National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53050	Date: July 21, 2022
Circular Ref. No: 92/2022	

To All NSE Members,

Sub: **SEBI Order in the matter of Mr. Nilesh Vajifdar**

This is with reference to NSE Circular No. NSE/INVG/47948 dated April 08, 2021, in respect of SEBI Order No. WTM/MB/WRO/WRO/11265/2020-21 dated April 07, 2021.

SEBI Now vide Order No. WTM/AB/WRO/WRO/17980/2022-23 dated July 21, 2022, has hereby debarred Mr. Nilesh Vipinchandra Vajifdar (PAN: ADPPV1303D) from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors as directed in para 18.1 of SEBI Order, whichever is later.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under “Home-Regulation-Members-Action against Members-Regulatory Actions”.

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

National Stock Exchange of India

Mr. Kshitiz Gupta (Extension: 22526), Mr. Anand Jangir (Extension:22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: SEBI Order in the matter of Mr. Nilesh Vajifdar

WTM/AB/WRO/WRO/17980/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL 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	Mr. Nilesh Vipinchandra Vajifdar	ADPPV1303D

In the matter of Unregistered Investment Advisory activities by Mr. Nilesh Vajifdar.

---

1. SEBI passed an *ex-parte* interim order dated April 7, 2021 (hereinafter referred to as **'the interim order'**), against the Noticee as the Noticee was *prima facie* found to have engaged in investment advisory activities, without obtaining a certificate of registration from SEBI. By the interim order, the Noticee was *prima facie* found to be in violation of provisions of Section 12(1) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") and Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **'IA Regulations, 2013'**), and Sections12A (a), (b) & (c) of SEBI Act, 1992 and Regulation 3(a), (b), (c) & (d), Regulation 4(1) and 4(2)(k) of SEBI (Prohibition on Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003**"). In view of the aforesaid *prima facie* violations, SEBI passed the interim order against the Noticee and the following directions were issued:

"..

1.1. *Mr. Nilesh Vipinchandra Vajifdar is directed:-*

1.1.1. *to cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor,* *directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever;*

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

1.1.3. *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.*

1.1.4. *to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, Facebook, Whatsapp, websites, communications etc., in relation to their investment advisory activity or any other unregistered activity in the securities market;*

1.1.5. *not to access the securities market and buy, sell or otherwise deal in securities, either directly or indirectly, in any manner whatsoever;*

1.1.6. *to provide a full inventory of all assets held in his 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;*

1.1.7. *to submit the number and details of clients who have availed their investment advisory Services and to submit details of fees collected from each such client, immediately but not later than 5 working days from the date of receipt of this order.*

1.2. *If Mr. Nilesh Vipinchandra Vajifdar have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. Mr. Nilesh Vipinchandra Vajifdar is permitted to settle the payin and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*

1.3. *ICICI Bank is directed not to permit any debits / withdrawals and not to allow credits, from / to the following bank accounts, without the permission of SEBI. PayTM, PhonePe and GooglePay where Mr. Nilesh Vipinchandra Vajifdar is holding an account through mobile no. 9825131967, are directed to deactivate the said account. The said Banks, PayTM, PhonePe and GooglePay money are directed to ensure that all the above directions are strictly enforced.*

Sr. No	***Name of Bank Account Holder***	***Bank Account Number***	***Name of the Bank***

1	*Nilesh Vipinchandra Vajifdar*	624601054561	*ICICI Bank*

1.4. *The Depositories are directed to ensure, that they neither permit any debits nor any credits in the demat accounts held by Mr. Nilesh Vipinchandra Vajifdar either individually or jointly.*

1.5. *The Registrar and Transfer Agents are directed to ensure, that they neither permit any transfer nor redemption of the securities, including Mutual Funds units, held by Mr. Nilesh Vipinchandra Vajifdar either individually or jointly.*

……………………………………”

2. I note that the interim order was also in the nature of a show cause notice and the Noticee was also called upon to show cause as to:

“…………………………………….

2.1. why his securities related activities discussed in this order should not be held as “Investment Advisory Services” in terms of the IA Regulations and thereby the activity of Noticee be treated as unregistered activity under the SEBI Act and relevant Regulations;

2.2. why the various representations made / services offered by Noticee in securities market, thereby luring and inducing investors to deal in securities by availing his services, may not be treated as a fraudulent practice / act / conduct, in terms of PFUTP Regulations;

2.3. why suitable directions / prohibitions under Sections 11(1), 11(4), 11B(1) and 11D of the SEBI Act and relevant SEBI Rules/Regulations, including the following, should not be issued / imposed against him, for the alleged violation of provision of SEBI Act and IA Regulations as discussed above in this order:

2.3.1. Directions for prohibition from buying, selling or otherwise dealing in securities market, either directly or indirectly, in any manner whatsoever, for an appropriate period;

2.3.2. Directions to not be associated with any registered intermediary/ listed company and any public company which intends to raise money from public in the securities market, in any manner whatsoever;

2.3.3. Directions as to why he should not be directed to refund, the fees collected from the investors/clients for unregistered investment advisory activities under Sections 11 and 11B(1) of SEBI Act;

2.3.4. Any other directions as it deemed necessary.

……………………………………..”

3. I note that the Noticee was given 21 days' time to file his reply/ objections to the Interim order. The Noticee has filed his email reply dated July 24, 2021 to the Interim Order. Thereafter, on September 20, 2021, the matter was placed before me for granting a date of hearing in the matter. The Noticee was granted an opportunity of personal hearing on March 16, 2022, on which date, the Noticee appeared personally (through CISCO WebEX) and was heard.

4. In the interim order, on the basis of material available on record including copies of the Facebook post / whatsapp post of Noticee, the following claims made by Noticee were noted:

4.1. Nilesh Vajifdar '*Equity Research Analyst'*, Inventure growth & Securities Limited, Mobile No. 98251131967, Email: nileshvajifdar@gmail.com. Join India's No. 1 Advisor channel.

4.2. Some of posts made by Noticee on his Facebook page were as under:

4.2.1. On August 23, 2020, Noticee posted that *"Earn 15% to 20% every year from Share Market by our Paid Service"*

4.2.2. On August 30, 2020, Noticee posted that:

	Advisory Plan	*Period*
1	*Rs. 2,500*	*1 – Months*
2	*Rs. 6,500*	*3 – Months*
3	*Rs. 13,000*	*6 – Months*
4	*Rs. 21,000*	*12 – Months*

4.2.3. On September 01, 2020 & September 29, 2020, Noticee posted in Gujarati that earn 20% to 25% return every year from share market and avail his paid advisory service today and stated that this offer is for limited member.

4.2.4. On November 05, 2020 Noticee posted that *"3000 Rs monthly charge, which is nothing. You can recover in a day or two with me"*

4.2.5. On November 07, 2020, Noticee posted that *"Earn 3,000 daily by investing in Nifty Options Intraday with 90 % sureshot calls given. Join our paid advisory group. WhatsApp on 9825131967."*

4.2.6. On November 25, 2020, Noticee posted that *"Pay just 1000 for 10 days and join in our premium advisory group. Hurry Good opportunity to earn handsome money".*

4.2.7. On November 29, 2020, Noticee posted that *"Sure Shot Calls, Join, start chat in Telegram, daily calls, Free. Equity / F&O/ commodity / only Crude oil"*

4.2.8. On December 09, 2020, Noticee posted that *"15% Return on Investment, Share Market Tips, Join us. Nilesh V Vajifdar Mobile: 9825131967".*

4.2.9. On January 20, 2021, Noticee posted that *"Bank Nifty Profit Today, BUY ADANI PORT ON NSE CASH / FUT ABOVE 553, SL 550, TGT OPEN…."*

4.2.10. On March 23, 2021, Noticee posted that:

Advisory Plan – Bank Nifty		
	Rs.	***Months***
1	*1,499*	*1*
2	*3,799*	*3*
3	*7,599*	*6*
4	*15,999*	*12*

5. From the material available on record, I find that Noticee has been making regular posts on Facebook, urging people to join his paid advisory service and claiming performance of his advice. I find that the fee charged by the Noticee for his advisory services are ranging from Rs. 1,000/- to Rs. 21,000/-.

6. I note that the ICICI Bank A/c. no. 624601054561 (IFSC Code: ICIC0000851) is mentioned on Facebook post / Whatsapp messages of Noticee. On perusal of the bank account statement of the aforesaid ICICI Bank A/c. no. 624601054561, belonging to the Noticee, I find that:

6.1. Multiple UPI payments through mobile number 9825131967 linked with GooglePay / Phonepe / Paytm are credited into the aforesaid ICICI Bank of Noticee.

6.2. The total credit received in the aforesaid bank accounts is approximately Rs. 16 lakh during the period May 2019 to March 24, 2021.

6.3. Several narrations for the payment received indicate that the UPI payments were made for 'Nifty' and 'Index Options'.

6.4. Payments which appear in the nature of fees through UPI started appearing from May 03, 2019 in the account.

6.5. Subsequently, many credits have been received in the account through UPI for sums of Rs. 10,000 and Rs. 20,000/-.

7. I note that the Noticee has admitted that he has given investment advice and that he has taken 'subscription fees' and that he has made a mistake, since he had no knowledge. From the copy of the Facebook Posts/ Whatsapp messages that are available on record, I find that the Noticee has made claims of lofty returns for attracting subscriptions from gullible investors to his paid advisory services. I note that, alongwith his reply dated July 24, 2021, the Noticee has furnished details in tabular form about the Total Credits and Total Debits into his bank account for the period from May 3, 2019 to March 24, 2021 with contention that all money credited in his bank account is not fees collected from investors and that amount includes his commission from mutual distribution and insurance. I have perused the details furnished by the Noticee in this regard and find that the same are not supported by any corroborating evidence. For instance, the Noticee claims that he has earned a commission of Rs. 1,13,746.48, from Mutual Fund distribution, however, no supporting proof has been produced to show that the same is commission from mutual fund distribution. Similarly, he has claimed that he has earned Rs. 3,96,652/- from Insurance Commission, but no supporting proof of he being an Insurance Agent or a Memo/ Statement from an Insurance Company evidencing the disbursal of 'commission', has been produced by him. Therefore, I find no merit in the submissions made by the Noticee and concur with the observations of the interim order that the Noticee has collected approx. 16 Lakhs rupees for the period from May 3, 2019 to March 24, 2021 towards fees for rendering investment advice.

8. From the aforesaid facts, I find that the Noticee was engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products in lieu of consideration. Therefore, I find that in terms of Regulation 2(1)(l) of IA Regulations, 2013 the Noticee was providing "investment advice". I note that if an

entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, the Noticee has received Rs. 16 lakhs approx. in the bank accounts mentioned in its Facebook/ Whatsapp posts. The Noticee has been unable to prove that these funds were earned from other source of income. Hence, I find that these services were being offered by the Noticee in lieu of the consideration, as noted above. Therefore, I find that the Noticee was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as an investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

9. I also note that, it is imperative that any person carrying out investment advisory activities has to necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

> *"No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:"*

10. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy inter alia the following requirements, as provided under IA Regulations, 2013:

    10.1. An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;

10.2. The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

10.2.1. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

10.2.2. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

10.2.3. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

10.3. Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

11. I note that safeguards provided under IA Regulations, 2013 requires continued minimum professional qualification and net-worth requirement for investment adviser,

including disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are aimed at protection of investor interest.

12. Section 12(1) of the SEBI Act, 1992 provides as under:

> ***Registration of stock brokers, sub-brokers, share transfer agents, etc.***
> *12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.*

13. As per Regulation 3(1) of IA Regulations, 2013 the registration of the investment advisers is mandatory. It provides that, "*On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations".*

14. It is noted that the Noticee was not registered with SEBI in the capacity of Investment Advisor. Hence, I find that these activities were being carried out by the Noticee without holding the certificate of registration as investment adviser and are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.

15. I note that, an unregistered investment adviser like Noticee can put investors at great risk by misleading them. Without having a registered Investment Adviser certificate, Noticee is engaged in the business of providing investment advice to clients with the objective of making money/ collecting fees through advisory services. Further, Noticee has put information in public domain / advertising by using Facebook page and Whatsapp messages about the earning 15% to 25% return every year though paid advisory services offered by him in securities market. Thus, by making the claims of assured "yearly return" between 15% to 25% and claim of "*earn 3,000 daily by investing by investing in Nifty Option Intraday with 90% sureshot calls given",* Noticee is, inducing investors to deal in securities by availing his services. Such *modus*

operandi is being continuously used by Noticee, which is evident from the fact that there are continuous credits in his bank accounts. It is observed that Noticee's claim to provide a specific return on client's investment or to claim guaranteed profit, is, an active concealment of the material fact that every investment in the market is subject to market risk. This act of conveying specific returns or certainty of profit, is indulging for the purpose of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticee to actively conceal material information, is a non-genuine and a deceptive act and has been made with an intent to influence the client to avail its advisory services and deal in securities.

16. I find that, the above discussed act and omission of Noticee is, fraudulent and is covered under the definition of '*fraud*' defined under Regulation 2(1)(c) of PFUTP Regulations, 2003. Thus, fraudulent activity / conduct / act / omission / practice of Noticee, as discussed above, is in violation of provisions of Sections 12A (c) of SEBI Act, 1992 and Regulations 3 (d) and Regulations 4(1) of PFUTP Regulations, 2003.

17. As observed in the earlier part of this order, I note that, the Noticee has collected Rs. 16 Lakhs (approx.) during the period from May 3, 2019 to March 24, 2021, in his ICICI Bank Account. I further note that the Noticee has been restrained from accessing the securities market or dealing in securities, vide the interim order dated April 7, 2021.

Directions:

18. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

    18.1. The Noticee shall within a period of three months from the date coming into force of this order, refund the money received from any complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;

18.2. The Noticee shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;

18.3. The repayments to the complainants/ investors shall be effected only through bank transfers, which ensures audit trails to identify the beneficiaries of repayments;

18.4. The Noticee is prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit from the bank accounts of the Noticee, only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the Noticee;

18.5. After completing the aforesaid repayments, the Noticee shall file a report of such completion with SEBI addressed to the "Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Depatment, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051", within a period of 15 days, after completion of three months from the coming into force of the directions at para 18.1 above, duly certified by an independent Chartered Accountant and the direction at para 18.4 above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors, to the satisfaction of SEBI;

18.6. The Noticee is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities, directly or indirectly in any manner whatsoever, for a period of 6 months from the date of this order or till the expiry of 6 months from the date of completion of refunds to complainants/ investors as directed in para 18.1 above, whichever is later;

18.7. The Noticee shall not undertake, either during, or after, the expiry of the period of debarment /restraint as mentioned in para 18.6 above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

19. It is clarified that the direction for refund, as given in para 18.1 above, does not preclude the clients /investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

20. This order comes into force with immediate effect.

21. A copy of this order shall be sent to the Noticee, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Sd/-

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: July 21, 2022
Place: Mumbai