

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 Securities and Exchange Board of India
(Intermediaries) Regulations, 2008

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

In respect of:

Sr. No.	Name of the Entities	Registration Number/DIN	PAN
1	The Equicom Financial Research Private Limited	INA000001639	AAECT4400E
2	Mr. Amit Kukda	05340621	BOHPK6437B
3	Mr. Akhilesh Raghuvanshi	05340629	ALDPR2234H

1. The Equicom Financial Research Private Limited (hereinafter interchangeably referred to as “**Equicom/ IA**”) 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 April 25, 2014. Its registered office is at “311, Apollo trade centre, Geeta Bhawan Square, Indore, Madhya Pradesh, 452001”. Its website address is www.theequicom.com.



2. The details of Directors of Equicom are as follows:-

Sr. No.	Name of Directors	DIN
1	Amit Kukda	05340621
2	Akhilesh Raghuvanshi	05340629

3. The shareholding pattern of Equicom is as follows:

Sr. No.	Shareholders' Name	% of Share holding	No. of Share
1	Amit Kukda	58%	1,45,100
2	Akhilesh Raghuvanshi	42%	1,04,900
TOTAL		100	2,50,000

4. Securities and Exchange Board of India (“SEBI”) conducted an inspection of Equicom for the period from April 1, 2015 to March 20, 2017.
5. SEBI has been receiving complaints against Equicom. The details of the same are as under:

Period	Total complaints	Complaints from unique investors
2016-17	20	17
2017-18	14	14
2018-19 (April-December)	124	91
TOTAL	158	122

6. It was observed that there were 91 unique complaints against IA from April 2018 to December 2019 i.e. within the period of nine-months.
7. SEBI conducted an examination in relation to the affairs of Equicom. The examination entailed, *inter alia*, an analysis of the details available on the website of Equicom, complaints filed by the complainants against Equicom and documents attached with complaints, Risk



Profiling Form, invoices, emails, audio call recordings, etc. The facts and circumstances of the case and a preliminary examination of the material available in the matter raises the following issues in the instant matter to be determined on a *prima facie* basis:

- 1) *Whether Equicom has prima facie violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “PFUTP Regulations”) and IA Regulations?*
- 2) *If answer to issue no. 1 is in affirmative, whether directors of Equicom are responsible for the violations committed by Equicom?*
- 3) *If answer to issue no. 1 and 2 is in affirmative,, whether urgent directions, if any should be issued against the Equicom and its directors?*

ISSUE NO. 1: Whether Equicom has prima facie violated the provisions of PFUTP Regulations and IA Regulations?

8. Upon examination of the material available on record, the following *prima facie* findings are observed:

Examination of the details available on website of Equicom:

9. From the details available on the website of the Equicom, it is observed that -
- i. The advisory business of Equicom is based on ‘subscription model’;
 - ii. The advisory fee was charged from clients based on the product subscribed and the subscription period.
 - iii. Advice given by the IA is through SMS and/or telephone support.
 - iv. Equicom offers packages viz., Stock Tips, Stock Future Tips, Nifty Future Tips, Option Tips, Commodity Tips, Agri Tips, MCX Tips, NCDEX Tips, Premium Pack and Super premium Pack, etc. to its clients as part of its advisory activity.
 - v. The charges for the aforesaid packages depends upon the period of subscription. For instance, the advisory fee for providing stock tips for a month is shown as Rs. 8,000/-; Similarly, fee for three months service is shown as Rs.20, 000/-; Fee for



six months' service is shown as Rs.38,000/- and fee for one year subscription is shown as Rs.70,000/-.

- vi. The payment to subscribe to the services could be made directly to the ICICI Bank account number 094605500165 opened in the name of The Equicom Financial Research Pvt. Ltd., the details of the same are mentioned on their website, and alternatively through the Paytm number 9993156514.
- vii. Additionally, it is noted from the records that Equicom has accounts with the Banks viz., HDFC bank (A/c number: 50200028212620), Axis Bank (A/c No. 913020007219039) and SBI Bank (A/c No. 32850076393).

10. **Examination of Complaints received against Equicom:** SEBI received large number of investor complaints (approximately 122 complaints as on December, 2019) against Equicom wherein it was alleged that the IA was extorting money from clients under different pretexts, IA had given profit commitments to its clients, IA was giving fraudulent and poor services, IA had given wrong trading calls which were not as per the services taken by the clients, etc. In view of this, SEBI carried out an examination/analysis of the complaints filed by the complainants against Equicom. The following *prima facie* findings are noted from the examination of SEBI.

A. Irregularities in Risk Profiling and Suitability Assessment of products/services:

11. It is noted from the Risk Profiling forms shared by Equicom with its clients that the following procedure for suitability assessment, and category of the products/services are offered to various risk categories:

Very aggressive investor	Aggressive Investor	High growth Investor	Moderate Investor
Cash Super Premium, Future Super Premium, Option Super Premium, Nifty Super Premium, MCX Super Premium, Agri Super Premium	Cash Super Premium, Future Super Premium, Option Super Premium, Nifty Super Premium, MCX Super Premium, Agri Super Premium	Cash Premium, Future Premium, Option Premium, MCX Premium, Agri Basic	Cash Basic, Future Basic, Option Basic, MCX Basic



- 11.1 It is however, noted from the analysis of products/services offered to various categories of clients vis-à-vis their risk profile that Equicom has sold its products/services meant for Very Aggressive Investor to a High Growth Investor.
- 11.2 For instance, from the complaint of Shri Mukesh H Agrawal received on SCORES on November 22, 2018, it is noted that the complainant stated that “*I have paid total Rs.5,93,000/- to Equicom for premium service of Stocks, F&O based on their commitment of giving guaranteed 25 lakhs return in 6 months*”. In this regard, Risk Profiling documents of Shri Mukesh were sought from him. From the risk profiling form, it is noted that the score of Shri Mukesh in the Risk Profiling done by Equicom is 43 which makes him fall under ‘*High Growth*’ category as per the parameters used by Equicom. However, it is evident from the Invoices of products issued by Equicom to Shri Mukesh that they had sold several products listed under ‘*Very Aggressive Investor*’ to a “*High Growth Category*” investor/client.
12. Equicom has sold products/services falling under its ‘*Aggressive Investor*’ category to the clients falling under ‘*High Growth Investor*’ category and as such, investment advices provided are not appropriate to the risk profile of the client. I note that Regulation 16 of the IA Regulations, *inter alia*, requires that an 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 Regulations is that the clients get only the investment advice consistent with their risk appetite. I note that the purpose for which it has been mandated by the IA Regulations that the IA must necessarily carry out risk profiling before selling its services is to give an informed investment advice to the client which is consistent with the real risk appetite of the client. Further, I note that Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client’s investment objectives and his financial situation. The investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice given to the client. However,



from the above instance, I note that the IA failed to provide Investment advice as per the risk profile and suitability assessment of the client and accordingly failed to comply with Regulations 16 and 17 (a) and (b) of the IA Regulations. I also note that Equicom has kept its own interest at a higher level compared to the interest of his clients. It has been guided with the objective of maximizing the revenue instead of providing best services to the clients and has therefore failed to act in a fiduciary capacity. In view of the above, it is apparent that Equicom has failed to comply with Regulation 15(1) and clauses 1, 2 and 8 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

B. Extorting multiple payments from clients

13. From the analysis of the call recordings, it is observed that Equicom is running IA operations like a call-centre by employing hundreds of sales representatives.

13.1 I note from the various call recordings between the representatives who interact with clients located across India that they try to extract payments from the clients under different pretexts. Following was observed in this regard:-

i. In a call recording dated October 29, 2018 at 10:38 am, Mr. Aditya, representative of Equicom is convincing Shri. Mukesh (client) to pay a sum of Rs. 25,000/- to start his work and make profits. This is despite the fact that client has already paid lakhs of rupees towards the IA services. The excerpts are reproduced hereunder:

>>At 00:05 into the call, Aditya is heard saying that, “Bharosa rakho, ye last 25,000 kar do. Iske baad jab main aapko kama ke dun, tabhi aur dena”. <<

ii. In a call recording of Equicom with Shri Umar Gollandaj (client) dated September 05, 2018 at 05:39pm, Mr. Rahul, representative of Equicom is insisting the client to take money on loan and pay to Equicom. The excerpts are reproduced hereunder:

>>The representative is heard telling client at 00:37 into the call that, “kisi se interest pe lelo, 9000 ka 10,000 de dena”. Client is repeatedly begging that he cannot do it, “Biwi ka mangalsutra tak girvi hai, ab aur nahi laa sakta”. Rahul is again telling that, “Aapke paas aaj raat tak ka time hai, kal 12 baje tak dedo, warna next level nahi dunga”. <<

13.2 Further, it is noted from the invoices issued by the IA to its clients that Equicom is taking payments for future services. In this regard, the following instances are noteworthy.



- i. One invoice issued by Equicom to its client Shri Sunil Patil clearly shows that invoice is issued in October 2017 while services mentioned on the invoices are scheduled to start in June 2018.
- ii. In an invoice issued to Shri Umesh Kurundkar by Equicom, date of payment is mentioned as April 16, 2016 while service start date is shown as November 30, 2017, which is more than 19 months.
- iii. Another invoice issued to Mr. Uttam Kanse shows payment date as April 27, 2018 and date of service to start from November 26, 2018 onwards.

13.3 After taking the payment as disclosed on the website, Equicom asks for share of profits from the client in the name of advisory fees and threatens stopping the services if payment is not made. The same is evident from the following extracts of call recording between the representatives of Equicom and its clients:

- i. In the recording dated April 24, 2018 at 10:19am with Shri Nanji (client), Mr. Prabhakar, representative of Equicom, is forcing the client to make another payment as the earlier calls given by Equicom has already resulted in a profit of Rs. 2.6 lakh for the client.

“Prabhakar at 00:58 into the call stated that, “Operator manne ko taiyaar nahi hai, aapko 2.6 lakh ka kaam karwa dia hai HINDALCO me. Aap aur jama karwa do, tabhi aage kaam ho paaega.”

It is important to note that the client had already paid Rs. 3 lakh to Equicom for various services but the company is asking for profit sharing from client.

- ii. In the recording dated September 04, 2018 at 02:23pm, Mr. Deepak, representative of Equicom is forcing Shri Ashwani (client) to make another payment of Rs. 50,000/- by 6:31pm as the client has already earned profit of Rs. 38,000/-.

“Deepak is heard telling client at 00:27 in the call that, “Deepak naam hai mera, commitment ke saath kaam hota hai saara.” Client is heard saying that, “Main aur 50,000 kar dunga aapke commitment par”. Deepak is again telling that, “Aaj aapko ye payment 6:30 se pehle karna hai”.

- iii. In the call recording above, Mr. Deepak also is making profit commitment to client.



>>Deepak is heard telling client at 00:11 into the call that, “*Mahine bhar tak aap badhiya kaam karo, main aapse kuch paisa nahi maangunga, jo bhi aapne service ka dia hai, wo main sara nikalwa ke dunga mahine bhar me. Meri koshih yahi rahegi ki 15 din me hi nikaal dun*”.<<

14. An Investment Advisor is expected to ensure that in the conduct of its business, it observes high standards of integrity, fairness, ethics and professionalism. However, in this case, it is noted from the call recordings detailed above that Equicom has not been fair in its dealing with clients by not starting its services or stopping services if additional money as demanded is not paid by the client. It is also noted from the invoices that IA is charging fees for future services even upto 19 months which shows that it is only interested in maximising its service fee rather than rendering best possible advice to its clients. It is also noted from the call recordings that the IA is making false commitment of profits or ask the clients to share the profits in the name of advisory fees. The above conduct is also an act of being dishonest on the part of Equicom and also not acting in the best interest of the clients. In view of the above, Equicom has *prima facie* failed in its responsibility to act in fiduciary capacity to its clients which is entrusted upon him under Regulation 15 (1) of IA Regulations. Further, Equicom has *prima facie* failed to abide by clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with Regulation 15 (9) of IA Regulations. Thus, Equicom has *prima facie* violated the provision of Regulation 15(1) and clauses 1 and 2 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

C. Misrepresentation and unfair dealing with clients:

15. It is noted from the excerpts of the call recordings between the representatives of Equicom and its clients that Equicom is presenting false facts about their services and its representatives and also forcing/coercing the clients to pay more money to continue the services or for completion of registration slots. Further, it is also noted that multiple representatives were dealing with one client and persuading the client to extract more money from the client. The instances of the same are reproduced hereunder: -



15.1 From the call recording of the client of Equicom viz., Shri Mukesh Agrawal on July 24, 2018 at 03:12 pm, it is noted that one of the representative of Equicom Shri Amit was stating that, *"Mere sir ne aapke naam se Rs. 1 lakh ka amount extra dalwaya hai, unke apne relation waale client se lekar. Jab aapka profit nikal jaega, aap remaining 1 lakh de dena"*. When Shri Mukesh was not convinced, Amit was further heard saying that, *"Aap Deepak Goel se baat kar lena, jo meri company ke head hain"*.

This appears to be clearly a misrepresentation as Equicom has no director or shareholder with the name of Deepak Goel. Further, without any consent from the client, Equicom is claiming to have given credit to the client.

15.2 Further from the call recording dated August 14, 2018, it is noted that one Mr. Aditya, representative of Equicom was trying to convince the client Shri Mukesh Agrawal to pay a sum of Rs. 25,000/- for earning Rs. 3 lakhs from the market. The representative has agreed in the call recording that Shri Mukesh has already paid Rs. 4,93,000/- to Equicom out of which Rs. 1,50,000/- he paid to Mr. Aditya.

15.3 From the call recording dated October 29, 2018 Mr. Narayan, representative of Equicom was persuading client Shri Mukesh Agrawal to trust him and make fresh payment for getting calls. The excerpts are as under:

>> At 02:18 into the call, representative is heard saying that, *"Don't worry, tension mat lo. Narayan ki zubaan hai. Pehle jin logon ke saath kaam kia, un logon jaise mat samjho. Mera department alag hai, unka alag"*<<.

It is observed from various call recordings mentioned above that Mr. Mukesh Agrawal was persuaded to pay more money by various representatives of Equicom viz., Amit, Aditya, Deepak, Prabhakar and Narayan and an amount of Rs. 4,93,000/- was extracted from him.

15.4 From the call recording dated April 23, 2018 at 5:22pm Mr. Vikram Pandey, a representative of Equicom is heard coercing a client viz., Shri Nanji Chaudhary, to pay Rs. 50,000/- additionally for continuation of the services as the previous payment of Rs.



50,000/- had lapsed on 19th April as the registration slot for the package was full. Mr. Nanji is pleading to start the service. The excerpts are as under:

>>Vikram is heard telling client at 1:57 minutes into the conversation that, *"Ye jo 50,000 dia hai aapne, wo to full Rs. 1 lakh dena tha 19 taarekh ko. Ab to registration full ho chukka hai. Ye amount 19th ko hi aana tha, tabhi apna kaam ho paata"*. Shri Nanji at 2:50 minutes is telling that, *"Apna 1 lakh to jama hai aapke paas, 1 call to dedo"*. <<

An IA is required to act honestly, fairly, carefully and diligently for the best interest of its clients and act in a fiduciary capacity. However, from the above, it can be seen that Equicom is providing unsolicited credits to clients and forcing/coercing the clients to pay more and more money for more and more services and extracting more and more money from the clients. The said business practices adopted by Equicom *prima facie* appear to be dishonest and unfair therefore, I am of the view that Equicom has violated regulations 15(1), 15(9) read with clauses 1,2 and 6 of code of conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

D. Promised Assured Returns to its clients:

16. Upon analysis of the call recordings between the representative of Equicom and its clients, it is noted that Equicom offered assured returns in case if they subscribe to their advisory services. Extracts of the relevant portion of the call recording available on CD is reproduced hereunder:

In a recording with Shri Mukesh Agrawal on October 29, 2018 at 10:19 am Mr. Narayan, representative of Equicom is heard telling client that, *"Jo market me data update hota hai, jise company purchase karti hai 'Equity Super Premium' service me, wo kaam main aapko karwaunga, jisme 8.5 lakh ka profit hoga"*. This also appears to be an advice given to the client without any rationale or research.

From the above call recording, it is evident that the representative of IA has promised assured returns to his client and such claims of assured profits are enticing and has the potential to make clients believe such claims. I note that the advice of Equicom is on stock tips, derivatives, commodity derivatives, etc., which are listed on the exchanges and therefore returns on investment in these products are subject to market risk. Knowing this very well,



and then promising assured profit to the client appears to be an act of being dishonest on the part of the IA and also not acting in the best interest of the clients. It is, therefore, *prima facie* observed that Equicom has (a) failed in its responsibility to act in fiduciary capacity to its client which is in violation of provisions of Regulation 15 (1), 15(9) read with clause 1 of the code of conduct as mentioned in Schedule III of IA Regulations.

E. Failure to Maintain Records:

17. It is noted from the call recordings available on CD as provided by the Complainants that Equicom has employed a team of representatives who provide tips to clients over telephone. However, it is noted from the information provided by Equicom that they were providing oral advice to clients without keeping any record and rationale for such advice. The same is evident from the following instances:

- In a recording dated November 06, 2018 at 10:19am, one representative is heard giving vague price target to Shri. Mukesh (client) in the scrip of Jet Airways.
>> At 00:36 into the call, representative is heard saying that, “Buy Jet Airways at market rate, aapse jitna ho utna kar lo”. After a thought, the representative tells client to put a stop loss of Rs. 250.
- From the call recording between Mr. Narayan, a representative of Equicom and Shri Mukesh Agrawal on October 29, 2018 at 1:19 pm, it is noted that the representative Mr. Narayan is presenting facts about the share price of Muthoot Finance as under: “Muthoot Finance 600Rs. ke upar aa gaya hai”. When the client confronts the representative with the actual price of the share of Muthoot Finance, the representative offers some vague explanation about its current level. It is therefore inferred that clients are given call over telephone by representatives without any research.
- In another recording dated September 18, 2018 at 11:23am, one representatives is heard giving price target to Shri. Ashwani Kumar in the scrip of Avanti Feeds Limited at a level of Rs. 487/-. This advice is not covered in any of the track-sheet of the company which has been uploaded on its website. It is therefore inferred that clients are given call over telephone by representatives without any rationale or research.



18. Further, Equicom was advised vide email dated March 18, 2019 to provide the track-sheet of all the calls/tips of the company for the period November 01, 2018 to November 15, 2018. Equicom vide email dated March 22, 2019 provided the track-sheet which was also verified from the sheet uploaded on its website. It was noticed that the aforementioned tip of Jet Airways was not covered in any of the track-sheet. It is therefore inferred that clients are given call over telephone by representatives without any research or rationale for such advices. It is noted that Regulation 19 of the IA Regulations mandates an Investment Advisor to maintain the records of Investment advice whether written or oral for a period of minimum five years to ensure that that the Investment adviser do not go back on their word/advice provided and the rationale for such advice. From the instances mentioned above such as Jet airways case and the correspondence with Equicom etc., I note that Equicom has failed to maintain full records as to the investment advice given through telephone or keep the record of rationale for giving such advice. It is therefore *prima facie*, observed that the IA has violated Regulation 19 (e) and (f) of the IA regulations.

F. Giving unauthorized tips/Advice:

19. During the inspection of Equicom conducted during March, 2017, the details of compliance with the certification requirement by the representatives of Equicom were noted as under:

S. No.	Name of the Representatives
1.	Mr. Amit Kukda
2.	Mr. Rahul Gehlot
3.	Mr. Anshuk Solanki
4.	Mr. Ritesh Chouksey

20. Equicom has not submitted any changes to SEBI in its authorized representatives since the aforesaid inspection. It is however revealed from the call records that the clients have been given tips by many other representatives viz., Mr. Amit, Mr. Aditya, Mr. Deepak, Mr. Prabhakar and Mr. Narayan, etc., whose names do not appear in the above mentioned list. In view of this it is inferred that there are several representatives at Equicom who are not holding the requisite qualifications/certifications as per regulation 7 of IA regulations.



21. Regulation 7 of the IA Regulations mandates that an individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice should have prescribed qualifications and obtained required certifications. However, the call recordings detailed above in the above paragraphs revealed that apart from the authorized representatives tabulated above, Equicom has several unauthorized representatives who were providing advice/tips to its clients. In the absence of any record of necessary certification (as they do not appear in the list of authorized representatives), the said employees of IA are, in my opinion, not qualified and competent to assess the information provided by the clients about their financial situation, investment experience, risk appetite and investment objectives. Consequently, the client would be saddled with a service / product which is not in his best interest. It can further *prima facie* be said that the IA has not employed effective and appropriate resources which are needed for the efficient performance of its business activities as the appropriate resource of qualified persons were not staffed at the stage where the product selection is carried out. The same is found to be *prima facie* in violation of Regulations 7 (1) and (2) of the IA Regulations.

22. In summary, the alleged violations are as under:

- Equicom did risk profiling & suitability assessment of its clients but sold inappropriate products;
- Extorted multiple payments from the clients for more and more services and also presenting false facts about their services;
- Equicom is offering assured returns to its clients;
- Equicom has not maintained records of Investment advice provided orally to clients, nor rationale for such advices rendered;
- Equicom has not dealt with its clients with diligence, skill, care and did not ensure to offer advice after proper research;
- Equicom has not dealt with its clients honestly, fairly and in their best interest thereby defeating the basis of fiduciary relationship.



- Several representatives of Equicom offering advice over phone are not qualified and are not holding the requisite NISM certifications.

23. It is noted that as per regulation 2(m) of the Investment Adviser 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 IA 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.
24. 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 PFUTP Regulations, 2003. An investment adviser cannot sell products promising assured profits to investors as was being done by the Equicom in the present case. 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, Equicom was falsely promising profits.



25. I note that the acts of the IA or the employees/representatives of IA viz., luring the innocent investors by making assured profit commitment, extracting more and more money from the clients by offering more and more services, presenting misleading information to clients to influence their decision to invest, taking advance payments for services and making false commitment of profits to their client for extracting more payments from the clients, etc., are *prima facie* fraudulent and is covered within the definition of 'fraud' under regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations"). The adoption of such practices are nothing but contrivance/device/deceit for manipulatively forcing the clients to deal with the IA. Thus, Equicom has *prima facie* violated Regulations 3 (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations. The relevant provisions are reproduced hereunder for reference:

PFUTP REGULATIONS, 2003

"(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
...



mpb.

“Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

...

(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”

26. Additionally, SEBI has also taken note of the complaints made against Equicom in the SCORES Portal. The said complaints have not been relied upon to arrive at the aforesaid *prima facie* findings against Equicom, nevertheless have been reproduced below to represent the allegations against Equicom:

a) As regards, irregularities in Risk Profiling and Suitability Assessment of products/services the following are alleged by the Complainants:

i. In the complaint of Shri Uttam Kanse received on SCORES on December 20, 2018, complainant stated that, *“Representatives of The Equicom Financial Research Pvt Ltd Mr. Yash called me and gave false information about company investment plan, he gave the plan 2.10 against which he promised profit of 30k-35k for that I have paid money on 25-04-2018, 26-04-2018 and 07-05-2018 there after he convinced me for higher plan of 3.1 for that I have paid money again on 16-05-2018, 17-05-2018 and 24-05-2018 for that he offered me returns of Rs. 13lac to Rs. 15lac”.*



Risk Profiling documents of Shri Uttam were sought from him. However, vide email dated March 20, 2019, he informed that, “*Risk profiling form was not shared by Equicom*’.

- ii. In the complaint of Shri Sunil Patil received on SCORES on March 16, 2018, complainant stated that, “*I had taken Option Tip Service for 3 months in the beginning of Oct 2017, with a Price of Rs. 435000 as per the discussion done with Mr Manish Sharma of Equicom. The profit which was assured was of approx 3 to 4 lacs per month on a capital investment of Rs. 50000. So I started trading on their tips but made loss of around Rs. 1 lac in a period of less than a month. No capital was left and I only made loss, so requested them to stop my service on 1st of Nov 2017 and asked them to refund my balance money for which no service was used. Interestingly, at the same point of time I came to know that they have activated my service for 9 months with the name of Super Premium Pack*”.

Risk Profiling documents of Shri Sunil were sought from him. The client had shared all the documents received from Equicom namely terms and conditions, disclaimers, refund policy, etc, however it is noticed that, neither risk profiling was done nor it was shared with the client. Instead Stock Option Super Premium service (*service falling under Aggressive Investor*’ category) was directly offered to client for 3 months. The Complainant has submitted supporting invoices dated October 02, 2017, October 03, 2017, October 04, 2017.

- iii. For many clients, Equicom has not, allegedly, done their Risk profiling or has not communicated the score and instead directly offered various plans to them without knowing the suitability of such products.

27. Although the aforesaid complaints have not been relied upon to arrive at the *prima facie* findings against the IA, reference of the complainants made in order to record the allegations made by the complainants that the Equicom is indulged in unfair and dishonest activities by not conducting risk profiling and suitability assessment of the clients.



28. 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/her 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 IA Regulations, *inter alia*, provide the framework for regulating the activity of entities who are in the business of providing investment advice in respect of securities and investment products. These Regulations seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring them to comply with the criteria set out in the relevant provisions. The relevant provisions of IA Regulations which are applicable to the present case are reproduced below for reference:

IA Regulations:

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

(a) A professional qualification or post-graduate degree or post graduate diploma in

finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognized foreign university or institution or association; or

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

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

(a) from NISM; or

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



Regulation 15(1): *An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*

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

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...

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.

... ”

Regulation 16. *Investment adviser shall ensure that,-*

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

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

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

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

Regulation 17: *Investment adviser shall ensure that:-*



a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

...

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

...

(e) Investment advice *provided*, whether written or oral;

(f) Rationale for arriving at *investment* advice, duly signed and dated;

..."

29. Looking at the activities and manner of operation of the Equicom in the present case, which have been discussed in detail in the preceding paragraphs, I am of the *prima facie* view that the Equicom has failed to abide by the code of conduct on all counts as detailed above. I, therefore, find that the Equicom, while carrying out its activities as an Investment Adviser has *prima facie* contravened the provisions of Regulations 7 (1) and (2), 15 (1) and (9) read with Clause 1, 2, 5 and 6 of the Code of Conduct mentioned in Schedule III, 17 (a) and (b) and 19 (e) and (f) of Investment Advisers Regulations, 2013.

ISSUE NO. : 2) *If answer to issue no. 1 is in affirmative, whether directors of Equicom are responsible for the violations committed by Equicom?*

30. I note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. The Hon'ble Supreme Court of India, while describing what is the duty of a Director of a company, held in *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602 that "A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes



to what must be obvious to everyone who examines the affairs of the Company even superficially". Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company.

31. The directors are statutorily expected to exercise due care and diligence as expected from a prudent person which among other things entails running the affairs of the company within the four walls of the relevant statutory provisions. Here, I would like to refer to the observations of the Hon'ble High Court of Delhi in the matter of *Santanu Ray vs. Union of India* decided on August 12, 1989, wherein the Hon'ble Court observed as follows:

"12. In Pennington's Company Law, 5th edition, at page 58, the topic of evasion of obligation imposed by law is discussed. The courts have ignored separate legal personality of the company if it was formed or used to facilitate the evasion of legal obligations. The American courts have disregarded a company's separate legal personality when it was clearly formed or acquired to facilitate a breach of the general law. In CIT v, Meenakshi Mills Ltd., their Lordships expressed that it is well established that in a matter of this description, the income-tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transaction. It is true that from the juristic point of view, the company is a legal personality entirely distinct from its members and the company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But, in certain exceptional cases, the court is entitle to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade."

32. I also place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs. Escorts Limited* (1986 AIR 1370), wherein while discussing the doctrine of corporate veil, the Court had observed: "90. ... the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible,



since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.”

33. In the present case, as noted in preceding paragraphs, Mr. Amit Kukda and Mr. Akhilesh Raghuvanshi are the only directors of Equicom. It is noted that SEBI had granted registration to Equicom on April 25, 2014 and Equicom is carrying out investment advisory activities from April 25, 2014 till date. The fact that the money has been collected, *prima facie*, in the form of service fee from the date of registration and Mr. Amit Kukda and Mr. Akhilesh Raghuvanshi are the only directors of Equicom through whom the Company functions, indicates that these directors are responsible for the activities of the IA which is already found to be fraudulent in nature. Therefore, I am of the view that Mr. Amit Kukda and Mr. Akhilesh Raghuvanshi being the directors of Equicom are *prima facie* responsible for the violations committed by Equicom.

ISSUE NO. 3: *If answer to issue no. 1 & 2 is in affirmative, whether urgent directions, if any should be issued against the Equicom and its directors?*

34. As a regulator of capital market, SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. IA Regulations have been formulated with the main objective of regulating such activities to safeguard the interests of investors and hence registration of such activities with SEBI has been made mandatory. IA Regulations *inter alia* seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring investment advisers to comply with the relevant provisions of the IA Regulations. The same is imperative for the protection of interests of investors and to safeguard the integrity of the securities market.



35. Since the conduct of Equicom, mentioned above does not, *prima facie*, appear to be in the interest of investors and the securities market, therefore, urgent necessary action has to be taken against Equicom and its directors immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of the present matter and on the basis of *prima facie* findings, it is necessary to prevent, Equicom from collecting any more fees from the public and luring innocent investor to avail its services under false / misleading assurance of return. I note that Equicom website and telephone number given on website are in operation. Therefore, the probability of investors reaching Equicom through website and telephone is high. Further, it is also noted that the bank accounts and payment gateway details are mentioned in website to receive credit for investment advisory services. Therefore, the threat of investors getting lured to the registered advisory services is still looming large and is imminent. Further, as per the information available on website, investors can become prey to the different packages offered by Equicom. I also note that the existing customers are not getting the IA services as per their risk profile. Since the present order, *prima facie*, finds that the services of the Noticee are "fraudulent" in nature within the meaning of PFUTP Regulations, it is not appropriate to allow the existing investors to get the services of this nature. Therefore, it is appropriate that credit from the existing clients for continuation of services also needs to be stopped, till further directions.
36. Thus, 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 action is required to be taken by way of *ad interim ex parte order* against Equicom and its directors for preventing them from collecting funds and indulging in investment advisory services; 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. In order to protect prospective investors and present investors from making payment or further payment to the bank accounts of Equicom, credit into bank accounts through any channels also needs to be stopped.



37. It is pertinent to mention that a large number of complaints have been filed against the Equicom alleging perpetration of fraud on the clients and the complainants have claimed refund of the money given by them to the Equicom. In the event, one of the directions that can be passed against the Equicom, subject to the adjudication of the allegation on the merits in the final order, under Sections 11(1), 11(4), 11B and 11D of SEBI Act is that of direction to refund the money collected by the Equicom from their clients. With the initiation of quasi-judicial proceedings, it is possible that Equicom may divert the money collected from its clients. The same may result in defeating the effective implementation of the direction of refund, if any, to be passed after deciding the matter on merits. Non-interference by the Regulator at this stage would therefore result in irreparable injury to interests of the securities market and the investors. It therefore becomes necessary for SEBI to take urgent steps of stopping the debits from the bank accounts of Equicom.

Order

38. In view of the above, pending detailed investigation, 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, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby issue the following directions:

39.1 The Equicom Financial Research Private Limited (SEBI Registration Number: INA000001639 and PAN: AAECT4400E) and Mr. Amit Kukda (PAN: BOHPK6437B) and Mr. Akhilesh Raghuvanshi (PAN: ALDPR2234H) are directed to :

- a. *cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever, until further orders;*
- b. *not to access the securities market and buy, sell or otherwise deal in securities in any manner whatsoever, directly or indirectly, until further orders; If the Equicom Financial Research Private Limited and its directors, named in this order have any open position in any exchange traded derivative contracts, they are permitted to close*



out/ square off such open positions within one month from the date of receipt/knowledge of this order.

- c. not to divert any funds raised from investors, kept in bank account(s) and/or in their custody until further orders;*
- d. withdraw immediately and remove all advertisements, representations, literatures, brochures, materials, publications, documents, websites, communications etc. in relation to their investment advisory activity in the securities market until further orders.*
- e. provide a full inventory of all assets held in its/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.*
- f. 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 her name except with the prior permission of SEBI.*

39.2 Banks including ICICI Bank, HDFC Bank Limited, AXIS Bank and State Bank of India, wherein the Equicom Financial Research Private Limited (PAN: AAECT4400E) and its directors viz., Mr. Amit Kukda (PAN: BOHPK6437B) and Mr. Akhilesh Raghuvanshi (PAN: ALDPR2234H) are holding bank accounts, are directed not to allow any debits / withdrawals from the said accounts, without the permission of SEBI, until further orders. The Banks are also directed not to allow any credits from the accounts of Equicom Financial Research Private Limited, without the permission of SEBI, until further orders. The Banks are directed to ensure these directions are strictly enforced.

39.3 Any person while working under The Equicom Financial Research Private Limited or under its 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 or selling IA services, directly or indirectly, till further orders.



39.4 The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Equicom, and its directors named in this order, held jointly or severally.

39.5 The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of Equicom, and its directors named in this order, jointly or severally, are not transferred or redeemed.

39. This order shall come into force with immediate effect and shall be in force until further orders. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entity in accordance with law.

40. The *prima facie* observations contained in this Order, pending enquiry, are made on the basis of the material available on record. In this context, *Equicom Financial Research Private Limited and its directors* may file their objections, if any, within 21 (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 to be made in that regard.

41. A copy of the order shall be served upon the Equicom, Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents for necessary action and compliance with the above directions.

Date: January 21, 2020

Place: Mumbai



Madhabi Puri Buch

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA