

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

Noticee No.	Name	SEBI Registration Number/ DIN	PAN
Noticee No. 1	Money Maker Research Pvt. Ltd.	INA000001415	AAHCM6434A
Noticee No. 2	Chandni Paryani	07472012	AXKPP7326H
Noticee No. 3	Abhisekh Tiwari	08251068	APQPT5692C
Noticee No. 4	Shashank Mishra	03639112	AYKPM8814C
Noticee No. 5	Tanveer Ahmed	03639119	AKMPA6142P
Noticee No. 6	Neelesh Kumar Tripathi	07783501	AMNPT0754F
Noticee No. 7	Devendra Kumar Tripathi	07783509	AUTPD0629H
Noticee No. 8	Nimish Shrivastav	07783564	CQMPS6113E
Noticee No. 9	Amita Jain	07871401	ASFPJ9264N
Noticee No. 10	Divya Sharma	07872373	BUVPS1494N

In the matter of Money Maker Research Pvt. Ltd.

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1. Money Maker Research Private Limited (hereinafter referred to as “**Money Maker**”) is registered with SEBI as an Investment Adviser (“**IA**”) bearing registration no. INA000001415, under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations**”) with effect from April 01, 2014. It has its registered address at 401, 4th Floor, Omega Tower,

32 Mechanic Nagar Extension Scheme No. 54, Vijay Nagar, Indore - 452010. The website address of Money Maker is <https://www.moneymakerfinancial.com/>. As per material available on record, the present directors of Money Maker are Ms. Chandni Paryani and Mr. Abhisekh Tiwari. The entities mentioned in the table above are collectively referred to as “**Noticees**”.

2. SEBI carried out an inspection of Money Maker during September 24 to 27, 2019, at its registered office. The period of inspection was from April 01, 2018 to March 31, 2019 (hereinafter referred as “**inspection period**”).

SEBI’s Inspection:

3. During the inspection, documents/information pertaining to KYC, Risk Profiling, communication of risk profiles to clients, change in risk profiling, product list, invoices, emails, website of Money Maker, etc., were verified on a sample basis. Further, documents/information provided by the complainants in SCORES were also taken into consideration while carrying out the inspection. Based on inspection / examination of documents / information provided by Money Maker, inspection brought out that Money Maker:

3.1. has not carried out risk profiling as per the provisions of the IA Regulations,

3.2. has not provided investment advice in terms of suitability as per the provisions of the IA Regulations and

3.3. has not charged fair and reasonable fee from client as per the provisions of the IA Regulations.

4. Money Maker has, *prima facie*, violated various provisions of the IA Regulations and of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to

Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations**”).

CONSIDERATION & PRIMA FACIE FINDINGS

5. I have perused the material available on record regarding risk profiling of clients, suitability of investment advice given to client and fees charged/ received from clients. In this context, *prima facie*, the following issues arise for determination:

5.1. Issue No. 1: Whether Money Maker has, *prima facie*, violated any provisions of the IA Regulations?

5.2. Issue No. 2: Whether Money Maker has, *prima facie*, violated any provisions of the SEBI Act read with the PFUTP Regulations?

5.3. Issue No. 3: If answers to Issue No. 1 & 2 are in affirmative, who are responsible for the violations?

5.4. Issue No. 4: If answers to Issue No. 1 & 2 are in affirmative, whether urgent directions, if any, should be issued against Money Maker?

6. Before moving forward, it is appropriate to refer to the following relevant provisions of the IA Regulations:

SEBI Act, 1992

“Section 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;”

IA REGULATIONS:

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:

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See **sub-regulation (9) of regulation 15**]

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.
- 3...
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.
- 7....
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.
9. **Responsibility of senior management:** The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

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

...

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

Regulation 17 Suitability:

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;*
- (c) It understands the nature and risks of products or assets selected for clients;*
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into: (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance; (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.*
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss*

PFUTP REGULATIONS

Regulation 2(1)(c):

- "(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

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

And “fraudulent” shall be construed accordingly ...”

Regulation 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.

Issue No. 1: Whether Money Maker has, prima facie, violated any provisions of the IA Regulations?

7. Suitability of advice given to Clients:

7.1. As per Regulation 17 of the IA Regulations, the investment advice given should be appropriate to risk profile of clients; the IA should have documented process for selecting investments to its clients based on their investment objective and financial situation; IA should understand the nature and risks of products or assets selected for clients; IA shall have reasonable basis for believing that a recommendation meets client’s investment objective and the client is able to bear

any related investment risks consistent with its investment objectives and risk tolerance; IA shall ensure that the client has the necessary experience and knowledge to understand the risks involved in the transaction; and the IA has to ensure that a recommendation given to client is based on reasonable assessment that the risk reward profile of financial product is consistent with client's experience, knowledge, investment objective and risk appetite.

7.2. Money Maker operates its advisory activities/business by providing investment advice through products/ services. Some of these products/ services sold by Money Maker are Intraday Cash, Jobbers Cash, Galaxy Cash Services, Intraday Future, MMR Future Express, HNI Options, etc.

7.3. The following observations are made regarding the suitability of investment advice given to clients:

A. Multiple subscriptions of derivative products/ services sold to clients with no experience of such financial products:

7.4. It is observed that Money Maker has sold multiple subscriptions of financial products to clients who have indicated in their RPQ that they have no experience of trading in such financial products. For e.g., client, Mr. Munavath Ravinder, as per his RPQ, has responded that his experience in Commodity market/Derivatives (futures/options/currency) market trading is 'Nil'. However, it can be seen from the table below that immediately after being on-boarded as a client of the IA, he has been sold products/ services belonging to the derivatives/ commodities category:

Table 1

Sr. No.	Date of RPQ/ invoice	Product/ Service sold	No. of subscriptions
1	Risk profiling was communicated to client on March 27, 2018		
2	April 10, 2018	Cash Bluechip@Qly	1
3	April 10, 2018	Revival Future @monthly	1

Sr. No.	Date of RPQ/ invoice	Product/ Service sold	No. of subscriptions
4	April 10, 2018	Galaxy Future Service @Qly	2
5	April 18, 2018	Galaxy Future Service @Qly	1
6	April 20, 2018	Galaxy Future Service @Qly	2
7	April 26, 2018	Breakout Option @monthly	1
8	May 05, 2018	Breakout Option @monthly	1
9	June 6, 2018	Jobbers MCX@monthly	2
10	August 09, 2018	Jobbers MCX@monthly	1
11	August 10, 2018	Jobbers MCX@monthly	1
12	August 11, 2019	Jobbers MCX@monthly	1
13	February 1, 2019	Base Metal & Energy Pack @monthly	1

While it can be argued that there will always be a first time when an investor is exposed to products/ services belonging to the derivatives category, it can be seen from the above table that the client, who has no previous experience of dealing in derivative products/ services, has been sold multiple subscriptions of the same derivative product/ service immediately after being on-boarded as a client (risk profiling was communicated to client on March 27, 2018). It is not a fair dealing on part of the IA to introduce the clients, immediately after on boarding of the client, to products/ services belonging to the derivatives category.

7.5. Similar instances are seen for the following clients:

Table 2

Sr. No.	Client Name	Date of Client on-boarding (date when RPQ communicated)	Experience in Commodity market /Derivatives (futures/options/currency) as per RPQ	Date when first derivative product/ service sold	Other derivative product/ service sold
1	Supriyo Nandy	June 19, 2018	Nil	June 27, 2018 (Min Max Express@monthly)	Intraday Future @monthly (3 subscriptions in July 2018) HNI Future @monthly and Option Call & Put

Sr. No.	Client Name	Date of Client on-boarding (date when RPQ communicated)	Experience in Commodity market /Derivatives (futures/options/currency) as per RPQ	Date when first derivative product/ service sold	Other derivative product/ service sold
					@monthly – 1 subscription each in July 2018
2	Mr. Mahaveer Prasad Bijarania	February 16, 2018	Nil	March 09, 2018 (Jobbers Future Pack)	Jobbers Future Pack, HNI Future, Galaxy Future Services, Breakout Option, Index Future, Galaxy Future
3	Mr. Ashok Bhadange	August 16, 2017	Nil	August 25, 2017	HNI Option

7.6. **IA Regulations:** As per Regulation 17(a), an IA has to ensure that investment advice is appropriate to risk profile of the client. Further, as per Regulation 17(d)(iii), the IA should have a reasonable basis to believe that the client has the necessary experience and knowledge to understand the risks involved in the transactions. As per Regulation 17(e), an IA has to ensure that a recommendation given to client is consistent with client's experience, knowledge, investment objective and risk appetite. From the above, it is, *prima facie*, found that clients, who do not have any experience of dealing in derivative products/ services, have been, immediately after being on-boarded, sold multiple subscriptions of different derivative products/ services by Money Maker. Therefore, Money Maker has not acted with due skill, care, diligence, honesty and in the best interest of its clients while selling products/ services to its clients. In view of the same, Money Maker has, *prima facie*, (a) failed to provide investment advice as per the risk suitability of clients in accordance with Regulation 17 of the IA Regulations; (b) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon it under Regulation 15(1) of IA regulation; and (c) failed to abide by Clauses 1, 2 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Money Maker has, *prima facie*, violated the provision of

Clauses 1, 2 and 8 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

B. Advisory Services sold prior to communication of Risk Profiling:

7.7. As per Regulation 17 of the IA Regulations, an IA has to ensure that all investments on which investment advice is provided, is appropriate to the risk profile of the client. Further, Regulation 16(e) requires that the IA has to communicate the risk profile to the client after the risk assessment is done so as to enable the client to verify whether his risk category has been correctly arrived at or not.

7.8. It was observed in the following instances that Money Maker was taking payment from the client for products/ services before the risk profile was communicated to the client:

Table 3

Sr. No.	Client Name	Date when RPQ sent to client	Date of collection of fee	Amount collected	Start of service
1	Mr. Vinod Singh Negi	July 04, 2019, on 17:01 PM (KYC was digitally signed by Money Maker on July 04, 2019, at 19:36 PM)	July 04, 2019, at 13:46 PM	Rs. 11,800/- for 'Intraday Cash' service	July 05, 2019
2	Mr. Umesh Kumar Pandey	October 27, 2018	October 25, 2018	Rs.1,55,000/-for 'Optional Positional @ yearly' service	October 26, 2018
3	Mr. Bhupen Suresh Vagal	July 11, 2018	July 05, 2018	Rs. 5,900/- for 'Intraday cash@ monthly' service	July 06, 2018
4	Mr. Supriyo Nandiy	June 19, 2018	June 16, 2018	Rs. 3,540/- for 'Intraday Cash@monthly' service	June 18, 2018
			June 18, 2018	Rs. 12,980/- for 'Intraday Cash	June 19, 2018

Sr. No.	Client Name	Date when RPQ sent to client	Date of collection of fee	Amount collected	Start of service
				Bluechip@Qly' service	
5	Mr. Vijay Soman	June 18, 2018	June 14, 2018	Rs. 5,900/- for 'Nifty Option@monthly' service	June 15, 2018

7.9. It is observed from the above table that Money Maker sold its advisory products/ services and collected fees from the clients even before it has communicated the risk profile to the client i.e., the client has not had an opportunity to verify whether his/ her risk category has been correctly arrived at. Thus, it is, *prima facie*, observed that the product/ service had already been sold by the IA and advisory fees had been collected from the client even before communication of the risk profiling to the client. It has been done, *prima facie*, by Money Maker to earn advisory fees/ profits by selling products/ services without having any understanding of the requirements of the clients.

7.10. Therefore, from the above it is, *prima facie*, found that the products/ services sold by Money Maker to its clients' could be completely inappropriate to the clients' need, as the risk profiling has not been communicated to the client before selling the product/ service. Thereby, the IA has not acted with due skill, care, diligence, honesty and in the best interest of its clients while providing investment advice appropriate to the clients' risk profile and had also failed to seek information from its clients about their financial situation, investment experience and investment objectives before selling them a package.

7.11. **IA Regulations:** As per Regulation 17(a), an IA has to ensure that investment advice is appropriate to risk profile of the client. From the above, it is, *prima facie*, found that Money Maker has not acted with due skill, care, diligence, honesty and in the best interest of its clients while selling services for its clients. In view of the same, Money Maker has, *prima facie*, (a) failed to provide the investment advice as per the risk profile of clients in accordance with Regulation

17 of the IA Regulations; (b) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon it under Regulation 15(1) of IA regulation; and (c) failed to abide by Clauses 1, 2, 4 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Money Maker has, *prima facie*, violated the provision of Clauses 1, 2, 4 and 8 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

C. High-risk product/ service sold to client with Moderate/ Low risk appetite:

7.12. **Client-Bhupen Suresh Wagal:** As per the risk profile communicated vide email dated July 11, 2018, client's risk category is "Moderate". However, the product/ service "HNI Option@monthly" has been sold to client on July 27, 2018, for Rs. 23,600/- and again on August 22, 2018, for Rs. 11,092/- As per the submissions of Money Maker, the product/ service "HNI Option@monthly" is a high-risk category product/ service. As per Regulation 17 of the IA Regulation, "*Investment Adviser shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client*", i.e., the IA cannot sell high risk products/ services to clients having moderate risk appetite.

7.13. **IA Regulations:** From the above, it is, *prima facie*, found that Money Maker has sold a product/ service, which is suitable for a client having a High Risk appetite, to a client having Moderate Risk appetite and hence, has not acted with due skill, care, diligence, honesty and in the best interest of its clients while selling products/ services to its clients. In view of the same, Money Maker has, *prima facie*, (a) failed to provide the investment advice as per the risk profile of clients in accordance with Regulation 17 of the IA Regulations; (b) failed in its responsibility to act in fiduciary capacity to its client, which is entrusted upon it under Regulation 15(1) of IA regulation; and (c) failed to abide by Clauses 1, 2 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Money Maker has, *prima facie*, violated the provision of

Clauses 1, 2 and 8 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

8. Unreasonable / Unfair Fees Charged from Clients:

8.1. As per Clause 6 of the Code of Conduct specified in Third Schedule of the IA Regulations, an investment adviser, advising a client may charge fair and reasonable fees, subject to any ceiling as may be specified by the Board, if any. I note that the examination has, *prima facie*, found the following instances of collection of unreasonable/ unfair fee:

- 8.1.1. Service fees charged are disproportionate to the annual income/ proposed investment and
- 8.1.2. Locking the clients by advance fee for sale of products without refund.
- 8.1.3. Selling clients two products/ services having different names but the same features

A. Service fees charged are disproportionate to the annual income/ proposed investment:

8.2. It was observed for clients mentioned in the table below that Money Maker has charged fees disproportionate to the annual income/ proposed investment of the clients, as disclosed in the respective risk profile forms of the clients.

Table 4

Sl. No	Name of client	Fees received from client (Rs.)	Annual income as per RPQ (Rs.)	Proposed investment by client as per RPQ (Rs.)
1	Mr. Aman Mittal	1,73,312/-	3-5 lakhs	< 1 lakh
2	Ms. Shamal Kadam	2,94,001/-	< 3 lakhs	< 1 lakh
3	Mr. Vijay Soman	19,47,203/-	3-5 lakhs	< 1 lakh

Sl. No	Name of client	Fees received from client (Rs.)	Annual income as per RPQ (Rs.)	Proposed investment by client as per RPQ (Rs.)
4	Mr. Mahaveer Prasad Bijarania	4,35,752/-	5-10 lakhs	< 1 lakh
5	Mr. Rakesh Kumar B	5,90,002/-	3-5 lakhs	1-3 lakh
6	Mr. Munavat Ravinder	2,59,165/-	5-10 lakhs	< 1 lakh
7	Mr. Swaminnathan Karthik	79,301/-	< 3 lakh	< 1 lakh
8	Mr. Suprio Nandy	3,45,426/-	-	< 1 lakh

8.3. Thus, from the above table, it is, *prima facie*, observed that Money Maker has charged fees which are disproportionate either to the annual income or to the proposed investment of the client or to both. In other words, the fees charged by Money Maker are not reasonable.

8.4. In order to determine the “reasonableness” of the fee charged by an IA, 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 provide for the principle based determination of fee by an IA 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. It is noted that Money Maker has not been fair in its dealing with the clients as outlined above. I, *prima facie*, find that in view of the fee being disproportionate to the annual income and/ or proposed investment of client, the fees are liable to qualify as being “unreasonable”.

B. Locking in clients by collecting advance service fee:

8.5. It is observed that Money Maker sells a second subscription, in some cases, multiple subscriptions, of the same advisory product/ service to the same client even before the existing subscription of the same product/ service has ended or has even started. It means that two/ multiple subscriptions of the same product/ service are sold with different service periods and fee has been collected for the subsequent subscription(s) while the first subscription is either active or has not even started. Therefore, if the client is dissatisfied/ doesn't want to continue with the IA after the first subscription has ended, he cannot do so as he has already paid for the subsequent subscriptions of the same product/ service in advance. An illustrative instance of the client Mr. Aman Mittal is explained below:

Table 5

Sr. No.	Date of invoice	Product/ Service	Period of product/ service	Amount (Rs.)
1	August 09, 2018	Option call & Put@monthly	August 13-27, 2018	4425/-
2	August 17, 2018	Option call & Put@monthly	August 28 to September 5, 2018	2360/-
3	August 25, 2018	Option call & Put@monthly	September 6 -14, 2018	2065/-
4	September 05, 2018	Option call & Put@monthly	October 9-November 13, 2018	10030/-
5	September 07, 2018	Option call & Put@qly	December 20, 2018 to May 20, 2019	34810/-

8.6. From the above table, it is observed that the fees for first subscription to the product/ service "Option call & Put@monthly" was received on August 09, 2018, with the service to start from August 13 and to end on August 27. While this first subscription is active, the client has been sold two more subscriptions of the same product/ service. Similarly, just before the September 06-14, 2018, subscription for the product/ service "Option call & Put@monthly" is about to start, another subscription of the same product/ service is sold. This in effect forces the clients to continue with the services of the IA without any opportunity to sever their ties in case of dis-satisfaction with the first subscription as the

payment for the subsequent subscriptions have already been paid in advance and there is a 'No Refund' policy followed by the IA.

8.7. The inspection has brought to light similar such instances, which are mentioned in the table below:

Table 6

Client Name	Date of invoice	Product/ Service	Period of product/ service	Amount (Rs.)
Mr. Aman Mittal	August 28, 2018	Breakout Option @monthly	September 3-10, 2018	14750/-
	August 30, 2018	Breakout Option @monthly	September 11-24, 2018	24780/-
	August 30, 2018	Breakout Option @monthly	September 25-October 02, 2018	14986/-
	August 31, 2018	Breakout Option @monthly	October 3-8, 2018	10000/-
	September 05, 2018	Breakout Option @monthly	November 14-16, 2018	4956/-
	September 06, 2018	Breakout Option @monthly	November 19 to December 07, 2018	35400/-
	September 07, 2018	Breakout Option @monthly	December 10-18, 2018	14750/-
Mr. Suprio Nandy	Jun 18, 2018	Cash Bluechip @Qly	Jun 19 to Jul 16, 2018	12980/-
	Jun 23, 2018	Cash Bluechip @Qly	Jul 23 to Aug 12, 2018	8260/-
	Jun 25, 2018	Cash Bluechip @Qly	Aug 13 to Sep 12, 2018	15222/-
	Jul 11, 2018	Intraday Future @monthly	Jul 13 to Jul 27, 2018	5099/-
	Jul 12, 2018	Intraday Future @monthly	Aug 13 to Oct 01, 2018	21900/-
	Jul 25, 2018	Intraday Future @yearly	Aug 01 to Jul 31, 2019	78000/-
Mr. Vijay Soman	June 22, 2018	Jiyo Future Unlimited @monthly	June 25 to August 25, 2018	500000
	June 22, 2018	Jiyo Future Unlimited @monthly	August 27 to September 12, 2018	166666
	August 25, 2018	Jiyo Future Unlimited @monthly	September 03 to October 01, 2018	275176
	June 27, 2018	Jobbers Futures Pack @half yearly	July 02, 2018 to May 01, 2019	500000
	June 27, 2018	Jobbers Futures Pack @monthly	May 02, 2019 to July 02, 2019	55555

	July 05, 2018	Bullion+Metal+ Energy @ yearly	July 06, 2018 to October 25, 2019	111111
	August 28, 2018	Bullion+Metal+ Energy @ yearly	October 28, 2019 to October 26, 2020	100000
Mr. Mahaveer Prasad Bijarana	March 9, 2018	Jobbers Future Pack (14 days)	March 12-28, 2018	41300
	March 19, 2018	Jobbers Future Pack (2 days)	March 29-30, 2018	5900
	March 20, 2019	Jobbers Future Pack (2 days)	April 2-4, 2018	5015
	March 23, 2018	Jobbers Future Pack (3 days)	April 5-10, 2018	8024
	March 23, 2018	Jobbers Future Pack (4 days)	April 5-16, 2018	11564
	March 31, 2018	HNI Future (20 days)	April 2-23, 2018	20060
	April 6, 2018	HNI Future (monthly)	April 24-25, 2018	30090
	April 19, 2018	Galaxy Future Services (3 days)	April 20-25, 2018	25370
	June 5, 2018	Galaxy Future Services (1 days)	June 6-7, 2018	11092
	May 16, 2019	Galaxy Future Services (16 days)	May 17-June 1, 2019	125080
	May 25, 2019	Galaxy Future Services (8 days)	June 3-10, 2019	60062
	May 30, 2019	Galaxy Future Services (4 days)	June 11-14, 2019	32096
	May 5, 2018	HNI Future (4 days)	May 28-31, 2018	4000
	May 21, 2018	HNI Future (5 days)	June 1-7, 2018	5015
Mr. Rakesh Kumar B	Galaxy Cash service (12 days)	December 18, 2018	December 19-30, 2018	80000
	Galaxy Cash service (6 days)	December 18, 2018	December 31, 2018- January 5, 2019	40000
	Galaxy Cash service (06 days)	December 22, 2018	January 7-12, 2019	40000
	Galaxy Cash service (20 days)	December 22, 2018	January 14- February 28, 2019	130000
	Galaxy Cash service (10 days)	December 26, 2018	March 1-11, 2019	66000
	Galaxy Cash service (4 days)	December 26, 2018	March 12-15, 2019	24000

It can be seen for the client, Mr. Vijay Soman, that the second subscription of the product/ service “Jobbers Futures Pack” has been sold to him in June 2018, while its duration will start in May 2019 i.e., it has been sold almost a year in advance of its start date.

C. Selling clients two products/ services having different names but the same features:

8.8. It is also observed that certain clients have been sold two or more products/ services having different names but with similar features for overlapping service duration. A few examples are given below:

Table 7

Client Name	Service	Period of product/ service	Product/ service features	Overlapping service duration
Ms. Shamal Kadam	Intraday cash (90 days)	April 24-July 24, 2017	Both services cater to the Cash Segment and intra-day calls. Target and stop-loss are provided in both services.	20 days
	Jobbers Cash (20 days)	April 28-May 18, 2017		
	HNI option (30 days)	September 25-October 25, 2017	Both services cater to Options Segment and intra-day calls are provided. The number of targets and open positions may differ.	10 days
	Breakout Option (10 days)	September 27-October 6, 2017		
Mr. Rakesh Kumar B	Cash Blue chip (76 days)	December 3, 2018-February 19, 2019	Both services cater to the Cash Segment and intra-day calls, with target and stop-loss are provided in both services.	15 days
	Jobbers cash Pack (15 days)	December 12-27, 2018		
Mr. Mahaveer Prasad Bijarania	HNI Future (monthly)	April 24-May 25, 2018	Both services cater to the Futures segment. Intra-day calls are given and number of targets and lots to be traded are different.	3 days 1 day
	Galaxy Future Services (3 days)	April 20-24, 2018		
	HNI Future (5 days)	June 1-7, 2018		
	Galaxy Future	June 6-7, 2018		

Client Name	Service	Period of product/ service	Product/ service features	Overlapping service duration
	Services (1 days)			

8.9. From the above, it can be seen that two or more products/ services catering to the same segment and having the same features and for overlapping periods are sold to the client. This practice is not a fair dealing with the client and the same appears to, *prima facie*, has been done with an objective to generate more service fees for the IA at the expense of the client.

8.10. From the above examples, it is observed that fees were collected for subsequent subscriptions even before the tenure of the first subscription ended. This in effect forces the clients to stay with Money Maker without any opportunity to sever their ties in case of dis-satisfaction with the service, especially in view of the 'No Refund' policy of the IA.

8.11. It can be seen that, *prima facie*, the modus operandi of Money Maker is to sell multiple subscriptions of products/ services to the client within a very short period, with each subscription for a different duration and thereby, extract more and more service fee from the client, with no possibility of refund in case client is not satisfied with the service. Also, the clients are subscribed to products/ services which are different only in name while they cater to the same market segment and have other similar characteristics. The durations of such similar products/ services are also found to be overlapping. It can also be seen in some instances that the payment is taken well in advance for a product/ service which will be delivered months later, in some cases, even after a year of the payment date.

8.12. From the above, it is observed that Money Maker has charged unfair and unreasonable fees from its clients without considering the annual income and/ or proposed investment of the clients. Money Maker has adopted dishonest

business practices by making the client subscribe to multiple subscriptions to the same product/ service, while one subscription is still active, and has therefore, charged unreasonable fee through this practice. These acts of Money Maker i.e., the manner in which Money Maker has charged fees to its clients, are, *prima facie*, purely meant to generate more and more service fees for itself and is clearly not in the best interests of the clients.

8.13. Thus, the above mentioned way in which Money Maker has sold products/ services to its clients is not fair and is not in the interest of clients and Money Maker did not exercise due skill, care, diligence and honesty in selling the products/ services to its clients. It is, *prima facie*, found that Money Maker has charged unfair and unreasonable fees from its clients and has not acted with due skill, care, diligence and honesty while charging advisory fees from the clients. They have had no regard to client's best interest and have not acted in the fiduciary capacity in which an IA is supposed to be associated with its client.

8.14. **IA Regulations:** In view of the above, Money Maker has, *prima facie*, (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon it under Regulation 15(1) of IA regulation and (b) failed to abide by Clauses 1, 2, 6 and 8 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Money Maker has, *prima facie*, violated the provisions of Clauses 1, 2, 6 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations.

9. Risk profiling of clients:

9.1. As per Regulations 16(a) and 16(b) of the IA Regulations, an IA is required to obtain information about the client, which includes age, investment objective, income details, existing investments, risk appetite, liabilities, etc., based on which (a) the risk appetite of the client and (b) the quantum of risk the investor would be able to take when subscribed to the services of Money Maker can be arrived at.

As per Clause 4 of Code of Conduct read with Regulations 15(9) of the IA Regulations, an IA is required to seek information from its clients about their financial situation, investment experience and investment objectives before providing them investment advices/ services. As per Regulation 16(e) of the IA Regulations, the IA is also under obligation to communicate the risk profile of the client, to the client, after risk assessment is done. One of the rationale, behind communicating the risk profile to the client is to provide the client with information about his/ her risk category as well as an opportunity to verify whether his/ her risk category has been correctly arrived at by the IA.

9.2. Money Maker has a risk profiling questionnaire (RPQ) consisting of 18 questions, wherein certain weightage is given to some of these questions, while no weightage is given to some questions. Money Maker has claimed that the employees of its Sales Team collect the answers to these questions telephonically from the clients and depending on the answer, the relevant weight is assigned to each question. Depending on the score, Money Maker classifies the clients into following Risk Categories:

Table 8

Risk profiling questionnaire score	Risk category of client
< 570	Low
570-930	Medium
> 930	High

9.3. As per submissions/ claims made by Money Maker during the inspection, including vide its letter dated September 27, 2019, the employees of its Sales Team collect the answers to the RPQ telephonically and I note that the client is not met with personally. Records of these conversations between employees of Sales Team and the client are not stored; hence, it cannot be ascertained if the options to each question were explained in detail to the client so that he/ she could select the appropriate answer. It is also seen that while Money Maker emails the filled-in RPQ to the client, the same contains only the answers

purportedly given by the client on telephone and the final risk category. The mailed RPQ does not mention the other options for each question and also the weight that was assigned to each option. Further, the risk score of the client is not mentioned anywhere in the form. In the absence of the weights assigned to the answers given, the client would not be in a position to verify whether the IA has correctly calculated his/ her risk score or not. Hence, the client is not in a position to verify the risk category (Low/ Medium/ High) that has been arrived at by Money Maker is correct or not. The status of his risk profile is a material fact influencing the decision of the client to accept a service offered by the IA. Hence, the information pertaining to the weights assigned to the options and the calculated risk score is material information and disclosure of the same to the client is essential.

9.4. The risk profiling of the client is a crucial process. The investment advice given to a client needs to be appropriate to the risk profile of the client. Since all the information for carrying out risk profiling is obtained telephonically with no record of this conversation retained, it is not enough to just send the filled-in RPQ to the client. In such a scenario, it is all the more important for Money Maker to send an RPQ to clients, which is complete in all aspects i.e., it contains all the details that would enable the client to determine that his risk appetite has been correctly determined as well as to accept/ reject/ modify it. The information in the mailed RPQ should include the options for each question in the RPQ, the weight assigned to each option and also the final risk score. Moreover, as records of the telephonic conversations between the client and the Sales Team are not preserved, there is no material available on record to validate the answers recorded by the employees of the Sales Team on any RPQ.

10. Examination of RPQs of certain clients revealed inconsistencies/ changes in the answers to RPQs without any justification:

10.1. For client Mr. Aman Mittal, it can be seen from the RPQ mailed to the client that the answer to the client's primary source of income is mentioned as "Business", while his occupation is mentioned as "Student". It is observed that the client was 20 years old when the risk profiling was carried out. It is also observed that the RPQ has the option "Any other please specify" for the field of "Occupation". As the primary source of income is "Business", the IA should have ensured that the details in the occupation field were correctly captured.

10.2. For client Mr. Vijay Soman, the comparison of the risk profiles communicated to the client vide email dated June 18, 2018, and vide email dated July 05, 2018, is given below:

Table 9

Q. No.	Question	Answer in risk profile communicated vide email dated June 18, 2018	Answer in risk profile communicated vide email dated July 05, 2018
3	Proposed capital for trading	Less than 1 lakh	Greater than 5 lakhs
5(a)	Which of these statements would best describe your attitudes about the next three years performance of this investment?	I have a hard time tolerating any loss	I can tolerate a loss
6	Annual Income details:-	3-5 lakh	Greater than 15 lakh
11	Approx. Value of assets held like property, FD, Shares, Mutual Fund etc.	Below 10 lakh	30-50 lakh
12	Market Value of portfolio held like Shares, Mutual Fund & Other Financial Securities	Less than 3 lakhs	Greater than 10 lakh
17	What is your experience with Equity market trading?	Very less	Extensive
18	What is your experience with Commodity market / Derivative (Future/Option/Currency) market trading?	Moderate	Extensive

10.3. It can be seen from the above table that Money Maker has revised the risk profile of the client within 20 days of the original risk profiling. From the revised risk profile, it is observed that the answers to questions of income, proposed

investment, experience, etc., are vastly different from what was stated in the original risk profiling dated June 18, 2018. For example, the total annual income has changed from Rs. 3-5 lacs to greater than Rs.15 lacs within a period of 20 days. Similarly, the experience in the equity market trading changed from 'very less' to 'extensive'. All of the changes indicated a significant increase in the financials and risk appetite of the client. However, it is observed from available records that the IA has not collected any additional information to justify the immediate change in the risk appetite and financials of the client.

- 10.4. **IA Regulations:** It is observed that Money Maker has conducted risk profiling of client telephonically. While it has sent the filled-in RPQ to the clients, it is observed that the same is not complete in all aspects, as information relevant to risk profiling, such as, options for each question, final score, weight, etc., are not included; hence, the clients have no means to know whether his/ her risk category has been correctly determined by the IA or not. The IA has also substantially revised the risk profile of a client, wherein the risk appetite and financials have suitably increased, while no evidence of seeking information by the IA from the client to justify the change is available on record. Thereby, Money Maker has not acted with honesty, fairness and in the best interest of its clients. Money Maker has also not, *prima facie*, made adequate disclosures of relevant material information related to risk profiling, such as options for each question, final score, weight, etc., while dealing with its clients. In view of the same, Money Maker has (a) failed to send complete filled-in RPQs, with relevant material information, to the clients in accordance with Regulation 16(e) of IA Regulations; and (b) failed to abide by Clauses 1, 2, 5 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Money Maker has, *prima facie*, violated the provision of Regulation 16(e) and Clauses 1, 2, 5 and 8 of the Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

Issue No. 2: Whether Money Maker has, prima facie, violated any provisions of the SEBI Act read with the PFUTP Regulations?

11. In the instant matter, it is, *prima facie*, found that:

11.1. Money Maker has sold products/ services to its clients which are not appropriate as per their risk profile. Money Maker has, immediately after on-boarding clients, sold these clients multiple subscriptions of derivative products/ services for which the client does not have the relevant experience. It is observed that the monthly charge for “Intra-day Cash” is Rs. 10000/-, while the charge for monthly subscription of “Intra-day Future”, which is a derivative service, is Rs. 15000/-. Similarly, “HNI Cash” costs Rs. 20000/- for a month, while “HNI Future” costs Rs. 25000/-. It is noted that derivative products/ services are much costlier than products/ services in the cash/ equity segment. Thus it appears to have been done with the objective to generate more fees for itself.

11.2. Money Maker has sold products/ services and charged advisory fees from the clients without communicating the risk profiling of the client, to the client, with an aim to earn advisory fees/ profits without understanding the requirements of the clients. Hence, the client did not have an opportunity to verify whether his/ her risk category was correctly determined by the IA.

11.3. Money Maker has sold products/ services to its clients which are not appropriate for them as per their risk profile. It has sold a high risk product/ service to a client who has a moderate risk appetite. The monthly charge for the product/ service sold i.e., “HNI Option” is Rs. 20,000/-, while a moderate risk product/ service, such as, “Intra-day Cash”, which was actually suitable for the client costs Rs. 10000/- per month. It is noted that High Risk products are more expensive than Moderate Risk products and by selling such products, the IA is in a position to earn more service fee and thus it appears to have been done with the objective to generate more fees for itself.

- 11.4. During the risk profiling, Money Maker has received information relating to proposed investment amount, annual income. Despite having known these financial details/ facts, Money Maker has charged exorbitant amount of fees from clients. It is observed that Money Maker did not pay any attention to the financial information of client, which is part of the risk profile. Hence, Money Maker, by knowingly charging fees in the said manner, has deceived its clients with an intention to maximize its income through fees.
- 11.5. Money Maker has knowingly sold multiple subscriptions of the same product/ service to same clients for future period, while an existing subscription is still active. Hence, if the client was dissatisfied/ did not want to continue after the first subscription finished, then he did not have any option to discontinue the service since the fees for subsequent subscriptions has already been paid in advance, with no possibility of refund. Money Maker has acted in the said manner with an objective to maximize its income through fees and has kept its own interest ahead of its client's interest.
12. As per Regulation 3 of PFUTP Regulation, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud, in connection with dealing in securities; or engage in any act, practice, course of business which operates as fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules and the regulations made there under.
13. The modus operandi adopted by Money Maker, discussed hereinabove, *prima facie*, shows that Money Maker 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, etc. However, it is, *prima facie*, found that Money Maker is knowingly acting in a deceitful manner, by:

- 13.1. Selling its advisory products and collecting fees from the clients before communication of the risk profile of said clients, thereby not giving an opportunity to the client to verify if the risk category has been correctly determined,
 - 13.2. Selling products to its clients which are not appropriate to their risk profile viz., multiple derivative products/ services sold to clients who have no experience in such products,
 - 13.3. 'High Risk Category' product / services sold to 'Medium Risk Category' clients,
 - 13.4. Charging fees from clients which are disproportionate to their annual income/ proposed investment and
 - 13.5. Knowingly selling multiple subscriptions of the same product/ service to same clients for future period, while an existing subscription is still active, which has the effect of locking in the client to the IA, as IA has a 'No Refund' policy.
14. The above activities, *prima facie*, are the devices adopted by Money Maker to defraud its clients in connection with their dealings in securities. Hence, Money Maker is, *prima facie*, running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing the above said devices, without keeping in mind the requirements of the clients and keeping its own interest ahead of its client's interest.
15. Thus, the findings of the preliminary examination and the overall modus operandi discussed in this order, *prima facie*, shows that a scheme is knowingly employed by Money Maker to defraud its clients in connection with their dealings in the securities and to maximize its revenue generation at client's expense. Thus, the above discussed non-genuine and deceptive "advisory" activities of Money Maker are, *prima facie*, fraudulent and are covered under the definition of "fraud" under Regulation 2(1)(c) of the PFUTP Regulations. Thus, Money Maker, through its fraudulent act/ scheme as discussed above, has, *prima facie*, violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

Issue No. 3: If answers to Issue No. 1 & 2 are in affirmative, who are responsible for the violations?

16. I note that Money Maker is responsible for the above mentioned, *prima facie*, violations of the provisions of the SEBI Act and of the IA and PFUTP Regulations.
17. 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. Here I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI* decided on April 26, 2013, wherein the Court observed as follows:

“33. 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. This Court 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 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 business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

18. I note for the contravention of law committed by the company, apart from the company, the Directors of company who at the time of contravention, were having knowledge of the said contravention or the directors whose neglect contributes to the contravention

of law, are also liable for said contravention of law committed by the company. The said principle is embodied in Sections 27(1) and 27(2) of SEBI Act.

19. Further, from the material available on record, it is observed that none of the Directors of company are designated as Managing Director or Executive Director or Independent Director. Therefore, all of them, *prima facie*, are in charge and responsible for managing the affairs / business of the company. Therefore, they are, *prima facie*, liable under the principles of Section 27 (1) of SEBI Act.

20. I also note that the liability of the Directors also arises if the offence/ contravention is attributable to any neglect on the part of them. There is no material on record to, *prima facie*, indicate that the directors in the instant case have taken any steps to prevent Money Maker from committing the violations, *prima facie*, observed against the company. Therefore, all the directors are, *prima facie*, liable under this ground also.

21. Further, as per the Code of Conduct prescribed in the IA Regulations, the senior management of a body corporate, which is registered as an IA, shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

22. I note that the inspection period is April 01, 2018 to March 31, 2019. The details of current directors and directors during the inspection period is as below:

Table 10

Sr. No.	Name	Original date of appointment	Date of Cessation	Designation
1	Chandni Paryani	March 20, 2019	-	Current Director
2	Abhisekh Tiwari	September 1, 2019	-	Current Director
3	Shashank Mishra	November 18, 2011	July 8, 2017	Past Director
4	Tanveer Ahmed	November 18, 2011	July 8, 2017	Past Director
5	Neelesh Kumar Tripathi	March 31, 2017	August 31, 2019	Past Director

6	Devendra Kumar Tripathi	March 31, 2017	October 11, 2018	Past Director
7	Nimish Shrivastav	March 31, 2017	August 14, 2018	Past Director
8	Amita Jain	July 8, 2017	June 6, 2019	Past Director
9	Divya Sharma	July 8, 2017	September 11, 2019	Past Director

23. The Directors mentioned at Sr. Nos. 1 and 2 in the table above are current directors of Money Maker and were in charge of the operations when the inspection was carried out. I note that the above mentioned violations are continuing in nature and hence, I note that these Directors are, *prima facie*, responsible for the violations of the IA and PFUTP Regulations, as mentioned above.

24. While the Directors mentioned at Sr. Nos. 3 to 9 are no longer Directors of Money Maker, I note that they were Directors for a certain part of the inspection period i.e., they were in charge of the operations of Money Maker. These Directors would be in charge of the operations when the investors, mentioned in this Order, were on-boarded as clients of Money Maker i.e., they were Directors during the period when the risk profiling information was collected telephonically, the RPQ was sent to the client, the fees were collected from the client and service was given, etc. It is also observed that certain investors became clients of Money Maker prior to the start of the inspection period but during the tenure of these Directors. For e.g., Ms. Shamal Kadam became a client of Money Maker in April 2017, as can be evidenced from the first invoice in her name, which is dated April 20, 2017. It is observed that this client has been charged fees which are disproportionate to her income/ proposed investment and that the same has occurred during the tenure of these Directors. Similarly, Mr. Swaminathan Karthik became a client in May 2017.

25. Hence, I note that all the Directors mentioned in Table 10 above are, *prima facie*, responsible for the violations of the IA and PFUTP Regulations, as mentioned above. These Directors are also, *prima facie*, in violation of Clause 9 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

Issue No. 4: If answers to Issue No. 1 & 2 are in affirmative, whether urgent directions, if any, should be issued against Money Maker?

26. An IA has to comply with all the provisions of the IA Regulations which enables it to effectively discharge its functions in the interest of the investor. In all the aforesaid, Money Maker and its Directors have fallen short of requirements as envisaged under the IA Regulations. Further, a SEBI registered intermediary should not abuse the certificate of registration granted to it, in any manner.

27. It is observed that the website of the IA is functioning and it is one of the medium via which new/ prospective clients may subscribe to the services of the IA. As discussed in preceding paragraphs, the conduct of the IA has been, *prima facie*, found to be fraudulent in nature and is also in violation of the IA Regulations, thus, it is imperative that the new/ prospective clients are to be safeguarded from the activities of IA, which are, *prima facie*, not as per the provisions of applicable laws.

28. 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. In the instant case, since the conduct of Money Maker and its Directors, as 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 them immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and the fraudulent scheme, plan, device and artifice as, *prima facie*, found in this case, I am convinced that this is a fit case where 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 not only to prevent any further harm to the existing investors but also to new/ prospective investors.

29. It has already, *prima facie*, been found that many of the clients of Money Maker have been sold services without any consideration of their financial situation, investment objective and risk profiling. The selling of such plans goes against the customized advice which would be required to be given based on the investors' risk profile. This requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. Exposing the existing clients to such advice, which has no co-relation to their 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 risk profile, urgent steps need to be taken against Money Maker. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by Money Maker and its Directors has been found to be, *prima facie*, fraudulent and in violation of the provisions of the PFUTP and IA Regulations. In view thereof, allowing Money Maker to continue its services to its clients, regardless of whether they have complained against Money Maker 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.

30. It is noted that permitting an investor to receive a service from Money Maker is, *prima facie*, not in consonance with the IA Regulations. Availing of the services from Money Maker is detrimental to investors as Money Maker and its Directors have not acted in the best interest of their clients but have only acted towards maximizing revenue/profits through the fees charged. The acts of Money Maker are not honest and fair towards its clients and results in giving advice to investors, which is not in accordance to their risk profile or as per their investment objective or as per their financial health. Exposing investors to such service also has the effect of interfering with the development of securities market, as victim of such services tend to lose faith in the securities market. Such an injury/detriment to the development of the securities market also qualifies as an "irreparable injury". The objective of SEBI as enshrined in

the SEBI Act is not only the protection of investors but also orderly development of securities market.

31. Further, if an ex-parte order is not passed, many prospective investors may have to part with large fees and investment resulting into irreparable injury to themselves as the advice given for which Money Maker and its directors are responsible, may not be as per their risk tolerance and the product offered to them may not be suitable as per their investment objectives and investment time horizon. However, if an ex-parte order is passed, what is at stake is right of the current entity herein vis-a-vis multitude of prospective and current clients of the entity. It may be noted that one of the underlying differences between the ex-parte orders in the case of private suits and ex-parte public enforcement actions, is the identification of the injured party. In private damage suits, the injured individual, as “whole”, is identifiable whereas ex-parte public enforcement actions, seeks to protect the floating multitude of investing public by preventing, continuous and imminent violations of the securities laws. The potential loss of the investors by following the advice of Money Maker and resultant loss of investor’s confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, Money Maker is permitted to carry out its irregular investment advisory service. Therefore, I consider the balance of convenience is also not in favour of Money Maker.

32. I, therefore find that pending conclusion of enquiry in the matter, in view of the, *prima facie*, evidence against Money Maker, it is also essential to take urgent steps to prevent Money Maker 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.

33. Considering the above, in my view, the balance of convenience lies against Money Maker and immediate steps needs to be taken against Money Maker to protect the investors / clients from freshly subscribing to or continuing to get such, *prima facie*, fraudulent, inappropriate/ unsuitable investment advisory service by Money Maker.

34. With respect to the Directors of Money Maker, as mentioned in paragraphs 21-25 above, I have already held that they were, *prima facie*, responsible for the operations of Money Maker during the time periods when the above mentioned violations of the IA and PFUTP Regulations have occurred. I note here that, *prima facie*, these Directors have also played a part in the fraudulent scheme that has been perpetrated on the clients of Money Maker and as such, their conduct has been fraudulent. Therefore, I consider the balance of convenience is also not in favour of the Directors of Money Maker.

ORDER:

35. In view of the foregoing, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11B(1) and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby direct by way of this *interim ex-parte order*, the following directions, which shall be in force until further orders: -

35.1. *Money Maker, Ms. Chandni Paryani and Mr. Abhisekh Tiwari, are directed:*

35.1.1. *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, in any manner whatsoever whether directly or indirectly,*

35.1.2. *to 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;*

35.1.3. *not to divert any funds collected from investors, kept in bank account(s) and/or in their custody;*

35.1.4. *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;*

35.1.5. *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 the name of Money Maker, including money lying in bank accounts except with the prior permission of SEBI;*

35.1.6. *to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;*

35.1.7. *to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order dated January 22, 2021, reproducing the directions mentioned in paragraph 35 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

35.2. *The other Noticees, viz., Mr. Shashank Mishra, Mr. Tanveer Ahmed, Mr. Neelesh Kumar Tripathi, Mr. Devendra Kumar Tripathi, Mr. Nimish Shrivastav, Ms. Amita Jain and Ms. Divya Sharma, are directed not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever, till further directions.*

- 35.3. *If any of the Noticees have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees, are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*
- 35.4. *The Depositories are directed to ensure that they neither permit any debits nor any credits in the demat account(s) held by Money Maker till further directions. The Depositories are also directed to ensure that they neither permit any debits nor any credits in the demat account(s) held by the other Noticees, either jointly or individually, till further directions.*
- 35.5. *The Registrar and Transfer Agents are directed to ensure that they neither permit transfer nor redemption of the securities, including Mutual Fund units, held in the name of Money Maker till further directions. Further, the Registrar and Transfer Agents are directed to ensure that they neither permit transfer nor redemption of the securities, including Mutual Fund units, held in the name of the other Noticees, either jointly or individually.*
36. The, *prima facie*, observations contained in this Order, are made on the basis of the material available on record. In this context, the Noticees, may, within 21 days from the date of receipt of this Order, file their reply/objections, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request to be made in that regard.
37. The above directions shall take effect immediately 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 Noticees, in accordance with law.

38. A copy of this Order shall be served upon the Noticees, Stock Exchanges, Registrar and Transfer Agents and Depositories for necessary action and compliance with the above directions.

Sd/-

Date: January 22, 2021

MADHABI PURI BUCH

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA