National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/54212	Date: October 27, 2022
Circular Ref. No: 154/2022	

To All NSE Members,

Sub: **Final Order in the matter of M/s Capital Mars and Anr.**

SEBI vide Order No. WTM/AB/WRO/WRO/20743/2022-23 dated October 27, 2022, has hereby debarred the below mentioned entities from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, 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 along with depositing of balance amounts, if any, with SEBI as directed in para 19(a) and 19(e) of the Order, whichever is later.

Sr. no.	Name of the entity	PAN
1.	Shri Santosh Patidar (Proprietor: M/s Capital Mars)	APRPP1496H

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. Souradeep Ghosh (Extension: 23345), 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

ANNEXURE: Final Order in the matter of M/s Capital Mars and Anr.

WTM/AB/WRO/WRO/20743/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Sr. No.	Noticee	PAN
1.	M/s Capital Mars	APRPP1496H
2.	Shri Santosh Patidar Proprietor : M/s Capital Mars	APRPP1496H

In the matter of Unregistered Investment Adviser

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1. The present proceedings emanate from a show cause notice dated **October 08, 2021** (hereinafter referred to as "**SCN**") issued by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against M/s Capital Mars and Shri Santosh Patidar, in his capacity as the sole proprietor of M/s Capital Mars (M/s Capital Mars and Shri Santosh Patidar are hereinafter collectively referred to as "**the Noticees**") wherein it was *prima facie* found that the Noticees were engaged in investment advisory services without obtaining a certificate of registration from SEBI in violation of the 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**"). The SCN called upon the Noticee to show cause as to why suitable directions should not be issued against the Noticee under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, 1992.

2. I note that the SCN alleges the following:

i. SEBI came across a website, www.capitalmars.com through which ‘M/s. Capital Mars, proprietor - Shri Santosh Patidar - PAN: APRPP1496H was providing various financial products/services to the general public and was charging fees *in lieu* of the financial services. Thereafter, SEBI had sent two letters dated December 26, 2014 and February 03, 2015 to the Noticees at the address “425, 4th floor, orbit mall, Indore, Madhya Pradesh- 452001”. The said letters were sent to the Noticees, seeking the comments from the Noticees with respect to the financial products/services in the nature of investment advisory services provided to the general public and charging fees for such activities without taking necessary approval from SEBI.

ii. The SEBI examination noted that the website of the Noticees i.e. www. capitalmars.com was not active. The screenshots of the webpage www.capitalmars.com taken on December 17, 2014 and December 26, 2014 and the archive pages of the website www.capitalmars.com dated January 13, 2014, January 14, 2014 and June 14, 2014, were downloaded from web.archive.org.

iii. The website of the Noticees disclosed that Noticees were providing investment advisory services. The payment tab of website also disclosed payment details of ICICI Bank and HDFC Bank accounts, in which multiple credit transactions from various entities have been received. Further, from the details of narration mentioned in the transactions of the said ICICI bank account mentioned on the website, it was *prima facie* observed that the Noticees were providing investment advisory services and tips. Hence, it is inferred that those bank accounts were used for receipt of fees from various entities for the purpose providing advisory services.

3. The SCN was issued to the addresses of the Noticees by Speed Post. The SCN was delivered to one of the addresses of the Noticees. However, no reply was received from the Noticees. In order to comply with the principles of natural justice, the file was placed before me on December 27, 2021 for granting a hearing and a hearing was granted to the Noticees on April 20, 2022. On the

said date the Noticees failed to appear, nor did they seek any adjournment to the hearing. In view of the same the hearing was concluded *qua* the Noticees.

Consideration of submissions and findings:

4. I have considered the allegations made in the SCN along with the findings of the examination by SEBI stated therein and material available on record.

5. In this regard, I note that the definition of Investment Adviser as given in Regulation 2(1)(m) of the IA Regulations, 2013 provides as follows:

> "investment adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;"

Further, Regulation 2(1)(l) of IA Regulations, 2013 provides as follows:

> "investment advice means 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 and shall include financial planning:
> Provided that investment advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium, which is widely available to the public shall not be considered as investment advice for the purpose of these regulations;"

6. I note that, the website, www.capitalmars.com *inter alia* claimed as follows:

"..

ABOUT CAPITAL MARS

(a) Capital Mars is a research house and an Investment Advisory Firm which carrying out operations in the Equities and commodity market. We provides most authentic and accurate intraday as well as delivery calls in NSE & BSE, MCX and NCDEX Market.

(b) Our highly qualified experience research team backed with sound and rigorous knowledge, comprising of MBAs (Finance), CFA and Engineers. They are competent and well versed with the complexities of the Indian and global financial market. In today's unpredictable volatile market, these analysts are using their experience and latest software tools to predict the movements in share market on time and with high accuracy. Our main goal is to provide accurate and timely calls to our clients, where the clients can earn handsome profit.

(c) Capital Mars very well understands the importance of Speed, Accuracy and consistency at which message is to be delivered to the trader or investor in order to maximize the benefits. All services are provided through SMS or Instant Messenger. We believe in giving each and every client a special treatment by providing online or telephonic assistance round the clock.

(d) Capital Mars is thankful to Our large Happy Customer base across the globe who always provide us their valuable feedback though which we consistently improve our services to achieve customer Satisfaction. We always aim at providing services in accordance with the comfort levels of all traders and investors, from small investors to HNI's. We assure more than 80-90% accuracy in our recommendations.

(e) Our research is based around these services:
Stock Tips, Mcx Tips, Equity Tips, Intraday Tips, Commodity Tips, Nifty Future Tips, Stock Future Tips, and Option Tips.

Further, as per the services webpages of the website, the services were being offered through the website for prices ranging from Rs. 4000 monthly to Rs. 150000 yearly.

From the above, I note that the website claimed that Capital Mars is a research house and an Investment Advisory Firm which was carrying out operations in the Equities and commodity market. I note that through the website, services were being offered which were being held out as investment advice which included advice relating to buying, selling and dealing in securities.The website also mentioned various packages and their pricing.

7. From the print out of the web pages of the website, as available on record, the details of a few subscription packages are reproduced below:

Equity	**Monthly**	**Quarterly**	**Half Yearly**	**Yearly**
Stock Cash Services	4500	11000	18000	30000
Option Services	7000	17000	28000	45000

Bullions Services	8000	21000	37000	6500
Bullion Power	25000	60000	100000	150000
Agri Power	25000	60000	100000	150000
Stock Futures Services	6000	12000	20000	35000
Nifty Futures Services	4000	10000	17000	28000
Agri Services	6000	15000	25000	40000
BTST/STBT	25000	60000	100000	150000
Commodity Tips	12000	28000	50000	80000
Index Option Tips	4500	11000	18000	30000
Stock Future Power	25000	65000	90000	130000
Stock Option	5000	12000	20000	350000
Cash Power	25000	66000	110000	150000

I note that the Noticee have not contested above-mentioned details of the pricing of various services offered.

8. Further, investment advisory services were being offered to clients through the website www.capitalmars.com *in lieu* of consideration, which is clear from the pricing specified for the packages on the website and from the fact that the website provided bank account details for payment. The payment page of the website provided the following payment options:

Account Name	Capital Mars Global Research Pvt. Ltd.	Capital Mars
Bank Name	HDFC Bank	ICICI Bank
Account No.	XXXXXXXXX	237105500049
NEFT / IFSC Code	HDFC 0001405	ICIC0002371
Branch:	A B ROAD-THE ARCADE, Indore	Vaishali Nagar, Indore

9. Based on the bank account details mentioned on the website, account opening forms, KYC Details and bank account statements were sought from ICICI Bank. From the analysis of Account Opening Forms, KYC Details and Bank Account Statements for ICICI Bank No. 237105500049, it is noted as under:
    a. The current account was opened in the name of Capital Mars (Proprietor - Santosh Patidar, PAN: APRPP1496H)
    b. Date of Account opening was March 14, 2014
    c. The nature of business mentioned in the Account Opening Form is Financial Service.
    d. Multiple transactions had been done in the bank account with PayU payments.
    e. During the period from March 15, 2014 to December 15, 2016, total amount of Rs. 20,24,652 has been credited in the bank account.
    f. Narration details of the transactions, *inter alia,* include Stock Advise Fee, Consultancy Fees, Initial Brokerage, Advise Payment, MKT calls, HNI commodity/ Commodity etc.

10. In the above mentioned bank accounts credits were observed through PayU Money payment gateway Thereafter, vide email dated July 14, 2020, KYC and Account Opening Forms (AOF) were also sought from PayU Money and bank statement and KYC and AOF was also sought from HDFC Bank Ltd. on the basis of the PAN mentioned on the website. The following details were provided by PayU Money:

Name	**Capital Mars**
Email	capitalmars.in@gmail.com abhivyakti.cmars@gmail.com
Contact Number	8982222188
Bank Name	ICICI Bank
Branch Name	INDORE
IFSC Code	ICIC0002371
Account Number	237105500049

Account Holder Name	CAPITAL MARS
PAN ID	APRPP1496H
PERIOD	September 03, 2015 to November 30, 2017
AMOUNT CREDITED	Rs. 5,94,851/-

11. Therefore, it is noted from the above that the PayU Money account is connected to the ICICI Bank Account No. 237105500049 which is in the name of Capital Mars, proprietor Mr. Santosh Patidar. Further, from the KYC and bank statements of the HDFC Bank Account No. 50100064791099 which was retrieved based on the PAN, it is observed that the HDFC Bank Account was also in the name of Mr. Santosh Patidar and total amount credited during November 01, 2014 to April 01, 2017 in the account is Rs. 2,16,335.63 and the account had been closed on January 02, 2019.

12. From the aforesaid facts, I find that Mr. Santosh Patidar, who is the proprietor of Capital Mars, engaged in giving advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, through the website, www.capitalmars.com *in lieu* of consideration. 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, Rs. 20,24,652 and Rs. 2,16,335.63 were received in two bank accounts mentioned on the website www.capitalmars.com wherein the beneficiary was Mr. Santosh Patidar. As stated above, the narration details of the remittances in the ICICI Bank Accounts No. 237105500049 , *inter alia,* included Stock Advise Fee, Consultancy Fees, Initial Brokerage, Advise Payment, MKT calls, HNI commodity/ Commodity etc. Therefore, I find that these remittances were

in lieu of the investment advisory services provided by Mr. Santosh Patidar. Hence, I find that Capital Mars and its proprietor Mr. Santosh Patidar was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

13. I also note that, it is imperative that any person carrying out investment advisory activities must 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:"

14. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, *inter alia*, provides that, 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 SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's

investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

15. 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:
    (i) 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 alongwith requisite non-refundable application fee;
    (ii) 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:
        a. 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 recognised 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;
        b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
        c. 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.

(iii) 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.

16. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were acting as an Investment Adviser, although the Noticees were not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with regulation 3(1) of the IA Regulations, 2013.

17. From the material available on record, I also note that the examination in the matter was initiated *inter alia* on the basis of newspaper reports and not on the basis of complaints of investors who were availing any services of the Noticees. From a report in the Times of India dated November 05, 2016 which is available on record, it is observed that a complaint was filed by an investor before the police with respect to the 'fake' investment advisory firm being run by the Noticees.

18. The Noticees in the two bank accounts mentioned on its website one of which was in the name of Capital Mars, a proprietary firm of Mr. Santosh Patidar and other in the name of Mr. Santosh Patidar had received Rs. 20,24,652 (during the period from March 15, 2014 to December 15, 2016) and Rs. 2,16,335.63 (during November 01, 2014 to April 01, 2017), respectively, through unregistered investment advisory activities as observed above.

DIRECTIONS

19. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections11(1), 11(4) and 11B read with of Section 19 of the SEBI Act, 1992, hereby direct that:

a) The Noticees shall jointly and severally, within a period of three months from the date of this order, refund the money received from any clients/complainants/investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;

b) The Noticees 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;

c) The repayments to the clients/complainants/investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

d) After completing the refund as directed in para 19 (a) above, within a period of 15 days, the Noticees shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai - 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment by banking transactions, name of the parties, communication address, mobile numbers and telephone numbers etc.;

e) The remaining balance amount shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/complainants/investors who were availing the investment advisory services from the Noticees. Thereafter, remaining amount if any will be deposited in the Investors Protection and Education Fund maintained by SEBI;

f) The Noticees are restrained 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/ depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticees and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

g) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in the securities market, 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 along with depositing of balance amounts, if any, with SEBI as directed in para 19(a) and 19(e) above, whichever is later;

h) Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 19(f) above shall cease to operate within 15 days thereafter;

i) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 19(g) 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.

20. The direction for refund and depositing the balance amount with SEBI, as given in para 19 (a) and (e) 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.

21. This order comes into force with immediate effect.

22. A copy of this order shall be sent to the Noticees, 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.

Date: October 27, 2022
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA