

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

CONFIRMATORY ORDER

**Under Sections 11, 11B (1) and 11D of the Securities and Exchange Board of
India Act, 1992**

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

In respect of:

S. No.	Name of the Entity	PAN
1	Ms. Pinky Kelva, Proprietor of M/s. Future Investment	ECYPK7182R

In the matter of M/s. Future Investment

Background

1. M/s. Future Investment (Proprietor: Ms. Pinky Kelva) (hereinafter referred to as the **"FI"/"Noticee"**) is registered as an Investment Adviser (hereinafter referred to as **"IA"**) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as **"IA Regulations"**) with effect from

August 8, 2017 under Registration No. INA000008242. It has its registered office at 301, Laxmi Tower, Mahatma Gandhi Road, South Tukoganj, Indore Madhya Pradesh – 452001. Its website address is www.futureinvestments.in.

2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had received a number of complaints against FI. Pursuant to the complaints, SEBI carried out an examination in relation to the affairs of FI. The examination entailed *inter alia* an analysis of complaints in the SEBI Complaints Redress System (hereinafter referred to as “SCORES”), documents/information provided by complainants i.e. WhatsApp conversations, SMS, emails, call recordings, etc. and information available on the website of FI, products list etc.

Consideration and Prima Facie Findings in SEBI’s Examination

3. The following was *prima facie* observed from inter alia, the analysis of invoices issued to clients, emails exchanged between FI and its clients, risk profile documents of clients and communications of clients with FI’s employees (WhatsApp messages and SMS), information available on FI’s website and FI’s products list.
4. It was also noted that, Noticee did not cooperate with SEBI and did not submit details of employees such as their qualifications, role/work description, NISM certification etc. sought vide email dated February 11, 2020, and reminder emails dated February 14, 2020, and February 18, 2020. Thus, in the absence of the details of the employees / representatives of FI, WhatsApp communications and communication by SMS available as material on record, it was *prima facie* observed, from the context / contents of the message, that the same is from the employee / representative of FI. Similarly, the emails received by the clients are *prima facie* observed to be sent by the employee / representative of FI as the email id from which it is sent has been sent to the client has the domain name of future

investment, for e.g., compliance@futureinvestments.in or is signed off as “Thanks & Regards, Future Investment, Support / Compliance Department.”

5. Pursuant to the examination, SEBI passed an Interim Ex Parte Order dated September 29, 2021, (herein after referred as “**Interim Order**”) against the Noticee in view of the following *prima facie* findings.

- 5.1. FI has been promising assured / guaranteed returns / profit to its clients.
- 5.2. FI has been unfair in its dealing with the clients and has extorted money under different pretexts.
- 5.3. FI has been selling multiple packages to its clients even though the subscription period for products earlier bought by the client was not over yet.
- 5.4. FI has been selling advisory services / products to its clients without ensuring suitability of product / service in accordance to their risk profile.
- 5.5. FI does not consider the financial situation of the client.
- 5.6. FI has not sold products as per clients’ risk profile.
- 5.7. FI does not have a documented process for selecting investments.
- 5.8. FI has manipulated the risk profile form.
- 5.9. FI has sought user id and password of trading account of its clients which is not relevant for the purpose of selling products / services to its clients.
- 5.10. FI has not filed ATR and resolved the investor grievances as per the prescribed timelines.

6. In view of the above observations, it was *prima facie*, found that the Noticee has violated the respective provisions of the following Regulations as mentioned in the interim order

- 6.1. SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations**”);

6.2. SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”)

Service of the interim order, hearing and replies of the Noticee

7. Copy of Interim order dated September 29, 2020, was served to entity vide letter dated September 30, 2020 and a reply was received letter dated October 06, 2020.
8. Vide submission dated October 06, 2020, Noticee, provided details of assets and confirmation of displaying the notification with respect to SEBI interim order on its website. Noticee also requested personal hearing in the said matter.
9. SEBI, vide letter dated November 23, 2020, granted opportunity of personal hearing to the Noticee on December 09, 2020. The hearing was adjourned on Noticee's request to January 08, 2021 and same was communicated to entity vide email dated December 09, 2020. Subsequently, SEBI vide email dated January 07, 2021, rescheduled the hearing due to administrative exigencies and fresh hearing date i.e. February 17, 2021, was intimated vide letter dated January 20, 2021. However due to administrative exigencies the said hearing was again rescheduled to February 18, 2021 and communicated to entity vide letter dated February 05, 2021. Subsequently, the hearing was rescheduled to March 03, 2021, which was communicated to the entity vide letter dated February 08, 2021. Noticee attended the hearing held on March 03, 2021 and was represented by the authorised representative reiterating the submissions made vide letter dated March 03, 2021.
10. Noticee vide letter dated March 03, 2021, made the following submissions:
 - 10.1. Non submission of relevant details sought by SEBI was due to personal issues.

- 10.2. The communication of Mr. Vikash Pushkar, on promised assured/guaranteed returns, vide email dated July 16, 2018, was send by an employee without the knowledge of the Noticee and brought to knowledge of Noticee upon the complaint being filed by Mr. Vikash Pushkar. The Noticee had taken immediate cognizance of the matter and resolved the complaint amicably by refunding the agreed amount and the complaint was subsequently withdrawn. The copies of proof of payments provided, along with copy of dispute resolution email received from Mr. Vikash Pushkar.
- 10.3. Noticee has denied communication of Mr. Raghav Kalva and Mr. Rajib Debnath with Noticee and has therefore mentioned that the allegation and observations made on the basis of said communication requires no explanation.
- 10.4. Noticee has stated that the interim order has categorically brought out that the Noticee's website mentions "*it does not provide any guaranteed service*" and "*with investment, your capital is at risk*". It may be noted that all clients visit the website before subscribing to the services. It cannot be deemed that Noticee has not disclosed to the investors about the risk associated with investment in securities market. Therefore, it may be concluded that, the evidence given by the complainant has no substance and has been observed in the interim order that a proper disclaimer had been given on the website of the Noticee.
- 10.5. In the light above facts, it would be harsh towards the Noticee to conclude adversely and charging it for violations of provisions of PFUTP read along with section 12A of the SEBI Act.
- 10.6. Noticee has denied communication with clients brought out in Para 12, 12.1 (Mr Raghava Kalva), 12.2 (Mr. Rajeev B.) of the interim order and therefore submits that it doesn't require explanation

- 10.7. With respect to selling of multiple packages, Noticee has stated that, the client has opted for various subscriptions based on their free will and the Noticee has offered the same in the absence of any specific regulation. Noticee has also stated that, it had no malafide intention with regards to selling multiple products. The Noticee is committed to provide all services as subscribed by its clients. Further, there were no prevailing regulations restricting the sale of multiple subscriptions.
- 10.8. With respect to the allegation pertaining to instances where services sold beyond clients Risk taking capacity giving reference to complaint filed by Mr. Raghava Reddy Kalva, where, the client was offered High Risk Services (i.e., Option Premium Services) although the client's risk profile is Medium Risk, the Noticee has stated that Risk Profile was forwarded on June 18, 2019 to client and the client opted for the Option Premium Services on June 25, 2019. In the aforesaid mail it has been clearly mentioned that as per Risk Profiling of the client, the client falls under the category of Medium Risk. The product which client is selecting comes under, High Risk Category. Still the client preferred to opt for High-Risk Product. Copy of the email dated June 18, 2019, is provided
- 10.9. With respect to complaints of Mr. Radharaman Dash and Mr. Sunil Semwal, respectively, Noticee has submitted that, the services offered to the clients are based on their risk profile. The Noticee uses a comprehensive scoring method based on responses of the clients. The risk profiling questionnaire was framed on the parameters such as: age, investment objectives, time span, income detail, existing investments and assets, risk appetite and tolerance, and status of borrowings/liabilities etc., furthermore, due care had been taken by the Noticee, in assessing its client's ability and willingness for absorbing losses. The Noticee has stated that, moreover, due care has been taken to ascertain that appropriate weights are assigned to all answers.

- 10.10. In the case of Mr. Radharaman Dash, it has been observed, that the client's gross annual income is Rs. 2-5 lacs and erstwhile investment was less than Rs. 2 lacs. Therefore, it has been concluded that, the respondent sold the products without considering risk profile of Mr. Dash, the Noticee has submitted that, it carried out a proper risk profiling and provided the risk profile sheet. From the risk profile it can be observed that scores obtained by Mr. Dash is 82 and his risk tolerance is weighted as "High Risk". Therefore, giving weightage merely to only few factors and concluding that due care was not taken and was unreasonable in assessing the risk profile, would be unjust. Further, from the extracted table of the risk profile, mentioned in the order, that the response of the client to Q.21 pertaining to Risk Tolerance is "HIGH"; and Q.27 pertaining to "How he defines himself" as a "risk taker", is "Willing to take Evaluated Risk". Therefore, it would be wrong to say that the Respondent has not exercised due care and skills, diligence in ascertaining the risk appetite of its client. Noticee has submitted that, it has acted in a professional manner
- 10.11. Similarly, in matter of Mr. Sunil Semwal also, Noticee exercised due care, skill, and diligence in ascertaining the risk appetite of the client. From the risk profile of Mr. Semwal it can be observed, though client represented himself as a retired person, but the other parameters which he himself disclosed, while ascertaining the risk profile, leads him to High Risk tolerance capacity. The overall score of Mr. Semwal obtained is 81 which puts him into High Risk Category. Therefore, in the light of above, it would be wrong to say that the recommendations given by the Noticee, to its client, would not meet the client's investment objective. Copy of Risk Profile is provided. Therefore, the allegation are denied.
- 10.12. In view of the explanation provided the Noticee has denied the allegations levelled in the interim order and submitted that it would be unjust and wrong to say that:

- 10.12.1. The products sold by FI to clients are not appropriate to the risk profile / risk tolerance of clients.
- 10.12.2. FI has not sold products / services based on client's financial situation.
- 10.12.3. FI has not sold services as per the investment objectives and investment time horizon of the clients.
- 10.13. The Noticee has denied the allegation that, adequate disclosure of relevant material information was not made, stating that all material information, pertaining to the product/services offered were disclosed on the website. So, it cannot be concluded that, the Respondent has by any means concealed any information, with an intention to defraud the clients.
- 10.14. Noticee has denied WhatsApp communication of Mr. Mohd. Aquib Khan and stated that it had no information pertaining to Mr. Mohd. Aquib Khan having taken loan to pay advisory fees.
- 10.15. Noticee, with respect to communication of risk profile to clients, has stated that the risk profile of Mr. Vijay Parwatrao Andhale, Mr. Pranmaya Joshi and Mr. Radharaman Dash, was done in accordance with regulation 16 of the IA Regulations 2013, and that all risk profile assessments were done before giving advisory services to the clients and none of the clients disputed the Risk Profile and Suitability Assessment Report.
- 10.16. With regard to allegation of manipulation of Risk Profile Assessment, to sell high risk product. Noticee has submitted that, the risk profile form is filled based on the inputs given by the client and not based on KYC. Further, the client never disputed the information in the Risk profile form which was communicated to him. Therefore, it would be unjust to press that the Noticee is involved in manipulative activities pertaining to Risk Profile Assessment. Noticee has reiterated that, it has done risk profiling of the client before giving advisory services and same have been, communicated to the client. It cannot

be overlooked that, there was no dispute, regarding the risk profiling, raised by any of the client. Noticee has stated that, Reg. 16(e), does not specifically mentions a timeline for communicating risk profiling. Therefore, Noticee has denied the violations stating that, technical laps such as communication of Risk Profile, or not doing financial planning cannot be terms as fraudulent and unfair act.

- 10.17. With respect to the allegation of seeking non relevant information from clients in the interim order, the Noticee denies any such communication and activities mentioned.
- 10.18. With respect filing ATR on SCORES, The Noticee has submitted that, IA is required to file ATR within 30 days. However, the spirit of filing ATR within 30 days to is to ensure that cognizance is taken on the complaint filed, and mere filing of ATR doesn't mean resolution of dispute. The circular doesn't stipulate that the complaint filed be resolved within 30 days, and to deem so, would be an inaccurate interpretation of the same.
- 10.19. Noticee denies telephonic conversations mentioned in para 52-58 of interim order pertaining to certain clients. Further Noticee has mentioned that, since these communications are not relied upon to arrive at the aforesaid prime facie findings, it does not require comments.
- 10.20. With regard to suitable directions for contravention of provisions of PFUTP Regulations and IA Regulations in para 59 of the interim order, the Noticee has stated that, since telephonic conversations were not relied upon to pass the interim order, the same may not be made basis to pass such order.
- 10.21. The Noticee has submitted that, there are no pending complaints on which the order is relied upon.

- 10.22. The Noticee without going into nitty-gritty and merits/demerits of each complaint has arrived at amicable resolution with its the clients, the settlements were done as prudent business decisions and should not be treated as admission of any wrongdoing with the clients of the Noticee.
- 10.23. Noticee has disclosed all material facts in the Terms and Conditions, Invoices, and on its website.
- 10.24. Noticee in the light of furnished information, explanation, clarifications, and facts, has requested the following:
- 10.24.1. The Noticee be absolved from all charges as levelled against it.
 - 10.24.2. Pass suitable order to remove restrictions imposed in the aforesaid order.
 - 10.24.3. Any such other relief, as may be, pleased to be granted.
11. Pursuant to the hearing dated March 03, 2021, certain information were sought from the Noticee vide SEBI email dated March 03, 2021 and March 09, 2021. The following information was provided by the Noticee vide letter dated April 03, 2021:
- 11.1. List of Employees/Agents/Representative along with KYC details, engaged in investment advisory activities on behalf of Future Investment
 - 11.2. Annotated Bank Account with summary of heads expenditure/income
 - 11.3. List of contact number owned by Noticee.
12. Further the Noticee also made the following additional submissions vide letter dated April 03, 2021:
- 12.1. It has tried to discharge the duties in honest, fair and in diligent manner. Noticee has collected all necessary information about clients pertaining to KYC, and Risk Profiling under set mechanism.
 - 12.2. Risk Profiling were done prior to giving advisory services to its client. Noticee had adequately disclosed relevant material information while dealing with

clients. Noticee informed its clients about their risk taking capabilities and suggested its clients, suitable investment as per risk profile.

- 12.3. Different services offered by the Noticee has been disclosed on website and explained the features to the customer, and upon satisfaction, agreed to subscribe the products. The product have been designed with risk classification. There was no conflict of interest and Noticee complied all regulations specified for IA.
- 12.4. The lapses observed were technical in nature and Noticee had no malafide intention. The complaint filed were immediately resolved in order to rectify lapses/errors, during the course of provision of advisory services to clients.
- 12.5. With respect to para 3.15 of reply letter dated March 03, 2021, it was submitted that risk profile was communicated along with suitable products to client in due manner. The client after receipt of the risk profiling, chose high risk service on his own will. Any misinterpretation which lead to conclusion that written consent of client on his opting high risk service may please be condoned.
- 12.6. Noticee has further mentioned that in the instance of Mr. Vikas Pushkar, where it was observed that the promised assured/guaranteed return, the Noticee has agreed to refund the amount upon being appraised that an employee has emailed such commitment on his own notion. Noticees website clearly mentions that “it does not provide any guaranteed service”

Consideration of Issues:

13. I have considered the oral and written submissions made by the Noticee. The issue to be considered at this stage is as follows:

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

14. With respect to non-cooperation in providing information as sought by SEBI, the Noticee has stated that the same could not be made due to personal issue. I also note that during the examination phase even after repeated reminders there was no revert back from the Noticee making any submission for additional time or citing any reason for non-submission. I note here that being a Registered IA with SEBI, the Noticee is required to adhere to the Securities laws at all times and personal issue, that too unexplained cannot be an excuse for any regulatory non-compliances especially when the entity did not ask for any extension of time. Due to the non-cooperation and non-availability of the information, the prime facie observations were made based on the available information. I also note that if information/document and replies had been made available in due course of time, it would have been helpful in arriving at more comprehensive findings and observations.

15. With respect to the circumstantial evidence of the communication exchanged between the individuals and the complainant being considered in the interim order as being made between the employee / representative of FI and the clients of the FI, I note that the Noticee has subsequently, provided the employees list vide its submission letter dated April 03, 2021. On analysing the submission of the employees list it is observed that individuals named in the communication provided by the complainants namely, (i) Mr. Rishab; (ii) Ms. Pooja; (iii) Ms. Shruti and (iv) Ms. Yamini, figure in the list of employees of the Noticee. Further it is noted that the Noticee has not denied in any of its submissions that the referred employees and clients in the interim order are not its employees or clients. Therefore, it is substantiated that the communication is between employees and the clients of the Noticee. Here a reference may also be drawn to the Hon'ble Supreme Court order in the matter of SEBI v. Kishore R. Ajmera (2016) 6 SCC 368, where it was held that,.....*It is a fundamental principle of law that proof of an allegation leveled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the*

allegations/charges made and leveled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

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

17. Promising assured / guaranteed returns / profit to its client:

17.1. The interim order has brought out that the Noticee was promising assured/guaranteed returns to clients and provided examples of communications between FI employees and three clients. The Noticee has admitted to the communication of its employee with Mr. Vikash Pushkar with respect to promising assured/guaranteed/profit returns. However it has contended that the same was sent without knowledge of the Noticee and on being appraised, the complaint was immediately resolved by making refund of the amount and the complaint was withdrawn. With respect to the other two communications with Mr. Raghav Kalva and Mr. Rajib Debnath on promising/guaranteeing returns, the Noticee has merely denied the communication without any reasons, justification, explanation or evidence. However, as per the material on record (Employee List of Noticee) the individual i.e. Mr. Rishabh communicating with Mr Raghav Kalra is employee of the Noticee. Therefore, the Noticee has admitted that its employee has promised assured/guaranteed return to the client in one of instance but has merely denied the communication in other two instances. However, Noticee has not denied that the communications exchanged is between its employees and clients, which is further substantiated through the submission of the

Noticee. Further, I note that mere denial of the communications without any supporting reasons/evidences to the effect that why the communications cannot be the communication of the Noticee, is not acceptable. On the contrary the existence of the communication and the material available on records (Employees List provided by the Noticee itself) substantiate that the communications cannot be simply disbelieved without any attendant circumstances being shown. Further drawing reference of the *Hon'ble Supreme Court order in the matter of SEBI v. Kishore R. Ajmera (2016) 6 SCC 368*, I note that, the *immediate and proximate facts and circumstances surrounding the events and the context of the communications and basis of preponderance of probability, reasonable conclusion through inferential process has been drawn, that the communication are of Noticee in this respect*. Further, the reply of the Noticee is absolutely oblivious to this allegation and no explanation has been offered for the same.

- 17.2. I also note here that, in either of the scenario, the allegation is with respect to the fact that no assurance/guarantee can be made in securities market by IA and by promising the same the Noticee is misleading the clients. The Noticee has contended that, the disclaimer on market risk is brought out in the interim order which contains that, *"it does not provide any guaranteed service"* and *"with investment, your capital is at risk"*, and has mentioned that, clients visit website before subscribing to our services and hence it cannot be deemed that Noticee has not disclosed to the Investors about the risk associated with investment in securities market. Therefore, the evidence given by the complainants has no substance in view of the disclaimer on website. I note here that, by merely making a disclaimer on the website that returns are subject to market risks, the Noticee cannot absolve itself of its liability in making such a reckless and careless misrepresentation of assured/guaranteed return to the clients through email and communications. Further, the Noticee's conduct of promising assurance/guarantee return through communications and SMS, are 100% contradictory to the disclaimer. If its objective was not to mislead

investors, it should not have communicated such reckless and careless claims/promises in its service/products. Therefore, the Noticee cannot take shelter under its submission that it has given due disclaimer on the website while ignoring the direct personal communication of its employees which is 100% to the contrary, to the investors.

17.3. In view of the above and the finding in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

18. FI has been unfair in its dealing with the clients and has extorted money under different pretexts

18.1. The Noticee has denied communications with Mr. Raghava Kalva and Mr. Rajeev B, and mentioned that since it denies the communications no further explanation is required.

18.2. The extract of the communication in the interim order are as follows:

WhatsApp messaging with Mr. Raghava Kalva (complainant):

27.06.19, 1:21 pm – raghava: I payed what ever I have

27.06.19, 1:22 pm – raghava: I took it from my father

27.06.19, 1:22 pm – raghava: You know I struggle to pay 5k

29.06.19, 12:37 pm – future Investment: and make the excuse of amount. I am just asking for 13570 only

29.06.19, 12:41 pm – raghava: pay my money back

...

*29.06.19, 12:42 pm – future Investment: **Non refundable policy***

29.06.19, 12:42 pm – raghava: What you did not say all this before.”

WhatsApp messaging with Mr. Rajeev B. (complainant):

“Rajeev B: Mail was sent to me not clearing my queries.

FI (Shruti): U have to pay service amount remaining from profit that I will mail u.

Tax u have to clear now. Aftr 72000 u have to pay after profit only.

*FI (Shruti): There is **no refund policy.***

Rajeev B: Okay. You can deliver the same statement to SEBI, NSE, BSE, Indore Police and other Competent Authorities.

FI (Shruti): Sebi donot ask for refund if client is denying to take service ok

Rajeev B: It was your responsibility to inform me before starting the things FI

(Shruti): Ok no problem.. I will tell the tax department that u r not interested and your time is wasted.. so kindly block your service.

Rajeev B: Dear I have clearly informed you after making more than the necessary payments to you, you have declined my profile by stating that I need to pay GST 72000/- which had not informed earlier. I got a valid information from your side that due to no payment of GST, you have cancelled my profile.

...

FI (Yamini): sir we did not said it official

...

Rajeev B: what do you mean? Message received from official who is using office number is not an official message?

FI (Yamini): message is not count in official....

18.3. As noted from the communications made, client has paid more than what was disclosed at the beginning of his service / package availed by him and the Noticee has not disclosed the full amount at the time of initial product / service selling to its client but gradually demands it from the client giving reasons that if the client does not pay the same then services will be stopped, profits will be lost, pretext of service tax and GST, etc. Further, complainants have mentioned no refund policy for the services availed and the IA did not respond to the communication for refund. Further, it is noted that the invoices mention that the 'Payment is Non Refundable' under 'Terms and Conditions' and that subscription charges once paid are non-refundable.

18.4. It is noted that though Noticee has denied the communications exchanged, it has not denied that Shruti and Yamini, are its employees. Neither did the Noticee deny that the recipient are its clients. Further it is noted from the submission of the Noticee dated April 03, 2021, and the available documents on record, that communications being exchanged is between the employees

and clients of the Noticee. The Noticee has also not presented any facts or documents, basis of which the communication should be disbelieved. Therefore, mere denial of the communications without any supporting reasons/evidences to the effect that why the communication cannot be the communication of the Noticee without contradictory facts, is not acceptable.

18.5. In view of the above and the finding in the interim order, I note that the submissions of the Noticee is devoid of merit and cannot be accepted.

19. Selling Multiple Packages

19.1. Noticee has submitted that client has opted for various subscriptions based on their free will and was offered in the absence of any specific regulation. Noticee had no malafide intention with regard to selling multiple products and is committed to provide all services as subscribed by its clients. Further, The Noticee has mentioned that, there were no prevailing regulations restricting the sale of multiple subscriptions.

19.2. It was observed in the interim order that, FI sells multiple services to its clients, even though the subscription period of earlier products/services were not yet over and the advisory fees charged is more than the investment/portfolio amount and gross annual income. Two such instances brought out are as follows:

19.2.1. FI has taken around Rs. 8.15 lakh towards service charges by issuing 12 different invoices to the client and had sold him 5 different services within a period of just 17 days, even though earlier packages were not over. The fees are more than 4 times of client investment amount and market value of his portfolio and 1.6 times, his gross annual income

19.2.2. FI has taken Rs. 10.09 lakh towards service charges by issuing 9 different invoices and sold 4 different services within a period of just 13 days. Fees

are 5 times of client investment amount and market value of his portfolio and double, his gross annual income

19.3. It was also brought out that, *the services were sold to the clients without taking into account the information provided in the risk profile of the client, especially his gross annual income and investment amount / market value of his portfolio, where, the total fees charged was disproportionate to his gross annual income.*

19.4. I note that the Noticee attempts to justify its action by mentioning that the clients have taken the product/services at free will. However, the Noticee has failed demonstrate that the product/services have been explained in detail with respect to the risk associated, the appropriateness of the product/services to the investors, no refund policy, etc. before offering the products/packages and charging the said advisory fees. The Noticee has mentioned that it had adequately disclosed the relevant material information, while dealing with its clients, however the Noticee has failed to produce documentary evidence in this respect or evidence justifying how the information or offered multiple products/packages were intimated to the clients. I note that, even though the clients may request or opt for certain product/services of their free will, however, the IA cannot deny its responsibility on the pretext of just free will of the client as the IA Regulations casts the responsibility on the IA for ensuring that the investment advices/services to the clients are commensurate with the financial and income capacity of the clients and thus has failed in in a fiduciary responsibility towards its clients entrusted under IA Regulations.

19.5. With respect to advisory fees being charged 4 to 5 times of the client's investment amount and market value of his portfolio and beyond his gross annual income, the Noticee has not presented any explanation or rationale on why it was selling these multiple products/services in which case the advisory fees was beyond the investment amount/portfolio/gross annual income of the client, except mentioning that it was with the free will of the client. The Noticee

has also failed to provide any documentary evidence or justification or communication to the investors indicating how these multiple products/services are achieving the objectives and goals of the investors, risk associated with the products/services and why the investors need to avail these multiple products/services upfront. Also, IA Regulation requires that the IA should charge “fair and reasonable fee” however, charging the clients with advisory fees even beyond the clients income capacity, investment and the portfolio value, violates the principle that investment advisers are to act with due care due to its fiduciary relationship with their clients. Further, in view of the instant cases, not only the Noticee is observed to be maximizing its income by selling multiple advisory services with advisory fees being charged 4 to 5 times of the client’s investment amount, within a short period of time and even before completion of the earlier service but is also observed to not paying regards to the clients’ financial condition.

- 19.6. With respect to the contention of the Noticee that no prevailing regulations restricts the sale of multiple subscriptions/products and absence of any specific regulation on offering multiple product/services, I note that IA Regulations cast the responsibility on the IA to take due care while acting in fiduciary capacity for ensuring appropriateness and suitability of various products/services commensurate with the needs and financial conditions of the clients, alongwith necessary disclosure of material information such as, risk absorbing capacity, financial condition of the client, no refund policy, etc. to aid the client in making informed decisions, inbuilt in regulation 17 of the IA Regulations. Also, the regulatory requirement mentions that fees charged to the clients shall be fair and reasonable. However, locking in of clients with various advance fees products/packages without the option of refund of fees, results in “unfair fee” and also “unfair dealing” as the client losses opportunity to not continue with Noticee, even if not satisfied with the products/services of the IA. Further, selling product/services beyond the income capacity is also breach of risk profiling regulatory requirement. The regulation requires an investment adviser

to deal with the clients with honesty and fairness. In the instant case it is *prima facie* observed that the Noticee has not been honest and fair while dealing with clients, as services/products were sold to the clients in advance without taking into account the information provided in the risk profile of the client, his gross annual income and investment amount / market value of his portfolio, which lead to charging advisory fees totally disproportionate to the gross annual income/investment amount/portfolio of the clients and also the client getting stuck with the Noticees without an option to terminate services and get refund of the payments made. The aforesaid actions and conduct of the Noticee *prima facie* shows that it has failed in its responsibility to act in a fiduciary capacity towards its clients which is entrusted to it under IA Regulations. Further the conduct of the Noticee to sell multiple products in contrast to the information provided in the risk profile and financial conditions of the clients with no refund policy and failure to substantiate with documented process for selecting investments based on client's investment objectives and financial situation, adequate disclosure of material information to client, and client consent received, *prima facie* is observed to be deceptive with the intent to conceal material information from clients and the Noticee is not transparent in its dealing. The above actions of the IA operates as a fraud on its clients and the malafide intent of Noticee in connection with its dealings.

19.7. In view of the above and the findings in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

20. Suitability Assessment of products/services irregularities

20.1. The interim order brought out the observation where the package / service sold to the clients did not match the risk profiles. Three such instances namely, Mr. Raghava Reddy Kalva, Mr. Radharaman Dash, Mr. Sunil Semwal, have been reproduced in the interim order where it was prime-facie observed that:

20.1.1. The products sold by FI to clients are not appropriate to the risk profile / risk tolerance of clients.

20.1.2. FI has not sold products/services based on client's financial situation.

20.1.3. FI has not sold services as per the investment objectives and investment time horizon of the clients

20.2. With respect to Mr. Raghava Reddy Kalva, the Noticee has contended that, *the Risk Profile was communicated on June 18, 2019 and the client opted for the Option Premium Services on June 25, 2019. In the aforesaid mail it has been clearly mentioned that as per Risk Profiling of the client, he falls under the category of Medium Risk. The product which he is selecting comes under, High Risk Category. Still the client preferred to opt for High-Risk Product.* With respect to the contention of the Noticee that client opted for the respective service on June 25, 2019, the Noticee has subsequently mentioned that, *no interpretation may be made of having any written consent of client to his opting the High risk services* vide its submission dated April 03, 2021. It is noted that Noticee is providing contrary submission and has admitted of no written consent from the client. The Noticee has also failed to provide any documentary evidence on how and on what basis the confirmation/consent for opting the high risk service was made by the client on June 25, 2019. With respect to the inappropriate product/service offered to the client, Noticee admits that the product/service suitable for the client is medium risk instead of high risk services, however the Noticee fails to provide any document conveying or communicating or counselling the clients that the product/services chosen/offered are not appropriate and suitable based on the risk appetite of the clients. Further, the IA regulations cast the responsibility on the IA of suitability assessment appropriate to the risk profile of the client in an objective manner commensurate with the facts and financial conditions of the clients rather than just relying on willingness of the clients, particularly, when the clients financial condition does not show loss taking ability.

20.3. Noticee has contended that, *In the case of Mr. Radharaman Dash, it has been observed in the interim order, “that the client’s gross annual income is Rs. 2-5 lacs and erstwhile investment was less than Rs. 2 lacs. Therefore, it has been concluded that, the respondent sold the products without considering risk profile of Mr. Dash, we herewith submit that, the respondent carried out a proper risk profiling”*. It is noted that, the Noticee has conveniently brought out only the part of the interim order to justify itself. However, the para continues as follows in the interim order, *“FI has sold 7 services to the client within a span of 5 days amounting to Rs. 4.16 lakh which is approximately the gross annual income of the client. The same is prima facie in total disregard to the financial condition of the client as disclosed in the risk profiling form of the client”*.

Further the Noticee has mentioned that, *“it carried out a proper risk profiling and from the risk profile it can be observed that scores obtained by Mr. Dash is 82 and his risk tolerance is weighted as “High Risk”. Therefore, giving weightage merely to only few factors and concluding that the Respondent had not taken due care and was unreasonable in assessing the risk profile, would be unjust. Further, from the extracted table of the risk profile, mentioned in the order, that the response of the client to Q.21 pertaining to Risk Tolerance is “HIGH”; and Q.27 pertaining to “How he defines himself” as a “risk taker”, is “Willing to take Evaluated Risk”. Therefore, it would be wrong to say that the Respondent has not exercise due care and skills, diligence in ascertaining the risk appetite of its client”*. In this context, the extract of the risk profile in the interim order is reproduced as under:

Q. No.	Questions	Response	Score
21	Risk Tolerance	High	5
26	Assume that you have invested Rs.1,00,000 in a share that goes down by 10% the next day.	Book your loss and invest in fixed deposits or bonds	2

27	How would you 'honestly' describe yourself as a risk taker?	Willing to take evaluated risk (I can't tolerate a some loss)	4
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It is seen that though the risk tolerance response is taken as high, however, the financial capabilities of the client from the response to Q26 and Q27 is of a "risk averse" client. It is observed that, the Noticee has considered partial response to Q27 and ignored "*I can't tolerate a some loss*" and also ignored the response to Q26 while making the contention. Therefore it is observed that the risk profiling was not objectively made to meet the objectives of the clients. Further, it may be noted that, selling of product which is suitable to the client's risk could include offering the products which may be high risk product, but it in any case the same cannot include selling of such products/packages which is not commensurate with the financial conditions of the clients and where the fees itself goes beyond gross annual income. This is lack of due diligence and breach of fiduciary duty by the Noticee in assessing the appropriate product/services to the clients.

20.4. With respect to Mr. Semwal, the Noticee has mentioned that, *though he represented himself as a retired person, but the other parameters which he himself disclosed, while ascertaining the risk profile, leads him to High Risk tolerance capacity. The overall score of Mr. Semwal obtained is 81 which puts him into High Risk Category. Therefore, in the light of above, it would be wrong to say that the recommendations given by the respondent, to its client, would not meet the client's investment objective.* It is noted here that, the interim order has brought out that the product services offered to the client is not based on the '*client's objectives*' of having '*regular income*' and '*long term positional*' investment type. It is also noted that the product service offered was 'Jobbers Futures' for Rs.1,16,000/- for four months period service, which is in contrast to the product generating regular income and 'Stock Cash' an intraday product in contrast to 'long term positional' investment type. Therefore the *prime facie*

observation was made that, *the recommendations given by the FI, to its client, would not meet the client's investment objective*. I note that the Noticee has not provided any justification or evidence, with respect to the relevance/parity of the product/ service being offered or recommended to the client which could bring out that the needs and objectives of the clients are achieved. Further, I note that as an IA, the Noticee is required to do necessary due diligence in objective manner irrespective of the choice or option of the client, which may be based on incomplete or incorrect understanding as seen in earlier instant, to ensure that the product/services combination is commensurate with the clients loss absorbing capacity, meet the objectives of the investments and are within the financial capacity of the client.

- 20.5. Further in the instant three complainants matter it is *prima facie* observed that Noticee has failed to provide any objective reasoning and documents to substantiate that the recommendation it was giving to its clients was consistent with the client's investment objectives, his ability to bear related investment risks, his risk appetite and his capacity to absorb loss. It is also observed that the Noticee has not been honest and fair in its dealings with its clients and has kept its own interest at higher pedestal compared to the interest of its clients as the Noticee has selected and sold multiple products/services without any regard to the financial situation of the client, his investment objectives and his risk appetite. I also note that, while performing or rendering services as an IA, it is required that the IA shall act diligently with due skill, care and, ensuring that its advice is offered after thorough analysis of the risk profile and risk appetite of its client, the financial strength of the clients, their investible earnings and the suitability of various investment products after taking into account available alternatives. The Regulations further cast responsibility on the IA that while rendering services of an IA, they will have to seek from their clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and shall make

adequate disclosures of relevant material information pertaining the advice rendered while dealing with their clients.

20.6. Further the Noticee has contended that, *“it uses a comprehensive scoring method based on responses of the clients. The risk profiling questionnaire was framed on the parameters such as: age, investment objectives, time span, income detail, existing investments and assets, risk appetite and tolerance, and status of borrowings/liabilities etc., furthermore, due care had been taken by the Noticee, in assessing its client’s ability and willingness for absorbing losses. Moreover, due care has been taken to ascertain that appropriate weights are assigned to all answers”*. The Noticee has also contended that, *it has acted in a professional manner and exercised due care, skill, and diligence in ascertaining the risk appetite of the client*. It is noted from the submission made that Noticee is relying on the responses and inputs received from the clients, even when there are particularly contradictory and inconsistent with the financial conditions of the client and therefore the Noticee has not acted in professional manner. It is also important to note that conducting an objective assessment of the risk profile/appetite of the clients as provided in the IA Regulations is a responsibility of the Investment Adviser. For instance, Regulation 16(b) insists upon a process for assessment of risk which the client is willing to take (subjective criteria) and able to take (objective criteria). I note that there may be cases where the client says he/she is willing to accept risk, with or without understanding the implication of the same (subjective criteria), however, he/she may not have the capacity to absorb the loss (objective criteria). Further Regulation 17(e) of IA Regulations on suitability requirement, says that the recommendation has to be consistent with his/her “capacity for absorbing loss” (objective criteria) and appropriate with the risk profile of the client as per Regulation 17(a), which can include the willingness to take risk (subjective criteria). However, the conduct of the Investment Adviser by recommendation of the product services to clients which are not appropriate to the risk profile / risk tolerance of clients, not based on client’s financial

conditions/situation, and not as per the investment objectives and investment time horizon of the clients, nullifies the protection given to the investors by mandating the IA to follow the mix of mandatory objective and subjective criteria for selection of suitable products. Further I also note that, the objective of risk profiling and suitability assessment is to determine the risk tolerance and loss absorbing capabilities of client and recommend suitable asset allocation/investment commensurate with the same and consistent with the investment/financial objectives of the clients, and if the same is not empirically made, it can lead to unsuitable and inappropriate services being offered to the clients, which defeats the objective of due diligence by the IA and is against the mandate of the IA Regulations. Therefore it is *prima facie* observed that the Noticee has not done the risk profile and suitability assessment appropriately and failed in due diligence and complying with the regulation.

- 20.7. The interim order has brought out the observation that, the *Noticee has concealed information from the client by non-disclosure of relevant material information about the intricacy of the product including its key features, performance track record and various kinds of risks and rewards associated with it, with the intent to defraud the clients.* In this respect the Noticee has submitted that, *all material information pertaining to the product/services offered were disclosed on the website and therefore, it cannot be concluded that the Noticee has by any means concealed any information, with an intention to defraud the clients.* I note here that website of intermediary may contain all the material information but the same is not the basis for arriving at the suitable product/services for the clients. On the contrary the IA Regulations cast the responsibility on the IA, who, acting in the fiduciary capacity for the clients are mandated to do appropriate risk profiling to arrive at suitable investment advice in line with the clients' requirements, needs and financial conditions and make necessary disclosure of material information on performance/service, intricacy of the product including its key features highlighting risk and potential loss, relating to an investment product which it is recommending to the client, etc.

I note that Noticee has not been able to produce any documentary evidence that the necessary disclosures and communications as required have been made to the clients.

- 20.8. In view of the above and the findings in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

21. Risk profiling, communication of risk profiling and financial planning

- 21.1. The interim order brought out the case of Mr. Mohd Aquib Khan where, it was observed from the risk profiling form that the client's current investment amount and market portfolio amount is less than Rs. 2 lakh, gross monthly salary is shown as Rs. 28,951/-, however, the client was sold multiple products worth Rs. 2,23,705/- within a span of one month. Further communication with the employee of the Noticee were brought out raising concern on demand of the advisory fees and returns on investment and that the fees being paid through credit from bank, raising the loan to around four lacs. In view of the facts it was observed that financial planning was not diligently done by Noticee for Mr. Mohd. Aquib Khan while selling services. The Noticee in its submission has denied the WhatsApp communication between the representative of Noticee and the Client (Mr. Aquib Khan). The Noticee has mentioned that it had no information pertaining to Mr. Mohd. Aquib Khan having taken loan to pay advisory fees. I note here that, facts of financial conditions of Mr. Mohd. Aquib Khan was brought out on record as per the information available, in terms of services being sold by Noticee worth Rs.2,23,705/- in a month's time in comparison to the monthly salary of Rs.28,951/- and the investment amount and market portfolio of less than Rs.2,00,000/-. The facts represent that the client's financial condition is not considered during the financial planning and selection of investment services required as per IA Regulations. Further the Noticee has also not presented any facts or documents, on the basis of which

the communication may be disbelieved. Therefore, mere denial of the communications without any supporting reasons/evidences to the effect that why the communication cannot be the communication of the Noticee or any contradictory facts, is not acceptable. I note that the Noticee has not denied the facts presented or produced with respect to financial condition in terms of monthly salary, market portfolio and advisory fees charged, however, the Noticee has not provided any contrary facts for the observation made that financial planning was not diligently done. Further, I also note that the Noticee has not provided any factual justification, reasoning or documents on the appropriateness of the financial planning in the instance case, in compliance with IA Regulation.

21.2. In the interim order it is prima facie observed that Noticee is selling products before communicating risk profiling to the clients in violation of the IA Regulations. Facts were also brought out where it was observed that clients, namely, Mr. Vijay Parvatrao Andhale, Mr. Pranamya Joshi and Mr. Radharaman Dash, were communicated risk profile on January 14, 2019, January 31, 2019 and November 24, 2018, respectively, however, the products were sold much before the communication to clients i.e. on December 26, 2018, January 03-19, 2019 and November 13-17, 2018 respectively. In this respect the Noticee has submitted that, *“risk profiling of Mr. Vijay Parwatrao Andhale, Mr. Pranmaya Joshi and Mr. Radharaman Dash, was done in accordance with regulation 16 and with respect to the observation of delay in communicating risk profiling, all risk profile assessments were done before giving advisory services to the clients and none of the clients disputed the Risk Profile and Suitability Assessment Report.* I note taking of fee by selling the product before communication of the risk profile to the clients has invariably given away the right of the client to dispute or disagree, where the advisory fees has already been paid by the clients and there is no refund policy. Therefore the contention that all risk

profile assessments were done before giving advisory services to the clients and none of the clients disputed stands irrelevant as the client is stuck with the Noticee with no right to dispute as the payments have already made much before the communication by Noticee. As per the IA regulations, IA shall ensure suitability of the investments on which investment advice is provided is appropriate to the risk profile of the client. This essentially means that for objective assessment of suitability of product/services risk profiling to precede suitability assessment. Moreover the regulation also mentions to communicate the risk profile of the client after risk assessment is done. The objective of this is to let the investor rule out any ambiguity between the client and IA vis-à-vis client's inputs for risk assessment. However, in the instant matter, the advisory fees is being paid before communication of risk profiling which defeats the objective of IA regulations. I note that, though the IA Regulations do not stipulated time line for communication of risk assessment, selling of a product before communication of risk assessment defeats the objective of communication which eradicates the possible errors of inputs forming the basis of risk assessment. Therefore, accepting fee before the risk profiling is communicated can result into unsuitable product being sold to the clients due to input disparities as explained above, particularly in the context of no refund policy under which the investor is locked into the services even if his/her risk assessment is inappropriate and he/she learns of this after having paid for the services. This is in violation of the IA Regulations which casts the responsibility on the IA acting in a fiduciary capacity towards the clients for compliance with the objectives and principles of risk profiling and suitability assessment, which if not done can lead to unsuitable and inappropriate services being offered to the clients. The Noticee vide letter dated April 03, 2021, has further submitted that, the *Noticee informed its clients about their risk taking capabilities and suggested its clients, suitable investment as per risk profile*. However, the Noticee has failed to provide the communication on apprising the client on the suitability of the product/services based on the risk profile, risk absorbing capabilities, no refund policy and also failed to place on

record the documented process in the instant case for selecting respective investments based on client's investment objectives and financial situation, clarifying/apprising the client that the high risk means high probability of loss, etc.

21.3. I also note that the Noticee has not disputed the fact of advisory fees being received before risk profiling being communicated to the clients. As the advisory fees for the services/product was made before the risk profile communication it may be possible that the product/services offered is non-commensurate with the risk tolerance and appetite of the client and unsuitable to the client. Further it is inconceivable on how for the product/services for which the payment has already been made without risk profiling may be suitable to client's needs and objectives, since the risk profiling and suitability is done afterwards. It is also observed that, the IA is citing "no refund" in the various communications brought out in the interim order, this in effect shows that the client is stuck with the product/service of the IA irrespective of what his subsequent risk profiling is arrived at.

21.4. As per the interim order in the instance of Mr. Pranamya Joshi, it is observed from risk profile that the occupation has been mentioned as 'private sector' instead of 'Business' and primary source of income as 'salary' instead of 'business' in risk profiling form, therefore the resultant overall risk score arrived is 84 (High Risk) instead of 79 (Medium Risk), this was observed to be made with an objective of selling high risks products instead of only one medium risk product. The Noticee has contended that, *the risk profile form is filled based on the inputs given by the client and not based on Know Your Client (KYC), which was never disputed by client and therefore it would be unjust to press that the Noticee was involved in manipulative activities in risk profile assessment.* It is important to note that conducting an objective assessment of the risk profile/appetite of the clients as provided in the IA

Regulations is incumbent on the Investment Adviser. Further the process of mandatory objective and subjective criteria for evaluation of the risk appetite and suitability assessment has already been explained in the paragraph 20.6 above. I note that Regulation 16 and 17 of the IA Regulations, *inter alia*, requires that the investment adviser shall obtain from its clients, information necessary for the purpose of giving investment advice, such as, their age, investment objective, income details, prior experience, existing investments, risk appetite, liabilities/ borrowings, etc. and provide investment advice appropriate to the risk profile of the client.

Though the client vide submission dated April 03, 2021, has mentioned that *it collected all necessary information about the clients pertaining to KYC and Risk profiling under a set mechanism*, however, it has failed to prove that the information obtained has been comprehensively used while risk profiling and suitability assessment. I note that the objective behind the regulations is that the clients gets only that investment advice which is consistent and suitable with their risk appetite. If the IA Regulations are interpreted that there is no requirement for verification of the information provided by the client and that inputs including grossly contradictory inputs attributed to the clients because no dispute is raised by clients, are enough, then the entire objective behind the regulation would be defeated, as in that case the advice given by the investment adviser could become completely inconsistent with the real risk appetite and suitability of product to the client. As already brought out, the responsibility is cast on IA acting in fiduciary capacity to ensure that suitable product is recommended based on the risk profile commensurate with the financial conditions of the client. I note here that the Noticee is only trying to escape the liability and responsibility by contending that it has only considered inputs provided by the client and not the KYC documents. The Noticee by not taking into account contradictory inputs, shows that Noticee has *prima facie* failed in the fiduciary responsibility to exercise due care and diligence and is not honest in dealing with its clients and does not consider the best interest of its client while advising him, but as guided only by its own benefits.

21.5. The Noticee has also contended that technical lapse such as communication of Risk Profile, or not doing financial planning cannot be terms as fraudulent and unfair Act. and that Reg. 16(e), does not specifically mentions a timeline for communicating risk profiling. I note here that the Noticee admits of the observation/violation, however, it contends that the same cannot be termed as fraudulent and unfair act being technical lapse. I note that the principle contained in the Regulation cannot be termed as technical lapse based on interpretation of the Noticee.

21.6. It has already been brought out in the interim order as well as above paragraphs the objective and principles of appropriateness of risk profiling and suitability assessment, importance of communication of risk profile and suitability assessment, financial planning for the clients, etc. I also note that the very premise of having an Investment Adviser is to ensure that the clients get professional assistance in the financial market in the most comprehensive manner abiding by the regulations framed thereunder. However, I note that Noticee has failed in its responsibility to act in a fiduciary capacity towards its clients, which is entrusted to it. Further as a registered IA, it is the duty and responsibility of the IA to act honestly and fairly in the best interests of its clients and integrity of the securities market. However, it is observed that the Noticee has not conducted its operations honestly and fairly in the best interest of the clients and violated the regulations, for its own interest and benefits and has not acted in a prudent manner while dealing with the clients. Further, if the Noticee had a well-documented process of selecting investments products/services based on the risk profile of the client, the same would have involved with proper communication of the risk profile to the client before any investment advice/ product/ subscription is sold the clients, confirmation/consent of the client for the risk profile and suitability assessment and a more reasoned financial planning of the clients.

21.7. In view of the above and the findings in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

22. Seeking non relevant information from clients

22.1. It is observed in the interim order that representative of the Noticee through WhatsApp communication are seeking demat id and password of the clients, which is outside the scope of investment advisory activities. With respect to this observation the Noticee has denied the communication and activities with the clients. Though the Noticee has denied the communication however, it has not denied that the individuals exchanging the communication are not its clients and employees. The Noticee has also not presented any facts or documents, basis of which the communication is disbelieved or denied. Therefore, mere denial of the communications without any supporting reasons/evidences to the effect that why the communication cannot be the communication of the Noticee or any contradictory facts, is not acceptable. I also note that being an Investment Adviser, the Noticee ought to have restricted its operation in providing only advice to his clients, who are left with the discretion to deploy such advice or not. However, the aforesaid the communications exchanged establish that the Noticee has been acting seeking non relevant information in complete disregard to the regulatory framework which cannot also be termed to be an act done in fiduciary capacity and is outside the scope of activities.

22.2. In view of the above and the findings in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

23. Non-Redressal of Investor Grievances

23.1. The Noticee has contended that, *IA is required to file ATR within 30 days. However, the spirit of filing ATR within 30 days is to ensure that cognizance is taken on the complaint filed, and mere filing of ATR doesn't mean resolution of dispute. The circular doesn't stipulate that the complaint filed be resolved within 30 days, and to deem so, would be an inaccurate interpretation of the same.* I note that the interim order brought out four complaints pending in SCORES as on January 31, 2020, for which ATR was not filed within the stipulated time of 30 days. Therefore, it was observed that, *IA has not submitted the ATR in a time bound manner as prescribed by SEBI and therefore not resolved investors' grievance.* Contextually, the interim order's finding is on the basis that ATR was not filed in time, such filing of ATR is the step towards the resolution of the investor grievance. Since the same was not done, the interim order recorded that failing to file the ATR within stipulated time Noticee has not resolved the investor grievance.

23.2. The Noticee has also submitted that, *there are no pending complaints on which the order is relied upon.* I note that as per the SCORES status as on date 7 unique complaint are pending beyond 30 days in SCORES of which 2 complainants pertain to the interim order. Therefore, the Noticee's submission is not correct. As per the status of SCORES it is noted that, Noticee has also not filed any ATR with respect to the other 3 (nos) complaints pending. I also note that the Noticee has paid and settled the other two complainants referred in the interim order for resolution of the complaint and stated that *"without going into nitty-gritty and merits/demerits of each complaint has arrived at amicable resolution with its the clients, the settlements were done as prudent business decisions and should not be treated as admission of any wrongdoing with the clients of the Noticee".*

23.3. In view of the above and the findings in the interim order, I note that the submissions/contentions of the Noticee are devoid of merit and therefore cannot be accepted.

24. Examination of complaints and records of conversations between FI's representatives and clients.

24.1. SEBI also examined the complaints and records of telephonic conversation between the clients / complainants and the employees / representatives of Noticee. The complaints and records of telephonic conversations, have not been relied upon to arrive at the *prima facie* findings in the interim order against the Noticee, since other material or records was adequate for the same. However, the records of conversation have been produced in the interim order to have holistic picture of the actions of Noticee. The Noticee has submitted that since these communications are not relied upon to arrive at the *prime facie* findings, it does not require comments. It may be noted that though the communications and complaints provided additionally in the interim order have not been relied upon during the *prime facie* violation in the interim order, however, the said details have been duly brought out so that Noticee be given the adverse materials and information available with SEBI, and the same if required, may be relied upon based on the facts and merits of the case in subsequent stage of the proceedings, if any. As stated in the interim order, the said materials have not been relied upon at the stage of the interim order.

25. The Noticee has additionally submitted that, *it has disclosed all material facts in the terms and conditions, Invoices and on its website*. I note that the Noticee has made a general submission without any documentary evidence to substantiate the submission and/or its relevance.

26. In view of the consideration of material available on record including submissions made by the Noticee, the findings in the interim order as mentioned in paragraph

5 above continues to stand at prima facie level. Hence, I find that the Noticee is, *prima facie*, in contravention of various provisions of the IA Regulations and the PFUTP Regulations, as outlined in the Interim Order. Hence, there is no justifiable reason to revoke or modify the directions issued against Ms. Pinky Kelva, proprietor of M/s Future Investment vide the interim order.

Order:

27. In view of the foregoing paragraphs, pending conclusion of enquiry, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11B and 11D thereof, hereby confirm the directions issued vide ex-parte ad interim order dated September 29, 2020, against Ms. Pinky Kelva, Proprietor of M/s. Future Investment.

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

-sd-

Date: June 03, 2021

Place: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA