

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

**Under Sections 11(1), 11(4), 11B(1) and 11D of the Securities and Exchange Board of India
Act, 1992 and Regulation 35 of Securities and Exchange Board of India (Intermediaries)
Regulations, 2008**

**In Re: Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
and**

**Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade
Practices Relating To Securities Market) Regulations, 2003**

In respect of:

Noticee. No.	Name of the Entity	Designation	PAN	DIN
1	Capitalaim Financial Advisory Private Limited	-	AAFCC0828E	-
2	Mr. Abhijeet Bajpai	Present Director	AKOPB2348A	06393590
3	Mr. Anant Tiwari	Present Director	AOZPT7238L	08254807
4	Mr. Debabrata Bhattacharjee	Past Director	AKKPB4039N	08271304
5	Ms. Sheetal Foujdar	Past Director	AVLPB6079L	07285442
6	Ms. Abhilasha Verma	Past Director	AMHPV0559J	06797311

In the matter of Capitalaim Financial Advisory Private Limited

-
1. Capitalaim Financial Advisory Private Limited, a company (hereinafter referred to as “Capitalaim” / “IA”/ “Company”) is registered as an Investment Adviser under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “IA Regulations”) with effect from April 11, 2014 under Registration No. INA0000001563. Capitalaim is a corporate body and the Corporate Identification Number

(CIN) of Capitalaim is U74140MP2012PTC029603. The registered office of Capitalaim is at “801, Airen Heights 13, Scheme Number 54 Indore Madhya Pradesh - 452010”. Its website address is www.capitalaim.com.

2. SEBI conducted an inspection in relation to the affairs of Capitalaim during November 4-8, 2019 at the registered address of Capitalaim to ascertain possible violation, if any, of the provisions of SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and rules and regulations made thereunder.

SEBI’s Inspection:

3. During the inspection, data regarding clients was sought on a sample basis. The 52 clients were shortlisted on the basis of complaints received on SCORES, highest fees received by Capitalaim, clients belonging to house wife category, middle income category, high income category and senior citizens. Based on inspection / examination of documents / information provided by Capitalaim, SEBI *prima facie* found that Capitalaim and its present directors namely Mr. Abhijeet Bajpai and Mr. Anant Tiwari and past directors namely Mr. Debabrata Bhattacharjee, Ms. Sheetal Foujdar and Ms. Abhilasha Verma (hereinafter collectively referred to as “**Noticees**”);
 - 3.1. had not carried out risk profiling and suitability assessment of client as per the provision of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”);
 - 3.2. had not charged fair and reasonable fee from clients as per the provision of IA Regulation.
4. Capitalaim and its present and past directors had *prima facie* violated the provision of IA Regulations and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”)

CONSIDERATION & PRIMA FACIE FINDINGS

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

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

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

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

5.4. **Issue No. 4:** *If answer to issue no. 1 or 2 is in affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?*

6. Before moving forward, it is appropriate to refer to the relevant provisions of SEBI Act, IA Regulations and PFUTP Regulations:

6.1. 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.

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

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

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

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

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 15(8):

An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time”

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*

6.2. 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;"*

6.3. 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 Capitalaim has, prima facie, violated any provisions of IA Regulations?

7. Risk Profiling:

7.1. Risk profiling and Non-communication of risk profile to clients:

7.1.1. As per Regulation 16 (a) and 16(b) of IA Regulation, IA is required to obtain information about the client which includes age, investment objective, income details, existing investments, risk appetite, liabilities, etc. for the purpose of determination and quantification of risk appetite of the client. As per clause 4 of code of conduct read with Regulations 15(9) of IA Regulations, IA is required to seek information from its clients about their financial situation, investment experience and investment objectives before providing them investment advice / services. As per Regulation 16(e) of IA Regulations, the IA is under obligation to communicate the risk profile of the client after risk assessment is done.

7.1.2. It is noted that Capitalaim has a Risk Profiling Questionnaire with 15 questions for determining risk assessment of the clients. Corresponding to each question, a set of answers has been stated. Each answer has been assigned a particular weightage. Depending on the response of the client, the total score of the client is calculated. The maximum total score is 40. Based on the response of the clients, assigned scores are given and risk appetite of the clients are assessed. Depending on the score, Capitalaim classifies the clients into following Risk Categories

Risk profiling questionnaire score	Risk category of client
0 – 15	Low
16 – 25	Medium
26 – 40	High

7.1.3. During the inspection, with regard to the communication of risk profile to 52 clients, it is observed that for 27 clients (more than 50% of sample size), Capitalaim did not

communicate the risk profile to them before selling a product / collecting fees for the product i.e. emails sent to them by IA did not have the attachment of risk profile. Further, it is to be noted that any confirmation / reply email received by the Capitalaim, from said 27 clients in regard to the emails which did not had any attachment, would not amount to any communication of risk profile to said 27 clients.

7.1.4. Thus, it is *prima facie* observed in respect of these 27 clients, there is no evidence of communicating the risk profile to them before selling a product / collecting fees for the product. Thus, these 27 client has no means to know whether the Risk Profile correctly reflects their risk assessment as the risk profile is not communicated before selling a product / collecting fees for the product.

7.1.5. Therefore, it is *prima facie* found that from the 52 sample clients, Capitalaim has not communicated risk profile for 27 clients before selling a product / collecting fees for the product.

7.1.6. Thus, from the above it is *prima facie* found that Capitalaim has not communicated risk profile to the clients before selling a product / collecting fees for the product and the clients has no means to know whether the Risk Profile arrived pursuant to the risk assessment by Capitalaim correctly reflects the risk assessment of the client. Thereby, Capitalaim has not acted with honesty, fairness and in the best interest of its clients and by not communicating / disclosing the risk profiling to the clients, Capitalaim has not made the adequate disclosures of relevant material information while dealing with its clients to its clients. In view of the same, Capitalaim has *prima facie* (a) failed to communicate risk profile to the clients in accordance with Regulation 16(e) of IA Regulations; and (b) failed to abide by clauses 1 and 5 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Capitalaim has *prima facie* violated the provision of Regulation 16(e) and clauses 1 and 5 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

7.2. Products meant for High Risk Bearing Clients Sold to Medium Risk Bearing clients:

7.2.1. As per Regulation 17 of IA Regulations, the IA shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client; the IA should have documented process for selecting investments for 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, the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance and 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, risk appetite and capacity for absorbing loss.

7.2.2. During the inspection, it is noted the Capitalaim has its suitability assessment policy for its clients. As per Capitalaim's policy for suitability assessment, following products / services offered to clients has been categorized as medium and high risk categories:

Products suitable for High Risk Bearers	Products suitable for Medium Risk Bearers
Bonzer pack equity Bonzer pack future Future positional Bonzer pack commodity Bullion positional Premium future Premium option Nifty premium Premium bullion Stock future basic Stock option basic Nifty basic Bullion metal basic Agri pack basic	Premium stock Stock cash basic Stock express Forex Btst/stbt future

7.2.3. Upon analysis of products/services offered to various categories of clients vis-à-vis their risk profile for 52 sample clients, it is observed that Capitalaim has sold

products/services which are meant for ‘High Risk’ bearing clients as per their policy to ‘Medium Risk’ bearing clients. Details of such instances are mentioned below:

Sl. No.	Name of the Client	Risk Category of the Client	High Risk Product/ Services Sold
1.	Gopal krishnan chandel	Medium	Premium option Premium Future
2.	Nagayya chetty krishnamurthy	Medium	Premium Future tips Bonzer Pack
3.	Narayan biswas	Medium	Premium Future Bonzer Special future NCDEX-Agri
4.	Parvez khan	Medium	Bonzer Special cash Bonzer Special future Bonzer Special MCX
5.	Sudhakar Rao	Medium	Bonzer Special Future Bonzer Special MCX Bonzer Special Cash

7.2.4. From the table mentioned at paragraph 7.2.2, the products / services namely, Premium Future, Premium Option, Bonzer Pack, etc. have been categorized as products suitable for ‘High Risk’ clients, however, the same were sold to ‘Medium Risk’ clients. From the risk profile form of the aforesaid clients, it is observed that, despite these clients have been categorized as ‘Medium Risk’ by Capitalaim itself, the IA has sold products meant for ‘High Risk’ clients. It is noted that as per Regulation 17 of 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. IA is not allowed to offer high risk products to clients falling in medium risk category.

7.2.5. From the above, it is *prima facie* found that Capitalaim has sold products/services falling under its ‘High Risk Category’ to the clients falling under ‘Medium Risk Category’ and 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, Capitalaim has *prima facie* (a) failed to provide the investment advice as per the risk suitability of clients in accordance with regulation 17 of 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 and 2 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Capitalaim has *prima facie* violated the provision of clauses 1 and 2 of 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.

7.3. Advisory Services Sold prior to Risk Profiling

7.3.1. As per regulation 17 of IA Regulations, the IA has to ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client. During the inspection, from the documents / information obtained with respect to 52 sample clients, it is noted that Capitalaim had received advisory fees from its clients prior to assessing and communicating the risk profiling to the clients. On examination of clients risk profile forms vis-a-vis dates on which first payments were received, following observations are noted

Sl. No.	Client name	Date on which risk profile is done as per Risk Profile Form	Date of payment received from clients	Difference in days
1	Akash Jain	August 20, 2019	August 19, 2019	1
2	Md Zahid	July 27, 2018	July 25, 2018	2
3	Aditya Mishra	August 8, 2019	August 7, 2019	1
4	Afsar Ali	May 9, 2018	May 8, 2018	1

Sl. No.	Client name	Date on which risk profile is done as per Risk Profile Form	Date of payment received from clients	Difference in days
5	Ajeesh Kumar	May 29, 2018	May 28, 2018	1
6	Alok Mahrotra	July 3, 2018	June 30, 2018	3
7	Balkishan Dhaker	June 3, 2019	May 30, 2019	4
8	Balbir Singh Mandi	September 7, 2018	September 3, 2018	4
9	Gopal Krishnan Chandel	July 9, 2018	July 4, 2018	5
10	Jadhav Chandra Prakash	March 13, 2018	March 8, 2018	5
11	Jayantibhai Prajapati	March 15, 2018	March 13, 2018	2
12	Jitendra	October 10, 2017	September 27, 2017	13
13	John Joseph	March 14, 2018	March 8, 2018	6
14	Kailash Choudhary	June 20, 2018	June 5, 2018	15
15	Kumar Abhay	June 15, 2018	June 14, 2018	1
16	Manas Ranjan Parida	January 16, 2018	January 15, 2018	1
17	Manisha Garg	January 8, 2019	September 28, 2018	102
18	Narayan Biswas	May 1, 2018	April 30, 2018	1
19	Parvez Khan	September 3, 2018	August 30, 2018	4
20	Prashant Bhosale	October 8, 2018	August 28, 2018	41
21	Prashant Singh	July 30, 2018	July 25, 2018	5
22	Rahul Vishnupant Jawale	April 20, 2018	April 18, 2018	2
23	Rakesh Kumar Singhal	October 5, 2018	October 4 , 2018	1
24	Ramesh Muljibhai Ashiyani	July 25, 2018	July 24, 2018	1
25	Rameshchandra Amrutlal Patel	September 26, 2018	September 22, 2018	4
26	Ravi Sharma	May 7, 2019	May 6, 2019	1

Sl. No.	Client name	Date on which risk profile is done as per Risk Profile Form	Date of payment received from clients	Difference in days
27	Sandeep Kumar	September 12,2018	September 11, 2018	1
28	Satyanarayan Gourishankar Jaiswal	March 1, 2018	February 28, 2018	1
29	Sharda Siddhant Nikam	March 10, 2018	March 7, 2018	3
30	Shreelakshmi S.	April 6, 2019	April 5, 2019	1
31	Vikas Kumar Dubey	May 29, 2019	May 23, 2019	6
32	Vinod Kumar	September 17, 2018	September 15, 2018	2

7.3.2.It is observed from the above table that Capitalaim had sold its advisory products and collected fees from the clients, even before it had carried out the risk profiling / assessment for its clients.

7.3.3.It is also observed that Capitalaim had sold its advisory products and collected fees from the clients, even before it had communicated the risk profiling to its clients.

7.3.4.In some cases the difference between the date on which payment was received and risk profiling was done, was more than three months. Thus, it is *prima facie* observed that the products had already been sold by the IA and advisory fees had been charged even before the risk profiling of the client was completed as well as even before the risk profile was communicated to its clients. It appears that the same has been done by Capitalaim to earn advisory fees / profits by selling products without caring for the needs of the clients.

7.3.5.Therefore, from the above it is *prima facie* found that the products sold by Capitalaim to its client's could be completely inappropriate to the clients' need, as the risk profiling has not been completed for the client before selling the product. Thereby, IA has not acted with honesty and in the best interest of its clients while providing investment advice appropriate to the clients' risk profile.

7.3.6. In view of the same, Capitalaim has *prima facie* (a) failed to provide the investment advice appropriate to the clients' risk profile in accordance with regulation 17(a) of IA Regulations; and (b) failed to abide by clause 1 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Capitalaim has *prima facie* violated the provisions of Regulation 17(a) and clause 1, of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations.

8. **Unreasonable / Unfair Fees Charged from Clients:**

8.1. As per clause 6 of code of conduct specified in third Schedule of 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. The said instances relates to:

- 8.1.1. Unreasonable fee / disproportionate fees to the annual income/proposed investment;
- 8.1.2. Locking in the clients by advance fee for sale of products without refund;
- 8.1.3. Arbitrary and unreasonable fee from the same client for the same service;
- 8.1.4. Arbitrary and unreasonable fee from different clients for the same service;

8.2. **Unreasonable fee / disproportionate fees to the annual income/proposed investment:**

8.2.1. Out of the 52 sample clients, it was observed that for clients stated in below mentioned table, Capitalaim has charged fees disproportionate to the annual income of the clients and / or disproportionate to the proposed investment, as disclosed in the respective risk profile forms of the clients.

Sl. No.	Name of client	Fees received from client in Rs.	Annual income as per risk profile form in Rs.	Proposed investment by client as per risk profile form in Rs.
1	Jitendra	25,35,676	Less than 5 lakh	Less than 5 lakh
2	Nandlal Kushwaha	18,34,813	Less than 5 lakh	Less than 5 lakh

Sl. No.	Name of client	Fees received from client in Rs.	Annual income as per risk profile form in Rs.	Proposed investment by client as per risk profile form in Rs.
3	Balbir Singh Mandi	12,59,888	More than 15 lakh	5 Lakh to 10 lakh
4	Prashant Singh	12,00,000	5 to 10 lakhs	Less than 5 lakh
5	Kumar Abhay	11,79,032	More than 15 lakh	5 Lakh to 10 lakh
6	Azad Mohd	11,76,692	5 to 10 lakhs	Less than 5 lakh
7	Parvez Khan	11,55,111	5 to 10 lakhs	Less than 5 lakh
8	Sudhakar Rao	11,52,750	More than 15 lakh	Less than 5 lakh
9	Sandeep Kumar	10,30,263	More than 15 lakh	Less than 5 lakh
10	Rahul Vishnupant Jawale	8,78,610	5 to 10 lakhs	Less than 5 lakh
11	Achal Jhingran	8,40,000	10 Lakh to 15 lakh	5 Lakh to 10 lakh
12	Ramesh Muljibhai Ashiyani	8,31,000	10 Lakh to 15 lakh	Less than 5 lakh
13	Shreelakshmi s	7,64,044	Less than 5 lakh	Less than 5 lakh
14	Praveen Kumar	7,28,697	5 to 10 lakhs	Less than 5 lakh
15	Afsar Ali	6,92,500	10 Lakh to 15 lakh	Less than 5 lakh
16	Balkishan Dhaker	6,80,000	Less than 5 lakh	Less than 5 lakh
17	Narayan Biswas	6,77,549	Less than 5 lakh	Less than 5 lakh
18	Maulik Ganeshbhai Amrelia	4,48,502	Less than 5 lakh	Less than 5 lakh

8.2.2. Thus, from the above table, it is *prima facie* found that out of 52 sample clients, from 18 clients, Capitalaim has charged fees which are disproportionate to the annual income and / or proposed investment.

8.2.3. In order to determine the “reasonableness” of the fee charged by the Investment Adviser, I note that while no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness, it cannot also be stated that the

reasonableness of the fee charged cannot be judged at all. The IA Regulations provides for the principle based determination of fee by the Investment Adviser indicating that such fees have to be fair and reasonable and the same can be tested as a violation of the Code of Conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determination. While determining the reasonableness of the fee, the same has to be seen from the perspective of various factors such as proportionality etc. It is noted that Capitalaim 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 or proposed investment of client, the fee are qualified as “unreasonable”.

8.3. Locking in the clients by advance fee for sale of products without refund:-

8.3.1. It is further observed that Capitalaim has been selling the same advisory product/service to the client on same day of their first service sold or just after the sale of their first service sold or before the end of tenure of their earlier service i.e. before the end of the earlier service sold, same service has been sold to the same client again for future dates / extended period. It means that, two same services were sold with different service periods, while the fee for the second service was charged just after or on same date of the start of first service. Therefore, if the client is dissatisfied/ doesn't want to continue after the first service then he does not have any option to discontinue with the services since the payment for both the services have been received from client in advance and there is “No Refund and Cancellation” policy followed by the IA. An illustrative instance of the client **Amit Kumar Roy** is explained below:

Sr. No.	Invoice date	Service	Period of service	Service Charges (Rs.)	Service start date	Service end date
1	26.09.2017	Bonzer Cash	90 days	66,150/-	26.09.2017	26.12.2017
2	29.09.2017	Bonzer Cash	180 days	75,000/-	29.09.2017	29.03.2018

8.3.2. From the above table, it is observed that, the amounts for the second service was charged just after two day from the start of the tenure of first service. This in effect forces the investors to stay with the IA without any opportunity to sever their ties in case of dis-satisfaction with its first service/product. This also in effect locks in the clients to continue with the services of the IA as the payment for the services have already been given in advance and there is “*No Refund and Cancellation*” policy followed by the IA. Further different fees were charged for same services from the same client without regard to proportionality of the period of services. In the above case, first service was for about 3 month tenure and fees charged was Rs. 66,150/-. For the same service provided for the service period of 180 days, Capitalaim has charged Rs. 75,000/- as service fee. It shows that disproportionate fees were charged from clients without regard to proportionality of the period of services.

8.3.3. It is also observed that service period for both the services are overlapping and operational for certain period of time i.e. the overlapping period was September 29, 2017 to December 26, 2017. The two services sold by Capitalaim which were operational during overlapping period was not in the interest of client while double payment, in effect, has been taken for the overlapping period.

8.3.4. The Inspection has brought to light similar such instances as mentioned in the table below:

**Service charges in Rupees*

Name of the client	Service	Invoice date	Service Charges	Service start date	Service end date	Period of service
Balbir Singh Mandi	Bonzer Special Future Recommendation	14.10.2018	2,34,888	15.10.2018	14.10.2019	365 days
	Bonzer Special Future Recommendation	14.10.2018	50,000	15.10.2018	14.10.2019	365 days
Jadhav Chandra Prakash	Stock Xpress	14.03.2018	11,500	14.03.2018	14.06.2018	90 days
	Stock Xpress	17.03.2018	32,500	17.03.2018	17.06.2018	90 days
	Stock Xpress	23.03.2018	47,500	23.03.2018	23.03.2019	365 days
John Joseph	Stock Futures	08.03.2018	5,000	08.03.2018	08.05.2018	60 days

Name of the client	Service	Invoice date	Service Charges	Service start date	Service end date	Period of service
	Stock Futures	20.03.2018	11,500	20.03.2018	20.05.2018	60 days
Vinay Kumar Rana	Stock Cash	02.04.2019	12,500	02.04.2019	03.06.2019	60 days
	Stock Cash	20.03.2019	50,000	20.03.2019	20.03.2020	365 days
Vinod kumar	Premium MCX BME	25.10.2018	1,00,000	25.10.2018	25.04.2019	180 days
	Premium MCX BME	25.10.2018	1,50,000	25.10.2018	25.04.2019	180 days
Jitendra	Bonzer cash	27.09.2017	1,53,500	27.09.2017	27.09.2018	365 days
	Bonzer Pack	28.09.2017	2,06,500	28.09.2017	28.09.2018	365 days
	Bonzer cash	30.09.2017	2,30,000	30.09.2017	30.09.2018	365 days
	Bonzer cash	31.10.2017	2,16,000	31.10.2017	31.10.2018	365 days
	Bonzer Pack	13.11.2017	18,200	13.11.2017	13.11.2018	365 days
	Premium Nifty	31.10.2017	2,13,800	31.10.2017	31.10.2018	365 days
	Premium Nifty	11.10.2017	4,00,000	11.10.2017	11.10.2018	365 days
	Premium Nifty	28.11.2017	1,27,200	28.11.2017	28.05.2018	180 days
	Premium Nifty	14.12.2017	3,54,488	19.12.2017	19.01.2018	30 days
Nandlal Kushwaha	Advantage Commodity	21.11.2017	6,250	21.11.2017	21.12.2017	30 days
	Advantage Commodity	23.11.2017	51,072	23.11.2017	23.12.2017	30 days
	Advantage Commodity	24.11.2017	85,120	24.11.2017	24.12.2017	30 days
	Advantage Commodity	24.11.2017	9,192	24.11.2017	24.12.2017	30 days
	Advantage Commodity	27.11.2017	15,322	27.11.2017	27.12.2017	30 days
	Advantage Commodity	30.11.2017	12,000	30.11.2017	30.12.2017	30 days
	Advantage Commodity	08.12.2017	48,000	08.12.2017	08.01.2018	30 days
	Advantage Commodity	08.12.2017	48,000	08.12.2017	08.01.2018	30 days
	Advantage Commodity	08.12.2017	5,500	08.12.2017	08.01.2018	30 days

Name of the client	Service	Invoice date	Service Charges	Service start date	Service end date	Period of service
	Advantage Commodity	08.12.2017	40,800	08.12.2017	08.01.2018	30 days
	Bonzer pack	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer pack	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer pack	30.11.2017	5,400	30.11.2017	30.12.2017	30 days
	Bonzer pack	30.11.2017	1,540	30.11.2017	30.12.2017	30 days
	Bonzer pack	30.11.2017	10,000	30.11.2017	30.12.2017	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	49,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	20.12.2017	13,000	20.12.2017	20.01.2018	30 days
	Bonzer pack	28.12.2017	10,000	28.12.2017	28.01.2018	30 days
	Bonzer cash	30.11.2017	15,000	30.11.2017	30.12.2017	30 days
	Bonzer cash	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer cash	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer cash	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer cash	30.11.2017	49,000	30.11.2017	30.12.2017	30 days
	Bonzer cash	30.11.2017	13,840	30.11.2017	30.12.2017	30 days
	Triple Advantage	21.12.2017	3,56,000	21.12.2017	21.12.2018	365 days
	Triple Advantage	28.12.2017	2,25,000	28.12.2017	28.12.2018	365 days

8.4. Arbitrary and unreasonable fee from the same client for the same service:

8.4.1. The above table demonstrates that apart from locking in the clients by charging advance fee for the sale of same product, the instances of arbitrary and unreasonable

fee from the same client for the same service is also noted. For instance, regarding the client Jadhav Chandra Prakash, the first service was for 3 months tenure and fees charged was Rs. 11,500/-. For the same service provided fees charged for second service was Rs. 32,500/- for a period of 3 months and for third service was Rs. 47,500/- for a period of 1 year. It shows that disproportionate amount of fees was charged from clients. In the case of client Jitendra, one service for Bonzer cash was for 6 months tenure and fees charged was Rs. 1,27,200/-. For the same service provided, Rs. 3,54,488/- for a period of 1 month was charged i.e. almost triple the amount of fees for same service and period is reduced to 1/6th. It shows that disproportionate amount of fees was charged from clients.

8.5. Arbitrary and unreasonable fee from different clients for the same service:

8.5.1. Further, it is also noted that Capitalaim had charged arbitrary amount of fees from different clients for the same service without regard to proportionality of duration. The details in this regard are as under:

Amount in Rupees

Service & period	Fees charged from different clients for same service.		
	Amit Kumar Roy	Jitendra	Nandlal Kushwaha
Bonzer Cash (30 Days)	-	-	49,000
Bonzer Cash (90 Days)	66,150	-	-
Bonzer Cash (180 Days)	75,000	-	-
Bonzer Cash (1 Year)	-	2,30,000	-

8.5.2. It is difficult to discern why a service/ product should be sold in this way in the first instance. Such a pattern of charging fees can, in my view, qualify to be called as “unreasonable” and “arbitrary”. Similarly, if the test of proportionality is applied, the fees for the same service over a period should be proportional to the period. Though, the “reasonableness” can accommodate the commercial realities where “discounts” for longer commitment of the clients in terms of money and duration with the IA are

extended, the same cannot be termed as “reasonable” where the clients commit to a longer relationship with the IA and still effectively pay more for their longer commitment.

8.6. Thus, from the above, I am of the *prima facie* view that fee charged by Capitalaim from its clients does not answer the test of “proportionality”. Hence, fee charged by Capitalaim from its clients are arbitrary and unreasonable.

8.7. From the above, it is observed that considering the annual income and/or proposed investment by the clients, Capitalaim had not charged fair and reasonable fees from its clients. Capitalaim has adopted dishonest business practices by making the client subscribe to multiple subscriptions to the same package on the same day / next day / soon thereafter and charging unreasonable and arbitrary fee for the same service/product. Further, for the same services and duration, Capitalaim had charged different arbitrary advisory fees from the same and different clients without regard to proportionality of duration of service. These acts of Capitalaim are *prima facie*, meant to generate more and more service fees for itself and is clearly not in the best interests of the clients.

8.8. Thus, the services / packages sold by Capitalaim to its clients was not in a fair manner and was not in the interest of client; and Capitalaim did not exercise honesty in selling the product / services to its clients. It is *prima facie* found that Capitalaim has charged unfair and unreasonable fees from its clients and has not acted honestly while charging advisory fees from the clients without having any regard to client’s best interest and the fiduciary capacity in which an IA is supposed to be associated with its client.

8.9. In view of the above, Capitalaim has *prima facie* (a) failed in its responsibility to act in fiduciary capacity to its client which is entrusted upon him under Regulation 15(1) of IA regulation and (b) failed to abide by clauses 1 and 6 of Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations. Thus, Capitalaim has *prima facie* violated the provision of clauses 1 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations.

ISSUE No. 2: Whether Capitalaim has, prima facie, violated any provisions of SEBI Act read with PFUTP Regulations?

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

- 9.1. Out of 52 sample clients, Capitalaim has not communicated the risk profile to 27 clients before selling a product / collecting fees for the product.
- 9.2. Capitalaim has sold products to its clients which are not appropriate as per their risk profile. For instance, it has sold a high risk product namely “Bonzer Special cash, Bonzer Special future, Bonzer Special MCX and Premium Index future” to Mr. Pervez Khan who is a medium risk taker. The Bi-monthly charge for high risk product such as Bonzer Special cash, Bonzer Special future and Bonzer Special MCX is Rs. 60,000/-, Rs. 60,000/- and Rs. 60,000/- respectively, however the Bi-monthly charge for medium risk product such as Stock Cash, Forex and BTST Future is Rs. 12,500/-, Rs. 20,000/- and Rs. 21,500/- respectively. It is noted that High Risk products are much more costly than Medium Risk products. Out of 52 sample clients, Capitalaim had sold high risk products / services to 5 Medium risk clients which are not suitable for them as per their risk appetite.
- 9.3. Capitalaim had sold its advisory products and collected fees from the clients, (a) even before Capitalaim had carried out the risk profile / assessment for its clients and (b) even before Capitalaim had communicated the risk profile to its clients. In some cases the difference between the date on which payment was received and risk profiling was done, was more than three months.
- 9.4. Capitalaim has charged unreasonable amount of fees from clients, which is disproportionate to their annual income/ proposed investment.
- 9.5. Capitalaim had knowingly sold same services / packages to same clients on multiple occasion at different arbitrary price for future period / overlapping period. Therefore, if the client is dissatisfied/ doesn't want to continue after the first service then he does not have any option to discontinue the services since the payment for subsequent services has already been paid in advance, with no possibility of refund and cancellation of services.

10. 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.
11. The modus operandi adopted by IA discussed hereinabove, *prima facie*, shows that IA 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. It is *prima facie* found that IA is knowingly:
- 11.1. selling products / services to its clients without communicating Risk Profile to them;
 - 11.2. selling products to its clients which are not appropriate to their risk profile i.e. ‘High Risk Category’ product / services are sold to ‘Medium Risk Category’ clients;
 - 11.3. selling its advisory products and collecting fees from the clients before carrying out the risk profile of said clients;
 - 11.4. charging fees from clients which is disproportionate of their annual income/ proposed investment; and
 - 11.5. selling same services / packages to same clients on multiple occasion at different arbitrary price for future period / overlapping period, while an existing subscription is still active, which has the effect of locking in the client to the IA, as IA has “*No Refund and Cancellation*” policy.

The above activities, *prima facie*, are the devices adopted by the IA to defraud its clients in connection with their dealings in the securities. Hence, IA is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client’s needs and keeping its own interest ahead of its client’s interest.

12. 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 Capitalaim 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 deceptive activities of IA are, *prima-facie* fraudulent and are covered under the definition of "fraud" under regulation 2(1)(c) of the PFUTP Regulations. Thus, Capitalaim 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.

13. In summary, following *prima facie* findings are observed:

- 13.1. That Capitalaim has not communicated the risk profile to the clients before selling services / products / collecting fees for the product. Capitalaim has sold products/services falling under its 'High Risk Category' to the clients falling under 'Medium Risk Category'. Capitalaim has sold the product / services to its clients inappropriate to the clients' risk profiling.
- 13.2. That Capitalaim has not been fair in its dealing with the clients. Despite knowing the annual income and/or proposed investment by the clients, Capitalaim had charged unreasonable, arbitrary and unfair fees from its clients. Capitalaim has adopted dishonest business practices by making the client subscribe to multiple subscriptions to the same package for future period / overlapping period before the start of first service period. Further, for the same services and duration, Capitalaim had charged different arbitrary advisory fees from the same and different clients.
- 13.3. That the above activities, *prima facie*, are the devices adopted by the Capitalaim to defraud its clients in connection with their dealings in securities. Hence, Capitalaim is *prima facie* running a scheme and defrauding its clients, with an intention to maximize its income through advisory fees by employing above said devices, without caring for client's needs and keeping its own interest ahead of its client's interest.
- 13.4. This constitute violations of various provisions of SEBI Act, IA Regulations and PFUTP Regulations.

ISSUE No. 3: If answers to Issue No. 1 or 2 is affirmative, who are responsible for the violations?

14. I note that Capitalaim is responsible for the above mentioned, prima facie, violations of the provisions of the SEBI Act, IA Regulations and PFUTP Regulations.
15. I note that Capitalaim is registered as an Investment Adviser with SEBI since April 11, 2014 till date. As per the information obtained from MCA website, the details of present directors and past directors of Capitalaim during the period April 11, 2014 till date are as under:

Sl. No.	Name	Date of Appointment	Date of Cessation	Designation
1	Mr. Abhijeet Bajpai	29/11/2012	-	Present Director
2	Mr. Anant Tiwari	22/10/2018	-	Present Director
3	Mr. Debabrata Bhattacharjee	15/11/2018	30/06/2020	Past Director
4	Ms. Sheetal Foujdar	10/09/2015	22/10/2018	Past Director
5	Ms. Abhilasha Verma	31/12/2013	10/10/2015	Past Director

16. 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.”

17. I note as per Section 27 of SEBI Act, for the offence / contravention of law committed by the company, apart from the company, the Directors of company who at the time of offence / contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, are also liable for said offence / contravention of law committed by the company.
18. In the instant matter, as per material available on record, I find that that the core activities / main objective of Capitalaim, is to carry on business in securities market as investment adviser. Further, as per material available on record, I also find that apart from investment advisory business, Capitalaim is not involved in any other business. Further, from the material available on record, it is observed that none of the Directors of Capitalaim are designated as Managing Director or Executive Director or Independent Director. Moreover, it is also observed from the material available on record that Capitalaim do not have CEO, CFO or any other officer who is designated as key managerial personnel.
19. Thus, on a preponderance of probability basis, all the Directors who have been appointed to the Board of Capitalaim, are in charge and responsible for managing the affairs / business of Capitalaim during the respective tenure of their directorships. In light of the aforesaid discussion, it is *prima facie*, observed that all Directors of Capitalaim are in charge and responsible for the conduct / business /operations of Capitalaim during the respective tenure of their directorships.

20. Further, there is no material available on record to indicate that whether all the directors have taken any steps to prevent the infraction of law *prima facie* found to have been committed in the instant matter. Therefore, the preponderance of probability indicates that all directors of Capitalaim, *prima facie*, during their respective tenure of directorships omitted to take any steps to prevent Capitalaim from committing the violations, *prima facie*, observed against Capitalaim.
21. From the table mentioned at paragraph 15 above, I note that Mr. Abhijeet Bajpai and Mr. Anant Tiwari are present directors of Capitalaim and are in charge of operations of Capitalaim as on date. Hence, I note that they are, *prima facie*, responsible for the violation of provisions of SEBI Act, IA Regulations and PFUTP Regulations as mentioned above, for their respective terms as directors. 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.
22. Further, from the table mentioned at paragraph 15 above, I also note that Mr. Debabrata Bhattacharjee, Ms. Sheetal Foujdar and Ms. Abhilasha Verma are no longer directors of Capitalaim. However, I note that Mr. Debabrata Bhattacharjee and Ms. Sheetal Foujdar were appointed / joined as directors of Capitalaim after April 11, 2014 (SEBI Investment Adviser registration date) and Ms. Abhilasha Verma was the director of Capitalaim at the time when Capitalaim had obtained registration from SEBI as investment adviser i.e. April 11, 2014 and continued to be as director of Capitalaim till October 10, 2015. Hence, I note that they were in charge of the operations of Capitalaim during their respective terms as directors. These Directors were in charge of the operations when the investors, mentioned in this order were on-boarded as clients of Capitalaim i.e., they were Directors during the period when the risk profile was not communicated to the client, the fees were collected from the client and service was given, etc. It is also observed that certain investors, in respect of whose services non-compliance is observed, became clients of Capitalaim during the tenure of Ms. Sheetal Foujdar and Mr. Debabrata Bhattacharjee as director of Capitalaim. For e.g., Mr. Jitendra became a client of Capitalaim in September - October 2017, as can be evidenced from the first invoice in his name, which is dated September 27, 2017 and risk profiling is done on

October 10, 2017. Similarly, Mr. Vikas Kumar Dubey became a client in May 2019 i.e. first invoice is issued on May 23, 2019 and risk profiling is done on May 29, 2019.

23. Upon perusal of information received on sample clients it is noted that no sample investors were on-boarded as clients of Capitalaim during the tenure of Ms. Abhilasha Verma as director of Capitalaim. However, it may be noted that the examination is based on the sample of clients which represent larger universe of clients. Though the sample of clients does not fall within the period between April 11, 2014 till October 10, 2015, it is to be kept in mind, what is relevant is the preponderance of probability of circumstances. The circumstances of the repetitive nature of violations over a longer span of period and the proximity of period for which sample clients were collected, indicate that, *prima facie* impugned practices relating to risk profiling and collection of unreasonable fees as mentioned above in this order have not just started but being carried on for some period of time from inception since April 11, 2014 when Ms. Abhilasha Verma was director of Capitalaim.
24. Hence, I note that all present and past directors of Capitalaim mentioned at paragraph 15 above are, *prima facie*, responsible for the violation of provisions of SEBI Act, IA Regulations and PFUTP Regulations as mentioned above, during their respective terms as directors. 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 answer to issue no. 1 or 2 is in affirmative, whether urgent directions, if any, should be issued against those responsible for the violations?*

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

26. 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 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.
27. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of Noticees, mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and 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 investor.
28. It has already *prima facie* been found that many of the IA existing clients 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 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 correlation 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 correlation to their risk profile, urgent steps need to be taken against Noticees. Further, as discussed hereinabove, the very nature of the investment advisory activity being practiced by Noticees has been found to be *prima facie* fraudulent and in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing Noticees to continue its

services to its clients, regardless of whether they have complained against the IA 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.

29. It is noted that permitting an investor to receive a service from Noticees is *prima facie* not in consonance with the IA Regulations. Availing of the services from the IA is detrimental even to the existing investors as Noticees is not acting in the best interest of its client but is only maximizing its revenue / income through fee. The acts of Noticees are not honest and fair towards its clients and give advice to investors which is not in accordance to their risk profile or as per their investment objective or as per client's 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.
30. 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 by the IA 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 exparte 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 Noticees and resultant loss of investor's confidence and reliability of securities market, cannot be retrieved, if, *prima facie*, Noticees is permitted to carry out its irregular

investment advisory service. Therefore, I consider the balance of convenience is also not in favour of the Noticees.

31. I, therefore find that pending conclusion of enquiry in the matter, in view of the prima facie evidence against the IA, it is also essential to take urgent steps to prevent Noticees from acting as an investment advisor and representing through any media as an investment advisor and securities market activities and 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..
32. Considering the above, in my view, the balance of convenience lies against Capitalaim and its present directors and immediate steps needs to be taken against Capitalaim and its present directors, to protect the investors / clients from freshly subscribing to or continuing to get such prima facie fraudulent / inappropriate / unsuitable investment advisory service by Capitalaim.
33. With respect to the directors of Capitalaim, as mentioned above, I have already held that they were, *prima facie*, responsible for violations of provisions of SEBI Act, IA Regulations and PFUTP Regulations. 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 Capitalaim and as such, their conduct has been fraudulent. Therefore, I consider the balance of convenience is also not in favour of directors of Capitalaim.

ORDER:

34. 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*: -

34.1. *Capitalaim and its present directors, namely, Mr. Abhijeet Bajpai and Mr. Anant Tiwari are directed:-*

34.1.1. *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 or on behalf of any of its clients through their accounts;*

34.1.2. *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;*

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

34.1.4. *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;*

34.1.5. *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 their name, including money lying in bank accounts except with the prior permission of SEBI;*

34.1.6. *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;*

34.1.7. *to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order dated February 08, 2021 reproducing the directions mentioned in paragraph 34 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

34.2. *The past Directors of Capitalaim, viz., Mr. Debabrata Bhattacharjee, Ms. Sheetal Foujdar and Ms. Abhilasha Verma, 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.

- 34.3. *If Capitalaim or its directors, both past and present, 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. Capitalaim or its directors, both past and present, 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.*
- 34.4. *The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by (a) Capitalaim; (b) Mr. Abhijeet Bajpai either individually or jointly; (c) Mr. Anant Tiwari either individually or jointly; (d) Mr. Debabrata Bhattacharjee either individually or jointly; (e) Ms. Sheetal Foujdar either individually or jointly; and (f) Ms. Abhilasha Verma either individually or jointly;*
- 34.5. *The Registrar and Transfer Agents are directed to ensure, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by (a) Capitalaim; (b) Mr. Abhijeet Bajpai either individually or jointly; (c) Mr. Anant Tiwari either individually or jointly; (d) Mr. Debabrata Bhattacharjee either individually or jointly; (e) Ms. Sheetal Foujdar either individually or jointly; and (f) Ms. Abhilasha Verma either individually or jointly.*
35. *The prima facie observations contained in this Order, are made on the basis of the material available on record. In this context, 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.*
36. *The above directions shall take effect immediately and shall be in force until further orders.*
37. *This Order is without prejudice to the right of SEBI to take any other action that may be initiated against Noticees in accordance with law.*

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

Sd/-

Date: February 08, 2021

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA