

WTM/AB/WRO/WRO/16948/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

UNDER SECTIONS 11(1), 11(4), 11B (1), 11D OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Noticee no.	Noticee Name	PAN
1	Capital Stroke Investment Services Pvt. Ltd.	AAFCC1815M
2	Mr. Upendra Singh Rajput	CLGPS4925M
3	Mr. Prashant Singh Baghel	BIKPP1812J
4	Mr. Kamlesh Dhole	BGTPD3720Q

(The aforesaid entities are hereinafter referred to by their respective names / noticee numbers or collectively as “the Noticees”)

In the matter of Capital Stroke Investment Services Pvt. Ltd.

1. Capital Stroke Investment Services Pvt. Ltd. (hereinafter referred to as “**Capital Stroke**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) 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 March 21, 2014, having Registration No. INA000001316. The registered office of Capital Stroke is at “404, 4th Floor, Gravity Tower 6/1 Race course Road Indore Indore MP 452001”. Its website address is <http://www.capitalstroke.com>.
2. SEBI conducted an inspection in relation to the affairs of Capital Stroke, during November 03-06, 2020, at its registered office, to monitor compliance by Capital Stroke with the provision of Securities and Exchange Board of India Act, 1992, (hereinafter referred as ‘**SEBI Act, 1992**’), the Regulations, the Circulars and the

Guidelines framed thereunder. After conclusion of inspection, SEBI found Noticee no. 1 to 4, to have *prima facie* violated the provisions of Regulation 15(1) of IA Regulations, and Clauses 1 and 2 of Code of Conduct for Investment Advisers as specified in Third Schedule read with Regulation 15(9) of IA Regulations, and Regulations 3 (a), (b), (c) & (d), 4(1), 4(2)(k) and 4(2)(s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) read with Section 12A(a), (b) and (c) of SEBI Act, 1992. Additionally, Noticee no. 2 to 4 were also *prima facie* found to have violated Clause 9 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations. In view of the aforesaid *prima facie* violations by the Noticees, SEBI passed an ex-parte ad interim order dated August 27, 2021 (hereinafter referred to as “**the Interim Order**”), against the Noticees and the following directions were issued:

- 36.1.1. *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*
- 36.1.2. *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 manner whatsoever;*
- 36.1.3. *not to divert any funds raised from investors, kept in bank account(s) and/or in their custody;*
- 36.1.4. *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;*
- 36.1.5. *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;*
- 36.1.6. *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;*
- 36.1.7. *to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order reproducing the directions mentioned in paragraph 36.1 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this order.*

- 3. I note that the Noticees were given 21 days’ time to file their reply/objections to the Interim Order. The Noticees have filed their reply dated October 15, 2021 to the Interim Order. They were also granted an opportunity of personal hearing on December 27, 2021, on which date, the Advocate representing the said Noticees, was heard.
- 4. I shall now proceed to examine whether the directions issued by the Interim Order *qua* the Noticees, needs to be revoked or confirmed, in view of the submissions made by

the Noticees. The Interim Order *inter alia* alleges following main violations by the Noticee no. 1:

- i. Making false and misleading representation by promising assured profits and returns to clients.
- ii. Charging unfair and unreasonable fees from clients.

5. The following paragraphs discuss the reply of the Noticees on the aforesaid allegations made in the Interim Order and my observations thereon.

I. False and misleading representation by promising assured profits and returns to clients

(i) On this front the Interim Order has made the following observations:

“

7. Promising assured profits and returns:

7.1. During the inspection based on the material on record, it is observed that Capital Stroke has been promising assured profit / returns on the investment made by the clients and luring them to avail its services. The service details mentioned at the service web pages (<http://www.capitalstroke.com/stock-tips.php> and <http://www.capitalstroke.com/sf-delivery.php>) in the website of Capital Stroke provide the following to lure clients into taking its services which is in the nature of promising assured returns.

*“ **Stock Tips** : When you stick to these share tips that are given by experienced analysts you can definitely register gains into your trading account.*

How it helps?

Investor can get huge profit if the stocks are bought with great care and research, investor purchases the stocks when the prices are low and sell when prices are high.

Therefore investor can get huge profit by holding the stocks.

These tips help clients to invest money in the best scrip and earn good profit. ”

FAQ *“Since we provide quality calls to our clients after diligent research, they earn a handsome profit, so the chances of loss are negligible. Therefore, we don’t have any policy of refund”.*

7.2. Capital Stroke is knowingly misrepresenting the truth on promising profits and returns. Further, such statement presented by the Capital Stroke on their website on possibility of earning profit when seen together is misleading to the point of giving assurance of profits/returns to the investors visiting the website and availing the services and are designed to influence the decision of investors dealing in securities.

7.3. Further, from the complaint analysis of Capital Stroke it is observed that various complaints are in the nature of alleging profit guarantee by the company. In this regard, the complainants have submitted the call recording of telecommunication between the client and the employee of the Capital Stroke. The conversation in the call recordings are narrated as under:

- I. Mr. Mohsin Md Hanif Dhale (complaint no. SEBIE/MP20/0000073/1):
"Mr. Mohsin Md Hanif Dhale (time stamp: 0.20): 25K se 70 days main profit to nikal kar aayega na.....
Employee of Capital Stroke: are bulkul nilkal ke aayega Mohsin j.....i ab main aap se kya bolu bilkul nikal kar aayega..... nikalne vali chinta ko aap chod do..... nikalne ki chinta hame hona chahiye aapse jayada kai guna hame hoti hai..... kyunki humne aapko mail diya hai.
Mr. Mohsin Md Hanif Dhale (time stamp: 0.50): Round about avrage kitna hoga 70 days main.....
Employee of Capital Stroke: aap dekhalo 10 percent ek call per niklega..... ab us hisab se avrage kar lo 5 hajar 10% hota hai apne investment ke anusaar to 5K ek call per niklega to 2 calls per 10K niklega daily ka."
- II. Mr. Shivaji Yamgar (complaint no. SEBIE/MP20/0000963/1) :
Recording - 1 dated October 18, 2019
"Employee of Capital Stroke (time stamp 2:30): thoda cooperate kariye aap.....aane wale 5 se 6 mahine main, main aapko 30 lakh se 40 lakh ka profit nikal kar duga."

Recording - 2 dated December 04, 2019
"Mr. Shivaji Yamgar (time stamp 1:05): Apne hi bola tha na to.....mahine main aapko weekly 3 se 3.5lac ka profit denge
Employee of Capital Stroke: ha sir bilkul aayega.....aap thoda wait karo main dhire dhire profit nikal kar deta hu
Employee of Capital Stroke (time stamp 2 :22): baki paisa kab doge.....apka pura 9 lakh ka plan hai.....jab profit kaamke dunga tabhi doge na.....to mujhe bhi to apse paisa lena hai.....to main profit kaamke dunga.....jab main apko 3 lakh kamake dunga....uske baad 1 lakh mangunga.....tab to doge na.
Mr. Shivaji Yamgar: mujhe to kuch profit do
Employee of Capital Stroke: ha to wahi bol raha hu sir ke sath main month main 3 se 4 level per hi kaam karne ko milega or ek level ki costing kam se kam 60 se 70 hajar ka profit milta hai aise main month main aapko chaar level per kaam karaya to jo aapko bataya vo mil jayega"

7.4. An investment adviser is required to comply with SEBI Act and other applicable Regulations. By promising assured profits and returns to the client, the IA knowing fully well that assured profits / guaranteed returns in securities market is impossible, was knowingly misrepresenting the truth. Further, such statements are misleading to an investor who visit the website and are designed to influence the decision of investors dealing in securities.

7.5. Based on the context of the communication referred above, it is observed that communications are exchanged between the employees of the IA and the clients of the IA, where assurance of profit and returns are being promised to the clients. The communication and action of the employees on making assurance of profit/return are

misrepresentation to the clients and meant to deceive the clients to attract/lure the clients in towards the IA services.

7.6. I also note here that, being Registered Investment Adviser (RIA) it is the responsibility of the IA to ensure that the employees are acting within framework of the IA Regulations, code of conduct and if there is any non-compliance, necessary action be taken by the IA. I note that an IA cannot neglect or be unconcerned of its responsibility and accountability towards the acts and conduct of its employees. In view of the above, the Noticee is responsible for the acts of all the employees.”

(ii) The Noticees have provided the following response to the aforesaid observations of the Interim Order:

“.....That, the averments made in para 7.1 are false, frivolous, vexatious, capricious, arbitrary and unsubstantiated, as these interpretations have been made on pick-choose basis, whereby, the learned inspection officers of the board have picked up few lines from the contents of website of the respondent and as the officer has neither annexed the screenshot of entire page nor have they copied all of its content, *prima-facie*, the interpretations are entirely unsubstantiated and arbitrary and against the settled principle of law that “Any Document/ record which is relied upon has to be read as whole and cannot be read in piecemeal,

Furthermore, the officer has left out the word “Can” used before definitely register gains can according to Black’s Law Dictionary denotes “a mere possibility and thus by no stretch of imagination it can be interpreted to mean guarantee of any sorts.

Similarly, in subsequent lines get huge profit is underlined without taking into consideration the entire para and the page from which the said para is arbitrarily chosen out.

That, in this regard the respondent places reliance on following judgement:-

Palvinder Kaur V Rup Singh {MANU/SC/0038/1952: AIR 1952 SC 354}

Dadaraao V State of Maharashtra (AIR 1974 SC388)

Hanumant Govind Nargunkar V State of Mahdya Pradesh (MANU fSC/0037/1952 : AIR 1952 SC 343) of the Hon’ble Supreme Court where the Hon’ble Court held that “A document should be dissected and considered only in part when that part is inextricably connected with the other part which is not taken into consideration.

Appellants: Ranka Jewellers and Qrs. Vs. Respondent: Addl. CIT Cen. Range-I and Ors. MANU/IP/0144/2011

Ratio Decidendi “seized document has to be read as a whole and should be relied upon or rejected in its entirety.”

That, the averments made in para 7.2 are preposterous, absurd & mutually contradictory as the officer has alleged that “possibility of earning profit” If the respondent is allowed same liberty like the officer to pick and choose

the averments it is clear and admitted position of the board itself that respondent has only stated a possibility of earning profit and no guarantee of any. Sorts. Further; the interpretation made by the officer is so arbitrary that it will attract the *wednusbury* principle, such that no prudent man can reach to such conclusion.

That, it is pertinent to mention here that, the officer has deliberately left-out the disclaimer part on the website which clearly reads "Investment/trading in market is subjected to market risk" and "We do not provide any guaranteed or assured return services. profit sharing services, Demat account services, Investment related services or any other services which are not mentioned at our website."

That these disclaimer are a part of the Invoice and a disclaimer is sent along with all other documents which are sent to the customer along with every email conversation and are also available on the companies website. Thus, the conclusion drawn by the inspection officer is completely arbitrary, vexatious, capricious and unsubstantiated.

That, in para 7.3 it is purported that some voice recordings are made available by the clients Mr. Mohsin Md. Hanif Dhale and Mr. Shivaji Yamgar, here Firstly, the complaints of both these clients have been closed on SEBI SCORES and a refund has been initiated by: the company well before the issuance of the impugned notice, and no adjudication can be made on a complaint which is already closed as per SEBI rules as the same is barred by the Constitution of India under Article 20(2),

Secondly, the said recordings are purported and allegedly sent by the complainants and are not recovered during the said inspection, it is imperative for the board before placing any reliance on the said recordings to atleast make a preliminary enquiry into the genuineness and correctness of the said recording, the officers should have verified whether the recordings are true or fake, whether they actually belong to an employee of the company or are just made by someone to put unlawful blame on the company, here, the respondent are not requesting to conduct a FSL report of the said recording but atleast a undertaking/ affidavit attesting the correctness of the said recording should have been taken to attest some credibility to the said recordings.

That, the respondents unequivocally and explicitly deny that any such conversations have been made by Capital Stroke, Further, we have complied with KYC, Risk Profile, Suitability Report, invoice, welcome mail, terms and conditions and disclaimers and disclosures and the invoice and other documents clearly state "Investment/trading in market is subjected to market risk" and "We do not provide any guaranteed or assured return services, profit sharing services, Demat account services, Investment related services or any other services which are not mentioned at our website. Further, the aforementioned documents and disclaimers make in amply clear that the company has made all efforts to warn the clients of the risk involved in trading and has in-effect discharged the duties entrusted on him. Furthermore, after such disclaimers and disclosures it cannot be said that the respondent has misrepresented or lured the clients by making any false statement.(A copy of set of relevant documents is Annexed as- A/1).

That, in para 7.4, 7.5 and 7.6 the averments made are completely and unequivocally denied for being misplaced and unsubstantiated as the company makes sufficient

and repeated disclaimers and disclosures on various documents and through all e-mail communications that "Investment/trading in market is subjected to market risk" and "we do not provide any guaranteed or assured return services, profit sharing services, Demat account services, Investment related services or any other services which are not mentioned at our website." Thus the findings of aforementioned paragraphs is grossly misconceived, capricious and arbitrary in nature and deserve to be set aside."

- (iii) I note that, the Noticees have contended that SEBI has adopted a 'pick and choose' approach and deliberately selected incriminating phrases from the contents of their website to allege that Noticees were offering assured returns. It is the case of these Noticees that when the contents of the website are considered in 'toto' and alongwith the 'Disclaimer' on the website, no charge of 'assuring promising returns', is made out against them. In this regard, I note that from the perusal of the contents of the website, as recorded in the interim order, it is clear that Noticees were offering assured returns. However, Noticees in their reply have contended that because of presence of word "can" in their representation made on the website, which only indicates "possibility", Noticees can not be said to have made the promise of assured return. In this regard, Noticees have relied upon the meaning of the word "can" as given in the Black's dictionary which states, "mere possibility". In my view, the representations made by the Noticees on their website should be read in ordinary sense as an ordinary investor would have understood them in common parlance and not in the light of the technical meaning given in the dictionary. As noted in the interim order, the representations made by the Noticees clearly gave message that on availing the services of the Noticees, investor would earn profit. Whereas investments in securities market are subject to various risks and in a worst case scenario one can lose even the capital invested and earning profit remains a far cry. In such a scenario, the representations made by the Noticees on their website amounted to offering assured return and contentions made by the Noticees in this regard are untenable.
- (iv) Further, after perusing the contents of the impugned webpage (<http://www.capitalstroke.com/stock-tips.php>) of Noticee no. 1 using the Web Archives (web.archives.com), as available on record, I find the following contents under the tab 'Stock Tips':

“.....If you have an idea of investing in the share market and trading online in stocks then you need to definitely pay attention to the stock market tips that experts in the field give. There are quite a number of online trading companies that offer these tips but it becomes essential that you take a look into the success track record of the company involved. Capital Stroke provides stock tips and intraday share tips for trading which have been found to give good returns to its traders as well as investors. We offer precise and accurate share tips which are arrived after a lot of research and probing into the profile of the company in question, its history, the earnings per share and many other parameters. When you stick to these share tips that are given by experienced analysts you can definitely register gains into your trading account.

How it helps?

Investor can get huge profit if the stocks are bought with great care and research, investor purchases the stocks when the prices are low and sell when prices are high. Therefore investor can get huge profit by holding the stocks.

These tips help clients to invest money in the best scrip and earn good profit.

You can also book the selling limit of the particular scrip by using these tips.

By using these intraday tips you can buy the stocks at a lower price and sell stocks at a higher price to that of the market.

You can also book profit on their portfolio by using these tips.....”

- (v) On perusal of the aforesaid webpage, I could not find any paragraph/ line / phrase in the nature of ‘Disclaimer’, as is being said to have been displayed by the Noticee no. 1 on its website. I note that Noticee no. 1 has produced copies of ‘Welcome e-mails’ and copies of ‘invoices’ that were purportedly sent to the complainants (which contained the Disclaimer) by Noticee no. 1. I note that such proofs do not help the case of the Noticees, since all these disclaimers are being put up before the clients only after they have paid for the services. It is observed in the Interim Order that Noticee no. 1 has been found to have adopted such business practices that lure the prospective clients into availing the services of Noticee no. 1 by falling prey to the assurances of guaranteed returns being made by Noticee no. 1. I find that the claims made by Noticee no. 1 on the website such as “When you stick to these share tips that are given by experienced analysts you can definitely register gains into your trading account.”, “Investor can get huge profit if the stocks are bought with.....”, are nothing but misleading promises of assured returns, being made by Noticee no. 1 to prospective clients. Further, on perusal of the transcript of the call recording of the complainants - Mr. Shivaji Yamgar and Mr. Mohsin Md Hanif Dhale, as are reproduced in the Interim Order, I find that communications are exchanged between the employees of Noticee no. 1 and the clients of Noticee no. 1, where assurance of profit and returns are being promised to the clients. I note that the

Noticees have denied that such conversations have been made by employees of Capital Stroke. However, there apparently appears no reason as to why the complainants would produce such call recordings, had they not been genuinely aggrieved by the conduct of Noticee no. 1. It is not the case of the Noticees that the complainants have produced fabricated/ concocted call recordings to take personal revenge or otherwise. On the other hand, I note that the Noticees have approached SEBI through its online complaints portal i.e. SCORES after being aggrieved by the conduct of Noticee no. 1 as an investment adviser. I note that the Noticees have merely raised suspicion on the veracity of these call recordings without providing any evidence. I note that the Noticees have admitted that Mr. Shivaji Yamgar and Mr. Mohsin Md. Hanif Dhale were their clients, then they could have provided the record of the Investment Advise provided by them to these clients in order to counter the veracity of recording provided by the complainants. I also note that in accordance with Regulation 19(e) of IA Regulations, the Investment Adviser is mandated to maintain record of all investment advise provided by him for a period of five years. If the Noticees are disputing the existence of such conversation, then they ought to have produced the evidence of actual Investment Advice given to these clients. However, I do not find any such proof being put forward by the Noticees. Thus, I find that the Noticees have merely denied the existence of these call recordings to escape from the consequences of these proceedings.

- (vi) In view of the aforesaid, I find that the observations made in the interim order regarding false and misleading representation made by Noticee no. 1, by promising assured profits and returns to clients, sustain.

II. Charging unfair and unreasonable fees from clients.

- (vii) On this front the Interim Order has made the following observations:

- 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 prima facie find that the following are the instances of collection of unreasonable / unfair fee.

The said instances relates to:

- 8.1.1. Selling multiple services for overlapping service periods and in a very short span of the time

8.1.2. Locking in the clients by advance fee for sale of products without refund.

8.2. Selling multiple services for overlapping service periods and in a very short span of the time.

8.2.1. During the inspection instances of selling multiple products to same clients was observed. Two instances where Capital Stroke has sold multiple services /products of same nature to clients are as under:

I. Mr. Mohsin Md Hanif Dhale (Scores Complaint no: SEBIE/MP20/0000073/1)

Table no. 1

S.No	Invoice Date	Invoice no.*	Service offered	Amount paid (in Rs.)	Service start date	Service end date
1	18/04/2019	14187	Stock Cash	3,000	23/04/2019	22/05/2019
2	24/04/2019	14247	Stock Cash Premium	22,000	26/04/2019	25/05/2019
3	25/04/2019	14271	Stock Cash Premium	10,555	26/04/2019	25/05/2019
4	26/04/2019	14292	Stock Cash, Cash Premium	15,000	29/04/2019	28/05/2019
5	27/04/2019	14299	Equity Plus	25,000	02/05/2019	31/05/2019
6	27/04/2019	14300	Equity Plus	24,445	02/05/2019	31/05/2019
7	08/05/2019	14409	Equity Plus	14,409	02/05/2019	31/05/2019
8	08/05/2019	14410	Equity Plus	31,000	02/05/2019	31/05/2019
9	27/05/2019	14743	Stock Cash, Cash Premium	27,981	06/06/2019	01/07/2019
10	28/05/2019	14767	Stock Cash	14,333	06/06/2019	09/08/2019
11	28/05/2019	14768	Stock Cash	6,656	06/06/2019	09/08/2019
12	28/05/2019	14775	Stock Cash Premium	14,902	06/06/2019	25/06/2019
13	31/05/2019	14851	Stock Future Premium	26,333	06/06/2019	09/07/2019
14	31/05/2019	14857	Stock Cash	13,500	06/06/2019	20/09/2019
Total				2,49,114		

**Invoices submitted by the complainant*

8.2.2. From the above table, it is apparent that the client has made 14 payments to Capital Stroke amounting to Rs. 2,49,114/- during the period from 18/04/2019 to 31/05/2019. Following are the observations on the basis of the above table;

- The client was billed four times for the same service i.e. Equity Plus, for the same period i.e. 02/05/2019 to 31/05/2019 vide four separate bills no. 14299 & 14300 both dated 27/04/2019 & 14409 & 14410 both dated 08/05/2019.
- Similarly, client was billed twice for Stock Cash premium service for the same period i.e. 26/04/2019 to 25/05/2019 vide two separate bills no. 14247 & 14271 dated 24/04/2019 & 25/04/2019 respectively.
- Further, it can be seen from the above table that there are multiple instances of overlap of service periods.
- Further, prior to completion of the advisory services, new advisory services are assigned to the clients.

II. Mr. Harish Kumar (Scores Complaint no: SEBIE/MP20/0000777/1)

Table no. 2

S.No	Invoice Date	Invoice no.*	Service offered	Amount paid (in Rs.)	Service start date	Service end date
1	04/01/2020	7522	Stock Cash	6400	15/01/2020	31/01/2020
2	06/01/2020	7523	Stock Cash	12200	01/02/2020	09/03/2020
3	07/01/2020	7524	Stock Cash	9000	10/03/2020	07/04/2020
4	09/01/2020	7525	Stock Cash	13000	08/04/2020	16/05/2020
5	14/01/2020	7654	Stock Cash	18100	18/05/2020	12/07/2020
Total				58,700		

*Invoices submitted by the complainant

8.2.3. From the above table it is noted that within a period of 10 days (during January 04, 2020 to January 14, 2020) Stock Cash was sold five times to the client and collected total of Rs. 58,700. It is observed that, even prior to completion of the 1st service period of Stock Cash which was allotted to the client on January 04, 2020, additional 4 services of stock cash for the extended period was sold to the client.

8.3. 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 fee for overlapping tenure, charging fee for various tenures of services prior to the completion of previous tenures, etc. It is noted that Capital Stroke has not been fair and reasonable in its dealing with the clients as outlined above as it is charging the clients for the same product for period which is overlapping, charging for services in advance even before completion of the earlier service, etc.

8.4. **Locking in the clients by advance fee for sale of products/packages without refund**

8.4.1. In view of the instances brought out above, it is observed that Capital Stroke 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 made by the client in advance and also as there is “No Refund and Cancellation” policy followed by the IA.

8.4.2. It is observed from the website of Capital Stroke that it has “No Refund and no cancellation Policy” for the fees collected. The refund policy also mentions that, “All sales are final. Because Capital Stroke offers a free 2 days evaluation to ensure that our products and services will meet your needs without the need to purchase, there will be ABSOLUTELY NO REFUNDS and CANCELLATIONS”. Further Capital Stroke also clarified and stated in the section FAQ that, “Since we provide quality calls to our clients after diligent research, they earn a handsome profit, so the chances of loss are negligible. Therefore we don't have any policy of refund”.

8.4.3. 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.

8.4.4. It is also observed that service period for few services are overlapping and operational for same period of time. The few services sold by Capital Stroke which were operational during overlapping period was not in the interest of client while duplication of payment and services, in effect, has been taken for the overlapping period.

(viii) The Noticees have provided the following response to the aforesaid observations of the Interim Order:

19. That, the averments made in para 8.1 and ensuing paragraphs are denied for the reason that the Board has never provided any ceiling on the fees to be charged and whether the fees is reasonable or not cannot be decided later-on on the basis of surmises, Further the findings in these paragraphs is arbitrary and attracts the Doctrine of Double Jeopardy as the complaints have already been closed to the satisfaction of SEBI and the client by processing a refund and Secondly the reasonability of fees can only be decided between the client and the company at the time of sale a subsequent evaluation will be biased and unlawful. Thirdly the respondent is producing a table of refunds made by the respondent to prove that even after having no refund policy the respondents aim was never to lock the clients and refunds have been made always if complaints have been found to be true.

Year	SEBI Complaint	Internal Complaint	Total Amount Refund
2018-2021	45	84	Rs. 1,10,72,389/-

That, the above table depicts two things, First, that the respondents have been making refunds always if any complaints have been found to be even prima-facie substantiate. Secondly, this refund has been processed irrespective of SEBI, intervention in as much as twice the cases refunds have been processed on internal complaints, that is the complainant has not even approached SEBI. That, a detail of refunds made alongwith PAN number details of client for KYC purpose is (Annexed as- A/2). That the respondent submits that if required & ordered the respondent will provide all available evidence in support of aforementioned table, if the Hon'ble Board so orders.

That, in para 8.2 and ensuing paragraphs again allegations have been levelled on the basis of two complainants, however, both the complaints have been closed as per the satisfaction of SEBI and the clients and any further adjudication is barred by Doctrine of Double Jeopardy. Further, there is no bar on selling multiple services to a client in-fact a RIA cannot perform his duties properly if he cannot suggest multiple services to the clients. Furthermore if the client is satisfied with the services of the company and wish to avail the service for an extended period the RIA is not excluded to provide such extended services to the client, merely because client has expressed willingness to buy annual service or such like services it cannot be said that the conduct of the company is unfair or unreasonable.

That, in para 8.3 allegations have been made that the fees charged by RIA is unreasonable, however, in the same paragraph it is admitted that the reasonability is not defined, further when the company has closed all the complains where there was any dispute raised by the clients any further adjudication in the matter is unconstitutional and against the laws of natural justice.

That, averments in para 8.4 to 8.4.4 are majorly based on a presumption that respondents are locking the clients by not giving any refund option, however, by the aforementioned table it is amply clear that the company has made refunds regularly even in cases where the complainant has never approached SEBI, which suggests that the respondent was following a fair procedure with regards to handling of complaint and making refunds, wherever the circumstances called for and the client had a genuine grievance. Thus, the findings are perverse and has no substance to stand on, consequently the allegations must be set aside.

(ix) I note that the Noticees have contended that Noticee no. 1, as a registered Investment Adviser, is free to sell multiple services to a single client and is also free to sell services for extended period of time, if the client is satisfied. In this regard, I note that Interim Order highlights the instances of irrational and incomprehensible pricing practices adopted by Noticee no. 1. For instance Mr. Mohsin Md. Hanif Dhale has made 14 payments to Capital Stroke amounting to Rs. 2,49,114/- during the period from 18/04/2019 to 31/05/2019. What is striking from these payments is that:

- i. The client was billed four times for the same service i.e. Equity Plus, for the same period i.e. 02/05/2019 to 31/05/2019 vide four separate bills no. 14299 & 14300 both dated 27/04/2019 & 14409 & 14410 both dated 08/05/2019.
- ii. Similarly, client was billed twice for Stock Cash premium service for the same period i.e. 26/04/2019 to 25/05/2019 vide two separate bills no. 14247 & 14271 dated 24/04/2019 & 25/04/2019 respectively.
- iii. Further, there are multiple instances of overlap of service periods.
- iv. Further, prior to completion of the advisory services, new advisory services are assigned to the clients.

(x) I note that Noticee no. 1 has failed to provide any specific response to these observations in the Interim Order. These payments do not indicate any regular Investment Advisory Fees but *prima facie* point towards an unfair, unrealistic and unreasonable fee structure being adopted by Noticee no. 1. Similarly, the fees charged to Mr. Harish Kumar also reflect an unreasonable fee structure. Within a

period of 10 days (during January 04, 2020 to January 14, 2020) 'Stock Cash' was sold five times to the client and Noticee no. 1 collected total of Rs. 58,700. It is observed that, even prior to completion of the 1st service period of Stock Cash which was allotted to the client on January 04, 2020, additional 4 services of stock cash for the extended period was sold to the client. Noticee no. 1 has not provided any specific response to these observations. In view of the above, I find that observations made in Interim Order in this regard, stand.

- (xi) I note that on the allegation of 'Lock-in of client money without refund', the Noticees have provided a list of refunds that purportedly were made by Noticee no. 1. It is the case of the Noticees, that even if there was a mention of 'No refund policy' on the website of Capital Stroke, but the same was never followed in practice by them. In this regard, I find that the data provided by the Noticees is not supported by any third party corroborating evidence like bank statements, which would lend credence to the claims of the Noticees. Nonetheless, no adverse inference could be drawn against Noticee no. 1 on the policy of 'No refund', since the same is not an 'unfair or unreasonable' practice, especially when the client is made aware of such a policy before availing any service.
6. I note that the Noticees have contended that SEBI has unjustly acted upon those complaints which have already been satisfactorily resolved by Noticee no. 1. I do not find any merit in this contention. Mere resolution of complaint, does not result into settlement of the violation of the provision of law. The Interim Order has highlighted *prima facie* instances of violation of Code of Conduct by Noticee no. 1. What is sought to be remedied is the consistent rogue behavior of Noticee no. 1 and not a mere few instances of delinquent conduct.
7. I note that the Interim Order has held that Noticee no. 2, 3 and 4 are in charge of operations and compliance of Capital Stroke. I also note that the Noticees have not disputed this finding of the Interim Order. Thus, for the violations of provisions of SEBI Act, 1992, SEBI (PFUTP) Regulations, 2003 and IA Regulations, by Noticee no. 1, I *prima facie* find that Noticee no. 2, 3 and 4 have failed in ensuring the maintenance of appropriate standards of conduct of Noticee no. 1, thereby violating provision of

Clause 9 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

Direction:

8. In view of the foregoing, I find that, no case is made out by the Noticees to revoke or modify the directions contained in the Interim Order, therefore, I hereby confirm the directions issued against the Noticees in the Interim Order, which shall remain in force till further orders.
9. The order comes into force with immediate effect.
10. A copy of this order shall be served on the Noticees, all recognized Stock Exchanges and Depositories.

Sd/-

Date: June 8, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA