

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

**Under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992,
and Regulation 35, Chapter VI, of the SEBI (Intermediaries) Regulations, 2008**

**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	SEBI Registration Number	PAN
1	Trade India Research (Proprietor Ms. Neha Gupta)	INA000003064	BEHPG5479R
2	Mr. Anurag Rajawat	Former/ present employees of Trade India Research	
3	Mr. Anand Siddh		
4	Ms. Sonam Jariya		
5	Ms. Vaishali Raghuwanshi		
6	Mr. Mangal Kumar Rathore		

Background:

- Ms. Neha Gupta (PAN: BEHPG5479R), Proprietor of M/s Trade India Research (hereinafter interchangeably referred to as “Trade India / IA / Ms. Neha Gupta/ 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, 2013") with effect from June 17, 2015. It has its registered office at 301, 3rd Floor, Mangal City Mall, Vijay Nagar, Indore - 452010. Its website address is www.tradeindiaresearch.com.
- The following observations regarding the business model of the Noticee are made from the details available on its website:

- a. The advisory business of the Noticee is based on 'subscription model'.
 - b. The fees charged is based on the product/ package subscribed and the subscription period.
 - c. The Noticee provides tips/calls to its clients through SMS and/ or telephone support.
 - d. The Noticee sells to its clients packages namely Stock Cash, Stock futures, Stock/ Nifty Option, Nifty/ Bank Nifty Future, Commodity Market, NCDEX, Forex, etc., at various price points depending upon the period of subscription.
 - e. The advisory fee varies from Rs. 7,000/- to Rs. 12,30,000/- as stated on its website. It is further mentioned on the website that it offers all services through fast SMS and messenger service.
3. SEBI has received letters from the Central Economic Intelligence Bureau, New Delhi, the Central Bureau of Investigation, Bhopal, and the Ministry of Finance, New Delhi, forwarding complaints of investors against the Noticee. SEBI has also received a letter dated July 10, 2019, from the Special Investigation Team of Indore police informing that a First Information Report dated July 08, 2019, has been filed against Ms. Neha Gupta, proprietor of Trade India Research and four employees of her Research team.
4. During June 2015 to March 2016, four (04) complaints were filed against the Noticee in SCORES. However, subsequently, there has been a considerable rise in the inflow of complaints against the Noticee. In total, 447 complaints have been received in SCORES against the Noticee from the date of its registration till June 30, 2019. After removing duplicate complaints, it was observed that 243 unique complaints have been received against the Noticee. In view of the large number of complaints received against the Noticee, it was decided to conduct a preliminary examination into the activities of the Noticee and complaints of a few client of the Noticee viz., Ms. Shashi Kala, Mr. Khoyendra Pande, Mr. Parshuram Chaupal, Mr. Vasant Kumar Rathod and Ms. Meena Hemant Padia were taken up for preliminary examination:

5. Further, for the purpose of examination, information/ documents were gathered from various sources such as:
 - a. SCORES complaints and supporting evidences submitted by complainants,
 - b. Documents/ information provided by complainants (WhatsApp chats, call recordings and their transcripts, emails and other documents received by them from the Noticee),
 - c. Documents/ information provided by the Noticee and
 - d. Information available on the website of the Noticee.
6. The, *prima facie*, observations from the preliminary examination are given in the succeeding paragraphs.

A. Charging clients unreasonable and arbitrary service fee:

7. It is observed from the mail records, supporting documents and payment invoices that Ms. Shashi Kala has paid Rs. 16.24 lakhs to the Noticee in 12 part payments between December 23, 2016 and March 6, 2017, for various services. The client has made multiple payments to the Noticee, details of which are given below:

S. No.	Invoice Number	Package (duration)	Date of Invoice	Amount (In Rs.)
1	TI-DEC-16-458	MCX Premium (35 days)	December 23, 2016	36000
2	TI-DEC-16-506	HNI MCX (46 days)	December 26, 2016	114000
3	TI-DEC-16-606	HNI MCX (41 days)	December 28, 2016	100000
4	TI-JAN-17-036	HNI MCX (38 days)	January 3, 2017	94875
5	TI-JAN-17-238	Customized MCX (29 days)	January 16, 2017	115000
6	TI-JAN-17-239	Customized MCX (67 days)	January 16, 2017	265000
7	TI-JAN-17-426	Customized MCX (01 days)	January 24, 2017	2001
8	TI-JAN-17-532	Customized MCX (20 days)	January 30, 2017	78000
9	TI-FEB-17-270	Customized Commodity MCX (22 days)	February 18, 2017	88003
10	TI-FEB-17-393	Customized Commodity MCX (08 days)	February 24, 2017	33950
11	TI-FEB-17-417	Customized Commodity MCX (25 days)	February 27, 2017	100000

S. No.	Invoice Number	Package (duration)	Date of Invoice	Amount (In Rs.)
12	TI-MAR-17-057	Customized Commodity MCX (149 days)	March 6, 2017	597050
			Total	16,23,879

8. The Noticee has also charged Ms. Shashi Kala the following amounts for the service “CUSTOMISED MCX” for different durations:

S. No.	Service	Amount Charged (In Rs.)	Invoice date
1	CUSTOMIZED MCX (01 DAYS)	2001	January 24, 2017
2	CUSTOMIZED MCX (20 DAYS)	78000	January 30, 2017
3	CUSTOMIZED MCX (29 DAYS)	115000	January 16, 2017
4	CUSTOMIZED MCX (67 DAYS)	265000	January 16, 2017

It can be seen that the service fee charged by the Noticee appears to be arbitrary and there does not appear to be any consistency in its pricing policy. For example, if fee for “Customized MCX” service for 1 day is Rs. 2001, then accordingly, the fee for the same service for 20, 29 and 67 days should have been Rs. 40,020/-, Rs. 58,029/- and Rs. 1,34,067/-, respectively or lesser than those amounts, as it could be a plausible business practice to provide discounts for larger periods. As is evident from the above table, the fees charged by the Noticee for “Customized MCX” service is proportionally very high for 20 days, 29 days and 67 days in comparison to what has been charged for a 1 day service. From the above, it is clear that the Noticee is charging service fee which is arbitrary i.e., there is no consistency in the pricing policy of the Noticee.

9. Further, it is also observed from the invoices that even before the duration of a particular service has expired, additional payments have been taken from the client for the same service. For example, on December 26, 2016, payment was made to the Noticee and invoice has been raised for “HNI MCX” service for a duration of 46 days and then within a span of two days i.e., on December 28, 2016, another payment has been received and invoice is raised for the same “HNI MCX” service for another 41 days. Similarly, before the expiry of the tenure of “Customized MCX” service for which payment was raised on January 16, 2017 for a duration

of 29 days, another payment has been received by the Noticee on the same day, i.e., on January 16, 2017, for the same service for 67 days.

10. The details regarding payments made by Mr. Khoyendra Pande for the service offered by the Noticee are given below:

S. No.	Date	Payment Amount (including GST) (In Rs.)	Name of the Service	Period of service in date format
1	14.09.17	4130	Stock Cash	26.9.17-10.10.17
2	23.09.17	53400	Customized Combo Basic	2.10.17-20.10.17
3	07-10-17	38000	Customized Combo Basic	23.10.17-03.11.17
4	11-10-17	17200	Customized Combo Basic	6.11.17-13.11.17
5	14.10.17	117270	Customized Combo Premium	23.10.17-22.11.17
6	25.10.17	120000	Customized Combo Premium	23.11.17-29.12.17
7	26.10.17	50000	Customized Combo Premium	01.01.18-19.01.18
8	28.10.17	2500	Customized Combo Premium	22.01.18-24.01.18
9	30.10.17	111111	Customized Combo Premium	25.01.18-28.02.18
10	30.10.17	61389	Customized Combo Premium	01.03.18-20.03.18
11	31.10.17	103500	Stock Future Power	08.01.18-09.02.18
12	07.11.17	209500	Stock Future Power	12.02.18-27.04.18
13	08.11.17	117117	Stock Cash Power	08.01.18-22.02.18
14	10.11.17	110110	Stock Cash Power	23.02.18-26.03.18
15	28.11.17	6890	Stock Cash Power	27.03.18-10.04.18
16	28.11.17	39990	MCX Power	30.11.17-07.12.17
17	28.11.17	696000	MCX Power	08.12.17-30.04.18
18	01.12.17	870000	Stock Cash BTST	04.05.18-01.06.18
Total		27,28,2017		

11. On analysis of payment receipts of Mr. Pande, it is noted that the client has made multiple payments to the Noticee. There are instances where the Noticee has sold a service to the client even before the tenure of the earlier package could end. For e.g., on 23.09.2017, the “Customized Combo Basic” service is sold to the client, which starts from 02.10.2017; however, at the same time, the client is already subscribed to the “Stock Cash” service which is ending on 10.10.17. Similarly, on 14.10.2017, the client was sold the “Customized Combo Premium” service even when the client was availing the “Customized Basic” service. Similarly, services like “Stock Future Power”, “Stock Cash Power”, “MCX Power” and “Stock Cash BTST” have been sold to the client even when other services availed by the client were continuing. From the above, it can be seen that, *prima facie*, the modus operandi of the Noticee is to sell products/ services to the client and extract more and more service fee. It can also be seen that within a period of almost two weeks i.e., from 14.10.2017 till 30.10.2017, the client has paid Rs. 4,62,270/- for four different subscriptions to the “Customized Combo Premium” service of different durations. It is seen that the payment is taken well in advance for service which will be delivered 3-4 months later.
12. Further, in the case of Ms. Shashi Kala, it can be seen from the payment receipts that the client had made payment of Rs. 3,44,875/- towards “HNI MCX” package, with last payment of Rs. 94,875/- made on January 03, 2017. Vide email dated January 7, 2017, at 3:32 PM, the Noticee has stated *“This is to bring in your kind attention that the you have made partial payment of 344875/- for HNI MCX. In order to complete your profile, you are requested to pay 355125/- FOR CUSTOMIZED COMBO HNI. This is the last payment you are requested to make so that you can avail full services”*. Thus, it can be seen that, *prima facie*, the Noticee has taken payment from the client for one package and then is asking the client to make additional payment towards another package in order for the client to complete her profile and avail full services.
13. As per the prescribed Code of Conduct, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Charging of reasonable fees includes not only the quantum of fees to be charged for a particular service but also the mode or manner in which the fees are levied on the clients. From the above observations, it can be seen that the Noticee has

accumulated a huge amount of service fee from the clients by allotting multiple subscriptions of the same/ different package in a very short span of time. It is also observed that the clients are made to pay for multiple subscriptions to the same package on the same day. It would be in the best interests of the client that instead of being charged for the same/ different service when a previous subscription is still valid, the payment for any subsequent service is taken only after the period of the current subscription/ service has ended and the client has had the opportunity to use and experience the service first. By virtue of this practice, the client is already locked in to the services offered by having made advance payments for services to be delivered in the future and the Noticee has not discharged its fiduciary responsibility towards its clients.

14. On analyzing the payment invoices of Mr. Pande, as submitted by the Noticee, it is also observed that the charging of service fees has no rational and is arbitrary. For e.g., in one of the invoice dated 26.10.2017, the “Customized Combo Premium” service for 1 day is charged at Rs. 2050/- and the same service for same tenure is charged at Rs. 5650/- in another invoice dated 08.11.2017. On further analysis of the invoices of the client submitted to SEBI by the Noticee, it is also observed that there is no basis for the fees charged by the Noticee. The summary of fees charged and the services offered by the IA are placed below:

S. No.	Service (Tenure)	Invoice Amount i.e., amount actually charged (excluding GST) (In Rs.)	Calculated amount Actual (excluding GST) on the basis of 1 day service (In Rs.)
1	Customized Combo Premium (1 Day)	2050	2050
2	Customized Combo Premium (22 Day)	96161	45100
3	Customized Combo Premium (23 Day)	98400	47150
4	Customized Combo Premium (33 Day)	141450	67650
5	Customized Combo Premium (19 Day)	84870	38950
6	Customized Combo Premium (39 Day)	171790	79950

S. No.	Service (Tenure)	Invoice Amount i.e., amount actually charged (excluding GST) (In Rs.)	Calculated amount Actual (excluding GST) on the basis of 1 day service (In Rs.)
7	Customized Combo Premium (22 Day)	96036	45100
8	Customized Combo Premium (21 Day)	90290	43050

15. The invoices raised for the payment made by the client show that the client was charged way above than what he should have been charged. From the above table, it is observed that the Noticee charged the client Rs. 2050/- for the service of “Customized Combo Premium” for 1 day, so for a duration of 22 days, for the same service, the Noticee should have charged the client Rs. 45,100/- or lesser. However, it is seen that for a 22 day duration, the Noticee has charged the client Rs. 96,161/-, which is more than double of what should have been actually charged. Similarly, for other invoices in the table, it is seen that the Noticee has charged more than double of what should have been actually charged. On the website of the Noticee, the pricing of the said service is shown as monthly, quarterly, half-yearly and yearly and not on the daily basis and there is no pricing on a per day basis displayed on the website. From the above, it is clear that the Noticee is charging service fee which is arbitrary.
16. In order to determine the “reasonableness” of the fee charged by the Investment Adviser, I note that while no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness, it cannot also be stated that the reasonableness of the fee charged cannot be judged at all. The IA Regulations provides for the principle based determination of fee by the Investment Adviser indicating that such fees have to be fair and reasonable and the same can be tested as a violation of the Code of Conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determination. While determining the reasonableness of the fee, the same has to be seen from the perspective of various factors such as proportionality, uniformity etc. However, the test of “reasonableness” of the fee, in my view does not mean, the same has been “agreed to and paid”. If such standard is adopted, the reasonableness of the fee cannot be tested if the client has agreed to and paid the same.

17. In the instant case, for the same service, fee has been taken twice for different durations with the durations overlapping. It does not stand to reason why fee for same service is taken for overlapping durations. It is a different proposition as to why a service/ product should be sold in this way in the first instance. Such fees can, in my view, qualify to be called as “unreasonable”. Similarly, if the test of proportionality is applied, the fees for the same service over a period should be proportional to the period. Though, the “reasonableness” can accommodate the commercial realities where “discounts” for longer commitment of the clients in terms of money and duration with the IA are extended, the same cannot be termed as “reasonable” where the clients commit to a longer relationship with the IA and effectively pay more for their longer commitment.
18. Similarly, the adoption of “fee” as a tool to force the investors to stay with the IA without any opportunity to sever their ties in case of dis-satisfaction, would in my view, surely be considered as “unreasonable”. In a scenario like this, though the fee may not be “unreasonable” in absolute standard, but the means for which it is used should also qualify as reasonable. There are instances, *prima facie*, where in order to force the client to continue with the IA, even before the service period for the particular product has expired, the same product is sold again, so that the client has no option but to continue with the IA. In my view such practice of using fee as tool to force the client to continue with the IA should also qualify as “unreasonable”.
19. From the above observations, it appears that, *prima facie*, the manner in which the Noticee has charged fees to its clients is purely meant to generate more and more service fees for itself and is clearly not in the best interests of the clients. Therefore, I am of the, *prima facie*, view that the Noticee has collected an unreasonable quantum of fees from its clients in an unfair manner without having any regard to client’s best interest and the fiduciary capacity in which an IA is supposed to be associated with its client.

B. Risk Profiling of clients:

20. The complainant, Mr. Parshuram Chaupal, has alleged that payment was taken by the Noticee in the name of opening of a Demat account and after taking the payments, he was told that money has been taken for services and not for demat account opening. As per the ATR submitted by the Noticee, it has been submitted that client was being provided services of “Stock Cash” and “Stock Option” and that these services were stopped on the basis of client’s request. The risk profiling form of this client was examined and it is observed that two different filled-in risk profiling forms were shared with the client.

Q. No.	Question	Shared with client on 25-06-2018 at 1:47 PM		Shared with client on 25-06-2018 at 5:14 PM	
		Answer	SCORE	Answer	SCORE
1	What is your Age Group	Under 35	40	Under 35	40
2	Investment Goal	Regular Income	30	Regular Income	30
3	Proposed Investment Amount(Current)	<1 lacs	10	1-2 lacs	20
4	Preferred Investment type	Intraday	30	Intraday	30
5	Gross annual Income Details	1-5 lacs	20	1-5 lacs	20
6	Source of Income	Salary		–	
7	Market Value of Portfolio held	<1	10	1-2 lacs	20
8	Investment Experience	<3	10	03 to 5 years	20
9	Experience in Market Products	Stock	0	Derivatives Stocks	0
10	How many dependents do you financially support	Between 1-3	10	Between 1-3	10
11	What is the Size of Your Emergency Fund	<1 month income	10	3-6 months	30
12	What is your experience with Equity Investments	Moderate Experience		Moderate Experience	
13	what is your Experience with Commodity Investments	No Experience		No Experience	
14	what is your Experience with Forex Investments	No Experience		No Experience	

Q. No.	Question	Shared with client on 25-06-2018 at 1:47 PM		Shared with client on 25-06-2018 at 5:14 PM	
		Answer	SCORE	Answer	SCORE
15	what is your Experience with Investments in Past	Moderate	20	Good	30
16	What is your preference w.r.t Securities with Low Risk, Low Return	Prefer	10	Strongly do not prefer	40
17	When market is not performing well do you prefer to buy Risky	Do not prefer	10	Strongly prefer	40
18	Risk Tolerance Rao	Medium	10	High	20
19	What Percentage of the monthly income allocate to pay or debt(all EMIs)	None	40	between 0%-20%	30
20	Occupation	Private Sector Service		Others	
21	Are you any of the following or are directly or indirectly related to any of the following				
Total Score			260		380
Risk Appetite			Medium		High

21. It can be seen that the first risk profiling form was shared with the client on June 25, 2018, at 1:47 PM and the revised risk profiling form was shared with the client on June 25, 2018 at 5:14 PM. It can be seen that within a span of 4 hours, the risk profile of the complainant has changed from MEDIUM to HIGH risk. The answers of the complainant to questions, such as, proposed investment amount, investment experience, market value of portfolio, preferences to opt for low risk products, etc., have changed so as to increase the client's score above 320 and accordingly, the client gets placed in the HIGH risk appetite bracket, which enables the Noticee to offer him high risk products and extract more fees from him. On the basis of this new risk rating, the client has been advised to take the "Stock Option" service, which as per the own submissions of the Noticee, is not meant for MEDIUM risk rating clients. It can also be seen from the payment receipts submitted by the client that payment has been made to the Noticee before the risk profiling of the client has been carried out.

22. The Noticee has entered into an agreement with one of its client, Mr. Bapu Vilas Jadhav, wherein it has mentioned in detail the Terms and Conditions of the service. The agreement is executed on November 20, 2018, but it is observed from the Fee Schedule attached with the agreement that the service period is from May 15, 2018 till February 04, 2019, and the amount mentioned is Rs. 13,88,669/-. Hence, *prima facie*, the payment of Rs. 13,88,669/- has already been made to the Noticee by the client. It appears that, *prima facie*, this is a post-facto agreement and the client was not made aware of the Terms and Conditions before the client was asked to make payment. Also, as part of the agreement, signature of the client has been taken on the “Risk Suitability Assessment” form, which has the following clauses mentioned:

- a. *“Despite your Age, Income and Occupation, you with your free consent have agreed to work in High Risk services”*
- b. *“It is clearly been communicated to you that High Risk profile services may be more risky/ risky but you still have opted that”*
- c. *“In case you disagree with the suitability assessment done, kindly revert us back with your dissent mail/notice else it will be assumed as accepted & suitable for you in case you fail to revert us back with your dissent within 24 hours”.*

From the above it is observed from that Risk Profiling and Suitability assessment has been done by the Noticee based on a mere declaration from the client. The client has been provided a window of 24 hours to agree/ disagree with the risk assessment; however, payments worth Rs. 13,88,669/- have already been taken from the client. As per the IA Regulations, the rendering of investment advice shall be done only after obtaining documents from the client for carrying out his risk profiling, identifying whether client is unwilling or unable to accept the loss of capital and then starting his services after taking his consent. In the instant case, the Noticee has, *prima facie*, collected payments from the client before carrying out any risk profiling and suitability assessment and as such the client would have had no option but to agree to the terms and conditions of the agreement or he would stand to lose the amount paid to the Noticee.

23. In case of complainant Mr. Vasant Kumar Rathod, the client has communicated his Risk Profile Score as 180 to the Noticee vide email dated February 21, 2018 at 19:41 hours. Subsequently, the Risk Profile Score was changed to 340 and shared by the Noticee with the client through a text message on February 23, 2018 at 18:21 hours. The said risk profiling was not accepted by the client and the complainant communicated the same on February 23, 2018 at 18:21 hours through WhatsApp to an employee of the Noticee named Ms. Vaishali Raghuvanshi stating “*What is this? Why should I trade...It was 170*”. As per the employee list submitted by the Noticee, Ms. Vaishali Raghuvanshi is its employee. Further, it is also observed that the client has been made to make payment to the Noticee in the name of his spouse, without carrying out any Risk Profiling and due diligence of the spouse. In the WhatsApp transcript dated 13.2.2018 at 19:49 hours, the employee of the Noticee, Ms. Vaishali, is telling the client “*But jab ap form filkrte hai too ap name mam kalikhe or mail id or no apna*”. On 13.2.2018 at 19:50 hours, the employee is telling the client “*Nhi sir form maikal jab payment krnge to name plus mail id plus no mam ka hi daliye ok*”. The payment receipt dated 14.2.2018 of PayU Money submitted by the client also corroborates the fact that the client has followed the instructions of the employee.
24. As per the IA Regulations, an investment adviser shall obtain supporting documents such as income proof, proof of investment experience, etc., to check the authenticity/ correctness of the response given by the client and to carry out its due diligence for properly assessing the risk that the client is able to bear. Further, the investment adviser is required to assess whether the client is unwilling or unable to accept the risk of loss of capital. The investment adviser also has to ensure that the investment advice provided is appropriate to the client’s risk profile. It is observed from the documents submitted in relation to the SCORES complaints that, *prima facie*, the Noticee is not collecting any supporting documents such as income proof, proof of investment experience, etc., to check the authenticity/ correctness of the response given by the client and to carry out its due diligence for properly assessing the risk which the client would be able to bear. It is also observed that, *prima facie*, the Noticee is also not taking consent of the clients on their risk profiles or the clients have no choice but to give their consent as the payment has already been made to the Noticee.

C. Using fake names in dealings with Clients:

25. The Noticee was advised to submit details of all employees who had been in service and are still in service from its payroll system. The names of certain employees which are appearing in the complaints received were checked against the records submitted by the Noticee. It is observed that certain names, such as, “Vaibhav Rathi” and “Ashutosh Rana” have been used in official communications with the clients and these names are not part of the payroll data submitted by the Noticee. From an examination of the complaints received against the Noticee, the following instances of employees using fake names in dealing with clients are observed:
- a. The complainant, Mr. Meena Padia, has submitted an email received from the Noticee wherein it has been stated that payment of Rs. 1 lakh has been paid for “HNI MCX” to the Noticee and Noticee has further stated *“Rs. 2.5 lakh in order to complete profile with 50%, so that the profile will be directly handled by Vaibhav Rathi.”*
 - b. Mr. Khoyendra Pande has received emails from the Noticee stating that as per his conversation with “Mr. Vaibhav”, he has paid Rs. 1,12,730/- and now has to pay Rs. 1,17,270/- and “Mr. Vaibhav Rathi” will support him. On a later date, he has received an email from the Noticee stating that he has to pay remaining amount for a service and “Mr. Ashutosh Rana” will support you.
 - c. Similarly, in respect of a client named Mr. Anil Dadhich, vide email dated June 19, 2018, the Noticee has introduced “Mr. Vaibhav Rathi” to the client stating that complete support from him regarding services along with SMS services will be provided.
 - d. Another client, Mr. Bapu Vilas Jadhav, has provided a document, on the letterhead of the Noticee, wherein the client is declaring that he is satisfied with the services received from the Noticee and that he is getting proper support by “Vishwas Kumar”. The name “Vishwas Kumar” does not figure in the list of employees submitted by the Noticee. This is another

example of the Noticee operating with employees using fake names in their dealings with clients.

- e. The complainant, Ms. Shashi Kala, has stated that an employee of the Noticee named Anurag sent her an SMS containing the text of a “satisfaction email” that she had to send through email. It is observed that the text mentioned that she is the client of “Vaibhav Rathi” and is satisfied with the services & support provided by the company. Ms. Shashi Kala has also provided details of her WhatsApp conversations with “Mr. Vaibhav” wherein the employee is promising her assured returns. The complainant has also provided WhatsApp chats with “Vaibhav” where her loss has been attributed to a certain person named “Supriya”.
26. Further, Mr. Gaurav Garg, Legal and Compliance Manager, and Ms. Abhilasha Mishra, Compliance Executive, of the Noticee, in their statement dated June 21, 2019, made to SEBI, have submitted that after going through the complaints received against the Noticee, there are certain instances of the employees of the Noticee using fake names when dealing with clients from the official email ID of the Noticee. It was submitted that their employee Mr. Anurag Rajawat has used the fake name of “Mr. Ashutosh Rana”, employee Mr. Anand Siddh has used the fake name of “Mr. Vaibhav Rathi”, employee Ms. Sonam Jariya has used the fake name of “Ms. Supriya” and employee Mr. Mangal Kumar Rathore has used the name of “Mr. Kumar Manglam”, when dealing with clients. It is seen from the employee details submitted by the Noticee that Mr. Anurag Rajawat, Mr. Anand Siddh, Ms. Sonam Jariya are no longer working with the Noticee, while employees Ms. Vaishali Raghuvanshi and Mr. Mangal Kumar Rathore are still with working with the Noticee.
27. It is observed that the employees of the Noticee remain in constant touch with the clients. During such engagements, the clients are informed that a team is attached to them for service and the names of the persons who are in the team are informed to the clients. It appears that, *prima facie*, the modus operandi of using fake names of employees is adopted by the Noticee so that when the clients ask for refund of their fees from the Noticee, they can be told that

there was no employee with the said name and that the client is lying. It is also observed from the complaints that one single client is handled by different set of executives every time he/she calls and the executives use fake names.

D. Investment Advice without consent of the client:

28. In the matter of the complainant Ms. Shashi Kala, it is observed that the Noticee, vide email dated January 5, 2017, at 2:36 PM welcomed the client for “HNI-MCX” services and communicated that *“As per the Risk Assessment or Risk Profile done by us, if your risk tolerance is HIGH according to your service, also the details of Risk Assessment are as attached, in case of any change in Risk Profiling, Please revert us within 2 days of the receipt of this email ...support@tradeindiaresaerch.com.”* It can be seen that the client will never be in position to provide his/ her acceptance/ rejection because the email address at which the client’s consent/ rejection is sought is support@tradeindiaresaerch.com and not support@tradeindiaresearch.com, which is the correct email ID.
29. In this case, the complainant, mailed back at the correct email ID i.e. support@tradeindiaresearch.com on January 7, 2017, at 2:01 PM i.e., within the stipulated timeline set by the Noticee and conveyed her disagreement to continue with the services and sought clarification for the entire payments and stated *“I need clarification on the entire payment that i have made thus far. I do not need 38 day service, I instead need what was promised. Plz revert asap.”* It is further observed that the Noticee did not pay any attention to the email of the complainant and vide email dated January 07, 2017, at 3:32 PM, continued to ask for more money.
30. Similar modus operandi is observed in the case of complainant Mr. Khoyendra Pande. In this case, it is observed that the Noticee, vide email dated September 16, 2017, at 12:49 PM, enclosed client’s Risk Profile for the “Stock Cash” services and communicated that *“In case you do not agree with the Risk Profiling, Please revert us within 2 days of the receipt of this email atsupport@tradeindiaresaerch.com”*. It may be noted here that the email address to which the Noticee has sent the email is ekoyendra.pande@gmail.com, which is not client’s

email ID. So the email would never have reached the client and he would not have been in a position to provide his acceptance/ rejection to the Noticee. Further, even in case the email reaches the client, then also the client would never be in a position to provide his acceptance/ rejection because the email address to which the client is supposed to forward his consent/ rejection is support@tradeindiares~~a~~erch.com and not support@tradeindiaresearch.com.

31. The email dated September 16, 2017, was again forwarded after two days to the client to his correct email ID i.e., khoyendra.pande@gmail.com on September 18, 2017 at 11: 23 AM. The email dated September 18, 2017, was not provided by the Noticee to SEBI and was provided to SEBI by the client. However, it is seen that there is a payment receipt, dated September 14, 2017, pertaining to the client; therefore, the services were started before the risk profiling of the client was done and without the client having given his consent to the risk profile.
32. It is also observed that vide email dated October 27, 2017, at 8:45 PM, the client informed the Noticee to update and resend their statement mentioning that the payments have been made only for Ashutosh Rana's call and that he does not want any kind of services from the Noticee without confirmation. On November 16, 2017, at 12:41 PM, the Noticee has sent a welcome mail to the client with respect to "Customized Combo Premium" service (21 days), stating "*In case you do not agree with the Risk Profiling, Please revert us within 2 days of the receipt of this email atsupport@tradeindiaresaerch.com*". The client vide email dated November 17, 2017, at 12:39 PM has reverted to the Noticee stating that he does not agree with the Risk Profiling and asked for refund of all amount. In response, vide email dated November 17, 2017, at 3:47 PM, the Noticee communicated to Mr. Pande "*This is request you to kindly check all invoices and also check your Risk Profile*".
33. It can be seen that the client, vide emails dated October 27 and November 17, 2017, had already communicated to the Noticee not to start services without his consent and also that he did not agree with the Risk Profiling and had sought refund of all money but still the Noticee has started the services. It can be seen from the invoices that the Noticee has taken payments to the tune of around Rs. 27 lakhs from the client.

34. It is noted that when examining the complaint of Mr. Pande, all the documents pertaining to the same were sought from the Noticee. The abovementioned emails dated September 18, 2017, October 27, 2017 and two emails dated November 17, 2017, were not provided to SEBI by the Noticee as it would unearth the modus operandi of the Noticee of luring clients, obtaining funds from the clients without doing risk profiling and without complying with the conditions of suitability as required in the IA Regulations.
35. The use of incorrect email IDs in two separate instances cannot be a coincidence and it appears that the use of incorrect email IDs is, *prima facie*, a deliberate ploy on the part of the Noticee so that any response from the client never reaches. The language used by the Noticee in the emails indicates that no reply from the client means that he/ she has accepted the risk profiling and the Noticee goes ahead with providing advisory services.

E. Assuring Returns to Clients:

36. **Complaint of Ms. Shashi Kala:** The complainant has alleged that the Noticee forced her to pay Rs. 16,23,879/-, through part payments, on various dates for providing investment advice in commodity market in return of assured profits. It is observed from one of the email dated January 5, 2017, forwarded by the Noticee to Ms. Shashi Kala that the Noticee has advertised the following “Here we fulfill your dreams to make money from stock market. We are registered with SEBI”. It appears that the above advertisement has been placed to garner trust by stating that it is a SEBI registered IA. The language used “*here we fulfill your dreams to make money from stock market*” is akin to committing to the client that he/ she can make positive returns from the stock markets. The complainant has submitted WhatsApp conversation chats which she had with an employee named Vaibhav of the Noticee. The WhatsApp conversations reflect that the client was assured Rs. 2 lakhs by March 20, 2017, and total of Rs. 70 lakhs for the entire service period. A few instances of these conversations are mentioned below:

- a. In the WhatsApp conversations dated March 7 & 9, 2017, with “Vaibhav”, the client is being offered commitment of profit:

March 07, 2017

“We have only 8 trading days” – At 23:17 hours Client is telling Vaibhav.

“Ho jayega” – At 23:27 hours Vaibhav telling the client.

“2 lac na” – At 23:28 hours Vaibhav telling the client.

March 09, 2017

“But I know you will support until I get 70 lakhs”- At 23:26 hours Client telling Vaibhav

“Me ne Bola” – At 23:27 hours Vaibhav telling the client.

“H” – At 23:27 hours Vaibhav telling the client.

“20 March” - At 23:27 hours Vaibhav telling the client.

“Mem maijaldi apna commitment pura kruga” – At 23:33 hours Vaibhav telling the client.

- b. In WhatsApp conversation dated January 24, 2017, the employee Vaibhav, is forcing the investor to pay Rs. 2000/- before 12:00 P.M. (January 24, 2017) in the night. The conversation happening at 23:27 hours on January 24, 2017. *“2000 rs pay karna hoga abhi before 12 p.m”*. Further, in the same WhatsApp conversation, Vaibhav is seen guiding the client to pay online at Trade India site.

37. **Complaint of Mr. Khoyendra Pande:** The complainant has alleged that his services were started without his consent and he has paid around Rs. 27 lakhs to the Noticee based on assured returns given by its employees, namely Mr. Vaibhav Rathi and Mr. Ashutosh Rana. Mr. Pande has also alleged that the Noticee has raised invoices in the name of Commodity Service whereas his broker does not deal in Commodity Services. From the documents submitted by the complainant and the documents received from the Noticee, it is observed that the Noticee is luring the client by providing assured returns over calls including handling of their trading

accounts. Mr. Pande has submitted transcripts of the audio call records to substantiate his allegations. A few examples of the conversations are given below:

a. **Call Date: 24.11.2017 Time: +919302869007**

Vaibhav: aapko kitna profit bataya tha ashutosh sir ne last time

Vaibhav: 80 lacs rupees profit bataya tha

Vaibhav: Pehle jo kam hoga wo 64 tak hoga phir 80 tak jayega

Vaibhav: Phir 92 lakh rupees tak jayenge

Vaibhav: 92 lacs ke baad 15% profit ashutosh Sir keliye rahega.

b. **Call Date: 24.10.2017 Call Time: 12:44: 24hrs +919302869007**

Vaibhav: De-mat account direct handle karega woh toh

Vaibhav : Ashutosh Sir

Vaibhav: jo call rahenge wo ashutosh sir ke department se rahenge

Vaibhav: Total profit mai daily batayakarunga aapko

Vaibhav: kaam wohi karenge, direct karenge....position bhi aapka wohi lagayenge.

c. **Call Date: 24.10.2017 Call Time: 12-20-17 +919302869007**

Vaibhav: Aapka profile show ho raha hai

Khoyendra: Aapke end pe pura profile show ho raha hai

Vaibhav: Ashutosh sir ke department se confirmation liya hai Wahan par show ho raha hai

Vaibhav: Sir ke calls ke profit ke commitment jo hote hai woh complete hote hai

38. **Complaint of Ms. Meena Hemant Padia:** The complainant has, *inter alia*, alleged that she was forced to make payments in the name of completing her profile and to start working with an employee of the Noticee named “Mr. Vaibhav Rathi”. The Noticee offered her a product

proposal in the name of “Budget Week Special Package” and the proposal mentions that “*As you know every year government of India announce Union Budget on 1st February, Same as Budget every year our company is giving opportunity to our all customers for getting extra-ordinary profit from market.*”

39. Though the aspect of assuring returns has been, *prima facie*, proved by the evidences earlier discussed, it would not be out of context to quote one instance of call recording between employee of the Noticee, Mr. Ravi Malhotra, and the client Mr. Pregmanshu Mistry on the aspect of assuring returns through telephone calls as an additional evidence. In the call recording, the employee is forcing the client to pay money so that his portfolio is complete and stating that “*Puri Portfolio complete hojayegi....audit hojayegi sebi....jo officers aana wale hai...uske baad pure free ho jayenge*” “*audit kardegi sebiseal laga degi*”. The employee is also assuring returns to the tune of minimum Rs. 20 lakhs in the said call. The client based on the understanding paid money to the Noticee. It is observed that the said client has also lodged a First Information Report against the Noticee and some of its employees.
40. From the complaints made against the Noticee, the WhatsApp and telephonic conversations between the complainants and the employees of the Noticee and misleading information provided in the advertisement/ proposal sent by the Noticee to the complainants, it, *prima facie*, appears that the Noticee was luring clients by assuring returns. The Noticee, being a SEBI registered intermediary, is very well aware that any investment by clients based on the advice given by it is subjected to market risk and by assuring any kind of return to the client from investment in the securities market, the Noticee has not acted in the best interest of the clients.

F. Selling products/ services which did not exist:

41. As per the PayU Money receipts dated December 23 & 26, 2016, submitted by complainant Ms. Shashi Kala, payment of Rs. 36,000/- and Rs. 57,000/- was made to the Noticee for a plan named “Financial Health Checkup Plan”. However, it is observed that such plan does not exist

under the product details on the website of the Noticee. Invoices were further raised by the Noticee in the name of “MCX Premium”, “HNI MCX”, “Customized MCX” and “Customized Commodity MCX”. As part of her grievance in SCORES, the complainant has sought information from the Noticee regarding the product “Financial Health Checkup Plan”; however, the Noticee has replied that it has not understood her query and no response was provided. From the above, it appears that, *prima facie*, payments were accepted by the Noticee in the name of products which did not even exist and post receipt of payment, invoices were generated in the name of products mentioned in the website.

42. The complainant, Mr. Khoyendra Pande, has submitted the receipts of payments made to the Noticee through PayU Money and it is observed that product information appearing in these receipts are “Ashutosh Rana Slots”, “Customize combo for Ashutosh Rana Call”, “Ashutosh Rana call”, “Customize combo premium”, “Customize Combo Plan Ashutosh Rana call” and “For Ashutosh Rana call”. However, it is observed that such plan does not exist under the product details on the website of the Noticee. The Noticee has sent emails to the client that payment is made for “Customized Combo Premium” service; however, the client has reverted that the amount has only been paid for “Ashutosh Rana’s Call” and not for any other product/service. From the above, it appears that, *prima facie*, payments were accepted by the Noticee in the name of products which did not even exist and post receipt of payment, invoices were generated in the name of products mentioned in the website.

G. Creation of fake portfolio of client:

43. The complainant, Mr. Vasant Kumar Rathod, has alleged in his complaint that the Noticee took money from him in the name of investment insurance, stock investment, intraday cash and investment and subsequently sent him invoices in the name of advisory service. As per the documents submitted by the complainant and his wife, they have, in total, paid Rs. 13 lakhs to the Noticee. The client has also submitted PayU Money payment receipts from which it is observed that the Noticee took money from the client for Investment, Investment

Insurance, GST, Swatch Bharat Cess, etc. However, subsequently the Noticee has raised invoices in the name of advisory services/ products.

44. It is also alleged by Mr. Rathod that the employees of the Noticee showed him a fake portfolio in Business Standard and falsely portrayed to him that as on July 10, 2018, his portfolio is worth around Rs.13,00,000/-. On examining documents submitted by the client, it is observed that, *prima facie*, a mock portfolio of the client has been created in Business Standard, which is nothing but an on-line tool meant for tracking the value of a portfolio without even actually having purchased or sold the shares comprising the portfolio. As per the holding statement of the client from his demat account, it is observed that the portfolio value of securities held by him as on July 10, 2018, was only Rs. 16,366.35/- while the online tool of mock portfolio showed a value of around Rs.13,00,000/-. The Noticee has created a mock portfolio of the client and showed him profit as if he has bought and sold on clients behalf the actual shares reflected in the “mock portfolio”, while the actual value the client holding was only Rs. 16,366.35/-.

Summary of Observations:

45. A summary of the, *prima facie*, observations made against the Noticee are as follows:
- a. The Noticee has been charging its clients fees which are unreasonable, arbitrary and not consistent with its pricing policy.
 - b. The Noticee has manipulated the risk profiles of clients in order to change risk rating and sell them high risk products and generate more fees.
 - c. The Noticee has carried out risk profiling and suitability assessment merely on basis of a declaration from clients.
 - d. The Noticee has taken payment from the client in the name of the spouse of the client without carrying out any risk profiling/ due diligence for the spouse.
 - e. The Noticee is not collecting any supporting documents such as income proof, proof of investment experience, etc., to check the authenticity/ correctness of the response given by

- the client and to carry out its due diligence for properly assessing the risk which the client would be able to bear.
- f. The Noticee is not taking consent of the clients on their risk profiles and is taking payment prior to carrying out risk assessment.
 - g. The employees of the Noticee have used fake names in dealing with clients.
 - h. The Noticee has lured investors by promising assured returns.
 - i. The Noticee has acted in a fraudulent manner with clients' viz., selling them non-existent products/ services, creating fake portfolio for clients and showing profit in such a portfolio.
46. It is noted that as per Regulation 2(m) of the IA Regulations "investment adviser" 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. The term "investment advice" has been defined under Regulation 2(l) 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. On a perusal of these definitions, it becomes clear that the role of an "investment adviser" envisaged under the Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from its clients, which is also stipulated under the Code of Conduct for investment advisers under the IA Regulations.
47. An investment adviser is required to comply with SEBI Act and other applicable Regulations. An IA cannot make a false statement without reasonable ground for believing it to be true as mandated in SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 (“PFUTP Regulations”). An investment adviser cannot sell products by assuring returns to investors as was being done by the Noticee in the present case. The Noticee was falsely assuring returns to investors knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk.

48. It is also noted from the payment receipts, email exchanges and other material discussed earlier that the advisory process being followed by the Noticee was akin to selling pre-fixed plans and extracting more and more money from the clients. The modus operandi adopted by the Noticee discussed hereinabove, *prima facie*, show that the Noticee was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/ her financial situation, risk appetite, financial goal, prior experience, etc. From the findings of the preliminary examination and the overall modus operandi discussed in this order, it, *prima facie*, appears that the Noticee was running a pre-meditated device, plan or scheme where under, employees/ representatives of the Noticee would lure innocent investors by assuring them returns and then more money would be extracted from them by subscribing them to additional packages without consent of the client, assurance of full service after additional money was paid, etc. The Noticee by assuring returns was inducing the investors to deal in securities and was thereafter also charging unreasonable and arbitrary fee from them, thereby increasing its income at the expense of the best interests of its clients.
49. The above discussed non-genuine and deceptive activities of the Noticee are, *prima facie*, fraudulent and are covered under the definition of 'fraud' under Regulation 2(1)(c) of the PFUTP Regulations, which provides 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 ... ”

50. I also take note of some of the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) and 4(1) and 4(2) (k) and (o) of the PFUTP Regulations, which are reproduced below:

SEBI Act, 1992

“12A. No person shall directly or indirectly— (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder; (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which

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

PFUTP REGULATIONS

“Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

.....

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

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

51. I note that, *prima facie*, the Noticee, through its fraudulent activities/ dealings, has contravened the above mentioned provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) and Regulations 4(1), 4(2) (k) and 4 (2) (o) of the PFUTP Regulations.

52. In addition to the above, the following is, *prima facie*, observed with respect to the Noticee:

- a. The Noticee has adopted dishonest business practices/ *modus operandi* (assuring returns, taking unreasonable and arbitrary fees from client, etc.) to lure the clients into buying/ subscribing multiple packages in order to maximize fee for its own benefit. The act of the Noticee is in complete disregard to the responsibility entrusted on him under the IA Regulations to act in fiduciary capacity and in the best interest of its clients and keeping his own interest ahead of his client's interest. In view of the above, it is noted that the Noticee has failed in its responsibility to act in fiduciary capacity towards its clients and has violated Regulation 15 (1) of the IA Regulations and has also failed to abide by Code of Conduct given under the IA Regulations.
- b. Regulation 16 of the IA Regulations, *inter alia*, requires that the investment adviser shall obtain from its clients information necessary for the purpose of giving investment advice, such as, their age, investment objective, income details, prior experience, existing investments, risk appetite, liabilities/ borrowings, etc. The objective behind this provision of the IA Regulations is that the clients get only the investment advice consistent with their risk appetite. If the IA Regulations are interpreted that that there is no requirement for verification of the information provided by the client, the entire objective behind the

provision would be defeated as in that case, the possible advice given by the Investment Adviser would become inconsistent with real risk appetite of the client which the verified information would show up. It is noted that even for KYC requirements, the information provided by the clients are required to be verified. The information for risk assessment stands at a higher pedestal when it comes to the investment adviser where not only the identity of the client is verified but also the information relating to his risk appetite needs to be verified under the Regulations. The said regulation also requires that the investment adviser after carrying out the risk assessment in the manner indicated therein, shall communicate the client's risk profile to him/her, and also that the information provided by the client and the risk assessment is updated periodically. In the present case, it is noticed that the Noticee did not carry out appropriate risk profiling of its clients which is, *prima facie*, evident from the fact that it sold pre-fixed plans assuring returns to the clients and also subscribed them to additional packages without their consent. Thus, the Noticee has, *prima facie*, violated Regulation 16 of the IA Regulations.

- c. Regulation 17 of the IA Regulations, *inter alia*, stipulates the investment adviser to ensure that the investment advice provided to the clients is appropriate to their risk profiles. The regulation further requires that the investment adviser should have a documented process for selecting investments based on clients' investment objectives, and the investment adviser shall also have a reasonable basis for believing that a recommendation provided meets the investment objectives. In the present case, it is noted that there does not appear to be any documented process for selecting investments based on client's investment objective and financial situation, rather majority of the clients have been sold pre-fixed plans promising unrealistic returns irrespective of their financial situation, investment objective, etc., with the sole purpose of extracting more and more service fee from the clients. I, therefore, find that the Noticee has, *prima facie*, violated Regulation 17 of the IA Regulations.

- 53. I note that 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-behooves 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. Under Regulation 15 (1) of the IA Regulations, an investment adviser shall act in a fiduciary capacity towards its clients. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct for an investment adviser prescribed under the IA Regulations, relevant provisions whereof are reproduced below:

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

.....

4. Information about clients

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

5. Information to its clients

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

6. Fair and reasonable charges

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

...

8. Compliance

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

54. Looking at the activities and manner of operation of the Noticee in the present case, which have been discussed in detail in the preceding paragraphs, I am of the, *prima facie*, view that the Noticee has failed to abide by the Code of Conduct on all counts mentioned above. I, therefore, find that the Noticee, while carrying out his activities as an investment adviser has, *prima facie*, contravened the provisions of Clauses 1, 2, 4, 5, 6 and 8 of the Code of Conduct for investment advisers read with Regulations 15(1) and 15(9) of the IA Regulations.
55. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of the Noticee and the proprietor, Ms. Neha Gupta, mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and such a fraudulent scheme, plan, device and artifice as, *prima facie*, found in this case, I am convinced that this is a fit case where, pending detailed examination, effective and expeditious preventive and remedial action is required to be taken by way of *ad interim ex parte* order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken to prevent any further harm to investors.
56. As noted earlier, in the present case, *prima facie*, violations of securities laws have been noticed on the basis of the examination carried out by SEBI. It is pertinent to mention that a

number of complaints have been filed against the Noticee alleging perpetration of fraud on the clients and in almost all the complaints, the complainants have claimed refund of the money given by them to the Noticee. In the event, upon detailed examination of the matter, it is found that the money was taken by the Noticee from the clients in violation of the applicable law, and the claims of the clients are found to be genuine, the Noticee would be liable to refund the money collected by it from the clients subject to the adjudication of the allegations on merits. While the detailed examination in the matter is pending there is a possibility that the Noticee may divert the money collected from the clients. I, therefore, find that pending detailed examination, in view of the alleged liabilities and the, *prima facie*, evidence against the Noticee, it is also essential to take urgent steps to prevent the Noticee from alienating 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.

57. As noted in the earlier paragraphs, there are instances where the Noticee has manipulated the risk profile of clients in order to sell them higher risk products. The modus operandi of the Noticee is also to extract more and more service fee from clients without having any regard to their best interests. Exposing the existing clients to investment advice, which has no co-relation to their real risk profile, is against the interest of those investors. Thus, in order to prevent the existing as well as the prospective clients from getting such advice which has no co-relation to their real risk profile, urgent steps need to be taken against the Noticee. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by the Noticee has been found to be, *prima facie*, fraudulent and in violation of the provisions of the SEBI Act, PFUTP Regulations and IA Regulations. In view thereof, allowing the Noticee to continue its services to its clients, regardless of whether they have complained against the Noticee or not, would tantamount to allowing the, *prima facie*, fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations. Considering the above, in my view, the balance of convenience lies against the Noticee and immediate steps needs to be taken against the Noticee to protect the investors/ clients from

freshly subscribing to or continuing to get such, *prima facie*, fraudulent investment advisory service by the Noticee.

58. As regards the employees of the Noticee, the findings recorded show that the employees of the Noticee are also complicit in the, *prima facie*, fraudulent activities of the Noticee. The operations of the Noticee are mainly carried out by its employees who, *inter alia*, contact the investors, lure investors into subscribing for services of the Noticee, make false assurances, sell additional packages to clients and extract more and more money from the clients. It has also been, *prima facie*, established that a few past and present employees of the Noticee, namely, Mr. Anand Siddh, Mr. Anurag Rajawat, Ms. Sonam Jariya and Mr. Mangal Kumar Rathore, have used fake names when dealing with the clients. Instances of these employees giving fake names when dealing with clients have been noted earlier in this order. Further, it is observed that employee Ms. Vaishali Raghuvanshi has facilitated the client to make payments in the name of his spouse without having carried out any risk profiling/ suitability assessment for the spouse. The act of these employees show that they are part of the larger scheme of fraud, *prima facie*, found to have been perpetrated by the Noticee. Even otherwise, the fraudulent inducement of any person by a market participant, which includes the employees of the market participant, to deal in securities with the objective of enhancing income is fraudulent trade practice prohibited by Regulation 4(2) (o) of the PFUTP Regulations. It goes without saying that the fraud, *prima facie*, found in this case, is only to increase the income of the Noticee. Therefore, these employees are, *prima facie*, in violation of Section 12A(a), (b) and (c) of the SEBI Act, 1992 and Regulations 3 (a), (b), (c) and (d) and Regulations 4(1), 4(2) (k) and 4 (2) (o) of the PFUTP Regulations
59. In my view, the modus operandi of the Noticee cannot be executed without the active complicity of its employees, especially those who have dealt with the clients using fake names. It would not be in the interest of the investors and the securities market to allow such persons to carry out or continue to carry out these fraudulent practices and therefore there is a need for appropriate directions in this regard.

60. In view of the foregoing, pending detailed investigation, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11B and 11D of the SEBI Act, 1992, and Regulation 35 of Chapter VI of the SEBI (Intermediaries) Regulations, 2008, direct as under:
- a. The Noticee/ its proprietor Ms. Neha Gupta is restrained from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any manner whatsoever, till further directions. If the Noticee/ its proprietor Ms. Neha Gupta have any open position in any exchange traded derivative contracts, they are permitted to close out/ square off such open positions immediately.
 - b. Further, the Noticee and any person while working under it/ them or under its/ their instructions as employee or otherwise, shall cease and desist from undertaking the activity of investment advisory services, including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, till further orders.
 - c. Mr. Anurag Rajawat, Mr. Anand Siddh, Ms. Sonam Jariya, Ms. Vaishali Raghuwanshi and Mr. Mangal Kumar Rathore, and any other persons who are or have been employees of the Noticee are directed to cease and desist from undertaking such fraudulent activities, as detailed in this Order, directly or indirectly, and to conduct themselves in strict compliance with the norms under the IA Regulations.
 - d. The Noticee/ its proprietor Ms. Neha Gupta is directed to provide a full inventory of all assets held in their name, 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.
 - e. The Noticee/ its proprietor Ms. Neha Gupta, 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 their name, including money lying in bank accounts except with the prior permission of SEBI.

- f. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of the Noticee/ its proprietor Ms. Neha Gupta, held jointly or severally.
 - g. The banks are directed to ensure that till further directions no debits/ withdrawals are made from and credits are made to the bank accounts held by the Noticee/ its proprietor Ms. Neha Gupta, jointly or severally.
 - h. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of the Noticee/ its proprietor Ms. Neha Gupta, jointly or severally, are not transferred.
61. The order shall come into force with immediate effect. A copy of the order shall be sent to the Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure that all the above directions are strictly enforced.
62. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entities in accordance with law. The entities against whom this order has been passed may file their objections, if any, within twenty one days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request, received from the said persons.

Date: December 13, 2019

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA