of the Noticee in responding to/ resolving them have acted as a trigger for SEBI to carry out a preliminary examination into the activities of the Noticee. Further, resolution/ settlement of grievances does not alter the nature of the services being provided to the clients, which, as explained later in this order, are found to be, *prima facie*, fraudulent and in violation of various provisions of securities laws.

In view of the above, I note that the submissions of the Noticee are devoid of merit and therefore, cannot be accepted.

17. Promising assured/ guaranteed returns to its clients:

I note that in the agreements signed between the client and the Noticee, it has been expressly stated that for a certain service charge, the Noticee will provide services to the client for a

“particular return”. I also find that in various communications with its clients, the Noticee has used terms such as *“IDP Commitment Plan”*, *“total commitment profit”*, *“committed profit slab”*, *“profit commitment plan”*, etc.

The Noticee has submitted it has never made any assured profit commitment to anyone. It has submitted that for the one-time service charge, it will continue to render investment advisory services to the client till such time period that the *“particular return”* is achieved. The Noticee has admitted that the service provided by it will lapse once the *“particular return”*, as stated in the agreement, is attained by the client.

- a. I do not accept this interpretation of the Noticee with respect to *“particular return”*. The Noticee has contended that it does not assure a *“particular return”* to its investors. Instead it is committing to its clients that it will continue to provide investment advisory services to its clients till the time the *“particular return”* is achieved. The Noticee, being a registered SEBI intermediary, is well aware of the fact that all investments in the stock market are subject to market risk and a particular return, or for that matter, any form of return on an investment cannot be guaranteed, no matter how long the period for which the investment is held or advice on that investment is offered to the client.
- b. I find that the Noticee, through the use of such terms/ clauses, is committing to the client that (i) he/ she will achieve the particular return mentioned in the agreement by acting on the investment advice provided AND (ii) the investment advice will be provided till the time such particular return has been achieved. I find that the commitment to the client that the service offered will continue till the *“particular return”* is achieved is tantamount to offering an assured/ guaranteed return and is an active concealment of the fact that any return on an investment cannot be guaranteed as all investments in the securities market are subject to market risk. There may be a scenario where the capital deployed by the investor gets eroded as the investment advice provided by the Noticee turns out to be incorrect due to market risk. In view of such adverse scenarios occurring, committing to deliver a *“particular return”* to the investor is not acceptable on part of the Noticee.

In view of the above, I note that the submissions of the Noticee are devoid of merit and therefore, cannot be accepted.

18. Unrealistic returns:

During the personal hearing, the Noticee was advised to demonstrate how its calls/ investment advice would enable the client to achieve the assured return/ profit vis-à-vis the investment made by the client. In this regard, for ten sample clients, the Noticee has submitted the logs of the investment messages that were sent to the client and the expected profit/ loss calculation for each message.

I find that the Noticee has not explained, moment by moment, on a daily basis, how the client will be able to execute each and every investment advice provided by the Noticee taking into account the amount of capital that he/ she is capable of investing on a daily basis. The Noticee has also not demonstrated, mathematically, how the profit/ loss generated by each call will be affected after taking into account the position taken/ squared off by the investor, margin requirements, capital deployed for each transaction and how all these factors will result in the profit commitment made to the investor.

Further, from the details provided by the Noticee, the following observations are made:

- a. I note that some of the messages counted towards profit calculation are not reflected in the investment message logs. For e.g., for client Harish Parekh, the Noticee has considered messages sent between May 15, 2017 and July 11, 2017 for the “Stock Option” normal package towards profit/ loss calculation; however, the corresponding messages for these transactions are not reflected in the investment message logs provided by the Noticee. Similarly, for client Swapnil Pohakar, the Noticee has counted certain messages for the dates March 07, 08, 09, 15 and 16, 2018 towards profit calculation; however, the corresponding messages for these transactions are not reflected in the investment message logs provided by the Noticee.

- b. Certain recommendations made by the Noticee to the clients do not reflect in the profit calculation sheets. For e.g., the client Harish Parekh has been sent messages for the package “Stock Future Premium”. However, the profit/ loss calculation for these messages has not been provided. Similarly, the client Swapnil Pohakar has been sent messages for the “Option Golden” and “Option Institution” packages. However, the profit/ loss calculation for these messages has not been provided.
- c. In a few cases, the Noticee has sent investment messages to the client after the end date of the subscription period and these messages have been not been counted towards the profit/ loss calculation. For e.g., for client Vishal Goyal, the Noticee has submitted that the service for “Institutional Cash” was provided till June 29, 2018; however, messages for this package have been sent to the client beyond this date but have not been counted towards profit/ loss calculation. Similarly, for client Anurag Saini, the Noticee has submitted that the “Stock Cash Golden” package was activated till April 13, 2017; however, the Noticee has continued to send messages for this package beyond this date and these messages have not been counted towards the profit/ loss calculation.
- d. With respect to cash market buy/ sell transactions, it is observed that in the profit calculation sheets, the Noticee has assumed the profit to be calculated at the highest target price that was achieved during the day. For e.g., for client Swapnil Pohakar, with respect to scrip VEDL, on March 12, 2018, the Noticee has sent the following messages to the clients:

Date	Time of Message	Message contents
March 12, 2018	09:37:28	Buy VEDL above 308.50 TGT 312.5-317 SL 304
March 12, 2018	09:39:19	Book some profit in VEDL@311.40
March 12, 2018	13:39:11	Book part profit in VEDL as 1 st TGT achieved high at 312.50

Date	Time of Message	Message contents
March 12, 2018	14:48:48	Book full profit in VEDL as 2 nd TGT achieved high at 317.40

While calculating the profit, the Noticee has assumed that the scrip was purchased at Rs. 308.5 and that the client has booked entire profit at Rs. 317. However, as per the message logs, the Noticee has advised the client to book profits at three different prices, Rs. 311.40, Rs.312.50 and Rs.317. The client may have booked some profit at each of these prices and in such a scenario, the expected profit will be lower than what has been calculated by the Noticee.

In view of the above, I find that, *prima facie*, the investment messages logs and the profit/ loss calculation sheets provided by the Noticee are not comprehensive and the Noticee has not demonstrated how its calls/ investment advice would enable the client to achieve the assured return/ profit vis-à-vis the total funds that the client has indicated as his investible funds. Further, I find that, *prima facie*, the profit calculated by the Noticee for the transactions has been inflated, as described above.

The Noticee has not submitted the declaration from these clients, which it supposedly takes from each client in the form of an agreement, whenever the client wants to take any service from it. While it has submitted declarations from a few other clients, I find that mere standard statement in the declarations by the client that he is aware that investments are subject to market risk cannot dilute the conduct of the Noticee in making false representation that it can provide returns which are in essence unrealistic. If the Noticee knows that the investments are subject to market risks, there is no need for any representation by it that it can assure unrealistic returns. Therefore, it is clear that Noticee is making the misrepresentation with knowledge that it is assuring unrealistic returns. Noticee cannot escape its liability for making such misrepresentation to the investor merely on the ground that the investor is aware that his investments are subject to market risks which is mentioned in the standard form of declaration.

Further, the Noticee has also not demonstrated its claim that it continues to provide its services, for no extra charges, even in cases where a client has made losses, let alone in a case where there was no capital available for employment by the investors due to loss.

I note the following from the undertaking given by the Proprietor, Mr. Tabrez Khan, dated February 27, 2019:

i. We regret to state that in the past, on our website message displaying the assured, committed return was being displayed when come to our knowledge which we had already been removed from the website, as the same was commonly used by other SEBI registered Investment advisor also.

ii. On understanding the error, we had immediately taken corrective measures and thereafter no such messages were disseminated.

iii. Recently it has come to our knowledge that in past some of our employees have interacted with our clients showing assured and committed returns, Further on enquiry, we find that only few customers have been communicated. However sincerely regret for the same.

I note that the proprietor of the Noticee has accepted that its website displayed the message of assured, committed returns, which was removed after it came to the knowledge of the Noticee. In the absence of any mention of the date from which these messages were removed from the website, I am inclined to believe that the same could have been done after the start of the preliminary enquiry against the Noticee by SEBI. The Noticee has also accepted that some of its employees have showed assured and committed returns to their clients.

In view of the fact that the Noticee has accepted that its website displayed messages of assured, committed returns and that its employees have showed assured and committed returns to their clients, I find the contention of the Noticee that the clients have read the disclaimers related

to risks and were aware of the market risks unacceptable. Merely displaying these disclaimers does not absolve the Noticee and its proprietor of their fiduciary responsibility towards the clients. The intent of the Noticee to lure clients to subscribe to its service packages is clear as they are committing to the client that it will continue to provide services till the assured/targeted return is achieved. Any information that a SEBI registered intermediary puts out for the consumption of its existing and prospective clients has to be done with great responsibility.

The role of an “investment adviser”, as envisaged under the IA Regulations, is to merely render investment advice to its clients, which is based on their financial situation, investment experience, investment goals, etc. The Regulations do not envisage any such scheme or practice through which the Investment Adviser will attract clients by committing any assured returns to the clients.

I find that the Noticee is a proprietorship with Mr. Tabrez Khan as the sole proprietor. He has accepted that the website of his proprietorship was displaying messages of assured, committed returns and has also accepted that the employees of his proprietorship have showed assured and committed returns to their clients. In his capacity as the proprietor, Mr. Tabrez Khan, is required to exercise due skill, care and diligence in all his dealing with investors. As the sole proprietor, he is the bearer of the primary responsibility for ensuring maintenance of appropriate standards of conduct by the Noticee and by all its employees/ representatives. Therefore, I don't find any other material to hold otherwise the, *prima facie*, establishment of the violation found in the interim order on this aspect.

As already mentioned earlier, the Noticee has not explained, moment by moment, on a daily basis, how the client will be able to execute each and every investment advice provided by the Noticee taking into account the amount of capital that he/ she is capable of investing on a daily basis. The Noticee has also not demonstrated, mathematically, how the profit/ loss generated by each call will be affected after taking into account the position taken/ squared off by the investor, margin requirements, capital deployed for each transaction and how all these factors will result in the profit commitment made to the investor. In view of this, I note that there is

no adequate evidence to show that the investment advice can really result into the assured and unrealistic return.

19. Extracting money from clients:

The modus operandi used by the Noticee to extract money from clients was disclosed to SEBI by the Compliance Officer of the Noticee. The undertaking given by the Compliance Officer was provided to the Noticee during inspection of documents. I observe that the Noticee has not challenged the fact that its own Compliance Officer has provided details of the violations committed by it to SEBI.

The Noticee has denied the charge of putting strict deadlines on clients to make the balance payment and has submitted that they have sent many reminders to clients before putting deadlines on them. This charge of putting strict deadlines on clients was corroborated in the interim order by way of an example, wherein the Noticee has clearly communicated to the client that his work will start only after the final dues are paid. A deadline was provided to the client for making additional payment, failing which his work will not be started and his slot will be rejected. This communication to the client was provided to the Noticee during inspection of documents and I note that the Noticee has not disputed the genuineness of this email and its contents. The Noticee has merely denied the charge and has neither provided any explanation for this particular email nor has it showed that it sent reminders to this particular client for payment.

During the personal hearing, the Noticee was advised to demonstrate its following claims:

- a. Clients are provided services even if they make a partial payment of the service fees.
- b. Additional charges are asked from the clients only when the service equivalent to the partial payment has been delivered.
- c. Clients are not threatened and it has not denied services to the clients.
- d. If a particular slot/ package is not available, then the money is returned to the clients.

I find that in its subsequent submissions the Noticee has not been able to demonstrate any of the above mentioned claims.

The Noticee has submitted that it has a standard pricing policy and no extra fees on account of server fee, file handling fee, etc., are charged from any client. The charge of extracting various types of fees from the clients, which were not disclosed initially, was corroborated in the interim order by way an example of the Noticee asking a client to pay additional fees such as server fee, file allocation/ handling fee, etc., I find that the Noticee has not provided any explanation for this particular instance but has merely denied that it charges extra fees. Moreover, as part of its submissions, the Noticee has a provided a bill dated February 02, 2018 for client Vishal Goyal wherein it is mentioned that the extra charges pertain to team allocation (Rs. 10,000/-) and to server charge (Rs. 25,500/-). Therefore, I don't find any other material to hold otherwise the, *prima facie*, establishment of the violation found in the interim order on this aspect.

In view of the above, I note that the submissions of the Noticee are devoid of any merit and have not been backed up with adequate evidence. Therefore, the same cannot be accepted.

20. Misrepresentation by employees of the Noticee:

I find that in the agreements executed with the clients, the Noticee was referring to itself as an "Investment Advisory Company". It is known fact that the Noticee is a proprietorship concern with Mr. Tabrez Khan as its sole proprietor. The Noticee has not made any submissions regarding this misrepresentation made to its clients.

With regard to the observation that the proprietor, Mr. Tabrez Khan, is not a signatory to any of the agreements executed with the clients, the Noticee has submitted that this authority was given to Mr. Mohammed Shahid (Compliance Officer) and Ms. Subhi Sahu (Chief of

Divisional Officer). However, the registration as an IA is in the name of Tabrez Khan and he cannot escape the liability for assurance of profit to the clients on the ground that he has not signed the agreements or he was involved only in the administration and management part.

The Noticee has submitted a list of its employees vide its letter dated February 22, 2019. Vide letter dated May 25, 2019, the Noticee also submitted details of salary and incentive paid to its employees for the calendar year 2018. The interim order mentioned an example wherein, as per the undertaking of its Compliance Officer, the Noticee had communicated names of non-existent employees to a particular client. This communication made to the client pertains to the August 2017 and I observe that it was also provided to the Noticee during the inspection of documents. In its submissions, the Noticee has not disputed the contents of this email and has not offered any explanation on the use of names of non-existent employees except stating that it has more than 100 employees and in case the client forgets the name of the person with whom he/ she communicated, then it is not the fault of the Noticee. If these persons were in fact employed by the Noticee at that point, then the same could have been substantiated by the Noticee by providing evidence of salary credits made to these employees. I find that the Noticee has not provided any such evidence.

Moreover, from the list of employees submitted by the Noticee, following discrepancies were observed:

- a. The name of the employee appears in the incentive list but not in the salary list. For example, for the month of December 2018, a certain Uzma Khan and Ruhan Khan have been paid an incentive of Rs. 59,442/- and Rs 26,833/-; however, their names do not appear in the list of employees who were paid salary for the month of December 2018.
- b. The name of Saud Anwar, who has been paid a salary of Rs. 49,350/- for the month of December 2018, does not appear in the list of employees provided by the Noticee vide letter dated February 22, 2019. Similarly, a certain Kamal Mandhwani has been paid salary

plus incentive of around Rs.1,28,000/- for the month of November 2018, while his/ her name does not appear in the list of employees provided by the Noticee.

- c. For employee Vishal Singh Tomar, different bank accounts are used for credit of salary and for credit of incentive for the month of December 2018, while the same bank account is used for credit of both, salary and incentive, for the month of November 2018.

The above discrepancies indicate that the employee records maintained by the Noticee are inaccurate and incomplete. These discrepancies were also pointed out to the Noticee during the personal hearing and I observe that the Noticee has not offered any comments on these discrepancies.

In view of the above, I note that the Noticee has not made adequate submissions or submitted adequate materials to refute the violations alleged in the interim order. Therefore, I do not accept these submissions.

21. Violation of Regulation 7(2) of the IA Regulations:

Regulation 7(2) of the IA Regulations states

Qualification and certification requirement.

7. (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.

SEBI has notified that Investment Advisers and their associated persons, including their partners and representatives, shall obtain Level 1 and 2 of the NISM Investment Adviser Certification. I find that the proprietor, Mr. Tabrez Khan, has accepted that for the period April 4, 2018 till July 14, 2018, he did not have the requisite NISM Level 2 certification, which is required under the Regulation 7(2) of the IA Regulations. He had submitted that he was unable to renew his Level 2 certification due to health issues and certain family circumstances. He also contented that he himself was not offering the advice or communicating with all the clients of the Noticee. Mr. Shailesh Barnaiya, Superintendent Research Analysis, who holds required qualification of NISM Level 1 & 2 was offering services of research analysis for the said period. I do not agree with his contention that this requirement is not relevant as he himself was not offering advice or communicating with the clients. Regulation 7(2) is very clear that an individual registered as an Investment Adviser under the IA Regulations shall have, at all times, the relevant certification prescribed by the Board. Hence, as the Proprietor of the IA, Mr. Tabrez Khan was bound by the IA Regulations to hold the necessary certifications at all times.

In view of the above, I do not accept the submissions of the Noticee. Therefore, I do not find any other material to hold otherwise the, *prima facie*, establishment of the violation found in the interim order on this score.

22. Violations of Regulations 16 and 17 of the IA Regulations:

Regulation 16 of the IA Regulations mandates the following:

- a. The IA shall ensure that it obtains all relevant information from the client, as is necessary to provide investment advice.
- b. The IA has a process to assess the risk a client is willing to take and identify his/ her capacity to absorb loss.
- c. The questions/ descriptions used by the IA when assessing the risk the client can take should be fair, clear and not misleading.
- d. The IA shall communicate the risk profile of the client to the client after the risk assessment is done.
- e. Information provided by the clients and their risk assessment is updated periodically.

It was alleged in the interim order that the Noticee has not carried out any risk profiling of its clients which is prima facie evident from the fact that it/he sold pre-fixed plans promising unrealistic profit commitments to the client. I note that the Noticee has now submitted the risk profiling forms of ten sample clients. It is observed that these forms do not contain the name of the client to which the risk profiling form belongs to. During the personal hearing, the Noticee submitted that the client is identified through the phone number; however, even phone number of the client is not mentioned on the risk profile form. Out of the ten sample risk profile forms submitted by the Noticee, only two forms had the name of the client mentioned, while none of the forms had the mobile numbers mentioned. Hence, it cannot be confirmed if these forms belong to the same client or not.

I find that the Noticee has submitted that *“the risk profiling has been always done by the experienced research/ marketing team which undertakes the intensive exercise of assessment through computer aided software and technology by question answer round on phone calls which are simultaneously punched/ entered by team member in computer and based on which one report is generated identifying the risk profiling capacity of the client”*.

In view of this submission, during the personal hearing, the Noticee was advised to submit evidence that the risk profiling form has been filled up by the clients themselves. The Noticee was also advised to submit the dates on which the risk profiling result was communicated to the client. I observe that the Noticee has not submitted any such evidence in this regard. Hence, the possibility of the employees of the Noticee having filled up the risk profile form in a manner to achieve a medium risk/ high risk score for the client cannot be ruled out.

The Noticee has submitted that the risk profile scores are communicated via messages to every client and the same is also confirmed by the client by replying to the message. However, for the sample ten clients, the Noticee has not furnished these details. The Noticee was also advised to demonstrate how it is denying services to low risk profile clients' along with proof and communication. I observe that the Noticee has only submitted the risk profile forms of clients who have got a low risk score. No evidence has been submitted that such clients were communicated their low risk score and were denied investment advisory services.

During the personal hearing, it was also observed that the proprietor, Mr. Tabrez Khan, was not aware of the questions of the risk profiling form even though the IA registration is in his name.

Regulation 17 of the IA Regulations mandates the following:

- a. The IA shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client.
- b. It has a reasonable basis for believing that a recommendation or transaction entered into meets the client's investment objectives and is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
- c. Whenever a recommendation is given to a client, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of the financial

product is consistent with client's experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

In view of the above, the following observations can be made from the risk profiling forms submitted by the Noticee:

- a. The Noticee has taken payment in advance from clients even before carrying out their risk profiling. The same can be seen by comparing the date of the risk profiling and the date of the first payment made to the Noticee by the client. A few examples of the same are given below:

Sr. No.	Name of client	Date of Risk Profiling (submitted by the Noticee)	Bill date for first payment made to Noticee (bills submitted by the Noticee)	Amount paid
1	Swapnil Pohakar	Feb 27, 2018	Feb 26, 2018	Rs. 5,000/-
2	Harish Parekh	Jan 12, 2017	Jan 11, 2017	Rs. 6,742/-
3	Vishal Goyal	Jan 30, 2018	Jan 25, 2018,	Rs. 2,500/-
4	Dharmesh Kumar	Sep 09, 2017	Aug 10, 2017 and two bills dated Aug 11, 2017	Rs. 1,100/-, Rs. 22,305/- and Rs. 5,000/-
5	Anurag Saini	Mar 20, 2017	Two bills dated Feb 15, 2017 and one dated Feb 16, 2017	Rs. 20,000/- each
6	Daler Singh	May 15, 2017	May 12, 2017	Rs. 3,000/-
7	Girija Shankar	Dec 15, 2017	Dec 14, 2017	Rs. 5,000/-
8	Jovet Jose	Apr 10, 2017	Apr 07, 2017	Rs. 12,973/-

- b. The Noticee has also sent investment messages to clients much before the date of their risk profiling. For e.g., client Dharmesh Kumar has been provided the service of the “Stock Cash” package from August 04, 2017 till August 24, 2017, while his risk profiling has been done on September 01, 2017.
- c. From the risk profile forms submitted by the Noticee, it appears that, *prima facie*, the Noticee has provided packages having a high risk involvement to clients who have been rated as medium risk. A few examples of such instances are given below:
 - i. As per the risk profile form submitted by the Noticee for the client Anurag Saini, the client has a risk score of 58 and is a medium risk client. The Noticee has sent the client investment messages for the “Stock Cash Golden” package and as per the own submissions of the Noticee, Golden services are provided generally to high risk bearing clients.
 - ii. Similarly, the client Swapnil Pohakar and clients having Trader IDs 126540028, 126540183, 126540383, 12861, 126540064, 126540220 and 126540075 (client names not mentioned on the risk profile form) have been rated as medium risk bearing clients and have been sent messages for the Golden services, which is a high risk service.
 - iii. Client with Trade ID 121961, who has been rated as medium risk, has been provided messages for the package of ZPPP ZAL package, which as per the own submissions of the Noticee is a package for the commodities markets and is a “high risk and high return” service.

From the above, I find that the Noticees’ intent is to first make the client pay towards the service without having any regard for his/ her risk appetite. This observation also strengthens the possibility of the employees of the Noticee having filled up the risk profile form in a manner to achieve a medium risk/ high risk score for the client. I also note from the details of the salaries and incentives paid to the employees that the incentives appear to be as high as

the salary paid and highly variable across the employees. This also strengthens the possibility that the employees are selling services to the client by promising them unrealistic and assured returns, without having any regard to their risk appetite.

Further, the Noticee has exposed its clients, who have an appetite for taking medium risk, to investment advisory services/ financial products which are of high risk rating.

From the above, I am of the view that, *prima facie*, the Noticee has not carried out risk profiling of its clients in accordance with the IA Regulations. Further, the Noticee has not followed the principle of suitability and appropriateness when providing investment advice to its clients. The sole objective of the Noticee has been, *prima facie*, to extract service fee from its clients, based purely on assurance of profit and with no regard as to their risk profiling.

In view of the above, I note that the submissions of the Noticee are devoid of any merit and therefore, reject the same.

23. Violation of provisions of the PFUTP Regulations:

‘Fraud’, in terms of Regulation 2(1)(c) of the PFUTP Regulations, is defined as under:

“(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 ... ”

From the above, I find that the acts of the Noticee in (a) misrepresenting that there will be assured and committed returns to the clients (b) falsely promising unrealistic assured returns on investments AND (c) actively concealing the fact that investments in the securities market are subject to market risk fall within the definition of ‘fraud’, as mentioned above. The business practice followed by the Noticee is in the nature of a scheme to lure investors by assuring them guaranteed returns and the same is manipulative and deceptive in nature. Further, as determined above, the sole objective of the Noticee has been, *prima facie*, to extract service fee from its clients, based purely on assurance of delivering profit and with no regard as to their risk profiling. These acts of the Noticee are manipulative, fraudulent and unfair trade practices. I find that the acts of the Noticee and its Proprietor are in contravention of the SEBI Act and the Rules and Regulations made thereunder. The contentions of the Noticee after consideration of the materials submitted by the Noticee does not alter the factual matrix whose commission and omission resulted in the prima facie finding of violation of provisions of section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (b), (c) and (d) and 4(1) and 4(2)(k) of the PFUTP Regulations.

24. Other Submissions:

As already mentioned in the interim order, a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he/she/it

operates and it ill behoves him to become a party to any market misconduct. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts.

The Noticee has marketed its investment plans over telephone, SMS, emails, etc. While there may be no bar in such communications, I note, in view of the conclusions arrived at above, that the same have been motivated purely by the prospect of achieving its financial gain through wrongful means without complying with the applicable provisions of the IA Regulations at the cost of the hard earned money of the investors. By its deceptive and manipulative acts, the Noticee and its proprietor have not discharged their fiduciary responsibility towards the investors and the clients. The Noticee has submitted a new proposed business products policy along with pricing structure. I note that this new business policy does not alter the nature of the findings of the interim order. Further, submission of this proposed policy does not imply its endorsement by SEBI.

In view of the above, I note that the submissions of the Noticee are devoid of any merit and therefore, reject the same.

25. In view of the considerations made above, I find the Noticee and its Proprietor, Mr. Tabrez Khan, to be responsible for (a) committing to provide guaranteed and unrealistic returns to its clients, (b) not discharging their fiduciary responsibility towards its clients, (c) non-redressal of investor grievances, (d) extracting money from clients, (e) misrepresentation made by its employees to the clients and (f) not carrying out risk profiling of its clients in accordance with the IA Regulations. These acts of the Noticee also amount to fraud, as defined in the PFUTP Regulations. Hence, I find that the Noticee is in contravention of various provisions of the SEBI Act, the IA Regulations and the PFUTP Regulations.

26. As the very nature of the investment advisory activity being practiced by the Noticee appears to be, *prima facie*, fraudulent and in violation of the provisions of SEBI Act, PFUTP Regulations and IA Regulations, the balance of convenience is not in favor of permitting the Noticee to provide investment advisory services to the existing clients. Further, the proprietor of the Noticee, Mr. Tabrez Khan, is responsible for all acts and omissions committed by the Noticee and its employees/ representatives. In view of the same, there appear to be no reasonable grounds to revoke the interim directions against him/Noticee at this juncture.
27. The Noticee has prayed for de-freezing of its bank accounts to permit it to meet its expenses. It is noted that SEBI has powers under Sections 11B and 11(4) of SEBI Act, in the interest of investors, to pass final direction against the applicant to repay such money received from various investors after giving a fair opportunity of hearing. The interim order has been passed in order to maintain the status quo, so that on final adjudication after granting fair opportunity of hearing on merits, if the liability to repay is established, the possible direction in the final order does not become infructuous. Therefore, I find that the balance of convenience is not in favor of the applicant. In view of this, the prayer to de-freeze the bank accounts cannot be acceded to at this stage.
28. To pre-empt the possibility that the Noticee may divert the money collected from its clients, Mr. Tabrez Khan was directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous. The contention of the Noticee that these directions are beyond the jurisdiction and scope of SEBI and as such, the interim order is ultra vires the Constitution of India, cannot be accepted as the Board has been vested with the power to issue such directions under Section 11 (B) of the SEBI Act, 1992.
29. The Noticee has prayed that its employees be allowed to work with any other IA. I have already noted that Mr. Tabrez Khan, in his capacity as the sole proprietor of the Noticee, is the bearer of the primary responsibility for ensuring maintenance of appropriate standards of conduct by the Noticee and by all its employees/ representatives. Therefore, while the Noticee

and its proprietor Mr. Tabrez Khan continue to be restrained from operating in the securities markets, directly or indirectly, I am inclined to modify the directions against its employees. Appropriate directions in this regard are issued in the operative portion of the order.

30. As regards the prayer to shift registered office within local limit, the Noticee is advised to make the representation before the concerned Department of SEBI.

31. Accordingly, necessary directions in this regard are issued in the following paragraph.

32. **Order:**

a. In view of the foregoing paragraphs, pending detailed examination, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11B and 11D thereof, hereby direct, that

- i. Mr. Tabrez Khan/ Zoid Research on their own, or, through his/its employees who have not ceased to be in the employment/agency of the Noticee, shall cease and desist from undertaking investment advisory activity or any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.
- ii. The other directions issued vide *ex-parte ad interim* order dated February 08, 2019, against the Noticee, Zoid Research and its Proprietor, Mr. Tabrez Khan (PAN: **BBQPK0436A**), are confirmed.
- iii. Zoid Research and its Proprietor, Mr. Tabrez Khan, is at liberty to make the representation before the concerned Department of SEBI for consideration of shifting its registered office within local limit

- b. This order shall come into force with immediate effect. A copy of this order shall be served upon all the Noticees, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: October 25, 2019

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA