

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/54576	Date: November 23, 2022
Circular Ref. No: 176/2022	

To All NSE Members

Sub: Final Order in the matter of Capital Gains Financial Services.

SEBI vide its Order no. WTM/AB/WRO/WRO/21389/2022-23 dated November 23, 2022, has hereby debarred below entity from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of this Order or till the expiry of six (6) months from the date of completion of refund to clients / investors along with depositing of balance amount, if any, with SEBI, as directed in paragraph 21(a) and 21(e) of SEBI order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	M/s. Capital Gains Financial Services, (Proprietor: Shri Rakesh Narwani)	AKPPN5003M

This Order shall come 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:

Mr. Abhishek Goenka (Extension: 23449), Mr. Atish Agarwal (Extension: 26026)

Direct No: 022-26598417/18 Fax: 022-26598195



National Stock Exchange of India

For and on behalf of

National Stock Exchange of India Limited

**Atish Agarwal
Senior Manager**

National Stock Exchange of India

ANNEXURE: Final Order in the matter of Capital Gains Financial Services.

WTM/AB/WRO/WRO/21389/2022-23

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:

Sl. No.	Name of the Noticees	PAN
1.	M/s. Capital Gains Financial Services (Proprietor: Shri Rakesh Narwani)	AKPPN5003M

In the matter of Unregistered Investment Advisory by M/s. Capital Gains Financial Services

Background:

1. Pursuant to receipt of complaints against M/s. Capital Gains Financial Services, SEBI conducted an examination in relation to alleged activities of unregistered investment advisory being carried out by it. Upon completion of examination, a show cause notice dated August 19, 2021 (hereinafter referred to as “**SCN**”) was issued to M/s. Capital Gains Financial Services, Proprietor: Shri Rakesh Narwani (hereinafter collectively referred to as “**the Noticees**”) whereby the Noticees were called upon to show cause as to why suitable directions under Sections 11(1), 11(4), and 11B (1) of the SEBI Act, 1992 should not be issued against them for the alleged violations of the provisions of Section 12(1) of the SEBI Act, 1992 and Regulation 3(1) of SEBI (Investment Advisors) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”).

2. The SCN sent to the Noticees through Speed Post had returned undelivered. Subsequently, SCN was again sent to the Noticees by enclosing the same with SEBI letter dated January 28, 2022 through Speed Post, which was delivered to the Noticees. The Noticees vide email dated March 14, 2022, submitted their reply dated March 12, 2022 to the SCN. Subsequently, the file was placed before me on March 04, 2022 for granting a hearing date and the Noticees were granted an opportunity of personal hearing on May 24, 2022. The Noticees attended the personal hearing on May 24, 2022 through video conferencing. During the hearing, Shri Rakesh Narwani submitted that he had filed his reply dated March 12, 2022 and that he had nothing more to submit in the matter.
3. The Noticees vide their reply dated March 12, 2022, has submitted *inter alia* the following:
 - (a) The Capital Gains Financial Services was a proprietary firm incorporated somewhere around November, 2016. The firm was incorporated by the Shri Rakesh Narwani with a view to do a business of consultancy in financial services. Shri Rakesh Narwani had completed his MBA in 2013 and was earlier doing a job in his field in the state of Gujarat.
 - (b) Shri Rakesh Narwani being a novice individual and being unaware of the SEBI laws and Regulations, had no knowledge that for running such business, he required SEBI Registration. Hence, he started the business activity without taking SEBI Registration.
 - (c) The Noticees had opened the Bank Account in ICICI Bank and only had a single current account throughout the business tenure. The Noticees further had two separate accounts for his personal use, viz. State Bank of India (savings account) and IndusInd Bank (salary account). However, the IndusInd Bank Account got linked to Payment Gateway and the account started receiving credits from the clients.
 - (d) The Noticees had created a website, namely capitalgain.co.in, through which they used to manage the business. On the website, it

was never claimed to be registered with SEBI in any capacity nor was any false claims made to the clients.

- (e) Clients used to analyse the performance of the firm through Free Trial before taking any subscription and upon getting satisfied completely; they used to take the services. The Noticees had just provided his clients tips in the share market by charging certain amount of fee from them, for which they duly agreed. None of the clients was forced in any manner nor was there undue influence or any coercion was made for taking the advisory services.
- (f) The Noticees were not involved in any malpractices such as promising assured returns or handling the client's Demat accounts, etc.
- (g) During the tenure of the business, only two clients had made complaints about which the Noticees were unaware, as the clients had made the complaints directly to the SEBI. Barring couple of clients, none of the other clients had any issues or grievance or had faced any losses. Hence, it is clear that Noticees didn't have any fraudulent intentions.
- (h) If SEBI would have then informed to the Noticees that they were into wrongdoing and non-compliance activity, they would have closed down the operations at that time only.
- (i) The Noticees did close down the operations somewhere around in 2018 as soon as he became aware that for doing this business, a license from the SEBI was required. On realization of the mistake, the Noticees shut the operations voluntarily in order to get away with the disciplinary action and the penalty charges.
- (j) The firm was running hassle free and smoothly and there were no hindrances as all of the clients barring couple of them were duly satisfied by the service. Hence, there was no loss to the investors.
- (k) After realizing the mistake, the Noticees immediately took the steps to close down the business after completing service of all the existing clients and closed the Website immediately.

- (l) Throughout the business tenure, the Noticees worked honestly and with integrity towards all the clients and served them to the best of their ability.
- (m) The Noticees admit the fact that they were involved in activities without obtaining registration from SEBI in accordance with the provisions of SEBI Regulations. However, it was done as a mistake due to no knowledge of SEBI Act and its Regulations. At that time, the Noticees were completely unaware of the SEBI Laws and Regulations. If they would have had knowledge of the SEBI laws, then being the law-abiding citizen, they would have definitely taken the registration from the SEBI. Further, the Noticees were neither intimated by SEBI nor received any communication from SEBI that the registration is required for carrying out such activities.
- (n) Furthermore, the allegations made in that complaints are completely false.
- (o) The amount collected by the Noticees is lesser than the amount mentioned in the Notice, as there were several personal deposits, contra entries and inter transfer between bank in the accounts which were not related to the business.
- (p) The actual receipt of fees from the clients was around Rs. 90 lakhs only. Further, out of the total receipt of fees of around Rs. 90 lakhs, the Noticees have refunded his clients around Rs.45 lakhs, which can be checked through the details enclosed with the reply.
- (q) Further, the SCN mentions credit entries in the bank accounts, however, there is no mention about the debit entries. It is a fact that expenses do get incurred while running a business. Hence, there were a lot of expenses incurred by the firm such as paying of salaries, office rent; office maintenance expenses; rent of systems, software and many more which can be duly checked through.
- (r) Further, the Noticees would like to plead to not to initiate any proceedings / inquiry against them as the said act was committed due to non-awareness and no knowledge of the SEBI Act.

- (s) Furthermore, since closure of the said operations, the Noticees are no longer in to the field of Securities Market. Since last 3 years, Shri Rakesh Narwani is into his job and looks after his family business.

Consideration of submissions and findings:

4. I have considered the allegations made in the SCN, submissions made by the Noticees in their reply and during the personal hearing, 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. The SCN alleged that the Noticees were carrying out unregistered investment advisory activities through the website www.capitalgain.co.in. I note that the said website is not active as of today. However, from the archive of the webpages, as available on web.archive.org, as available on record, I note that the following was disclosed on the website:

- *Capital Gain is an India's leading financial market research firm specializing in National Stock Exchange and Multi Commodity Exchange of India. We provide stock market commentary along with technical chart analysis & fundamental analysis with two significant aspects.*

- We provide recommendations to our clients through SMS and Live Chat. We use state of art technology for sending SMS to ensure that our recommendation reaches the client instantly so that they have sufficient time to enter the trade and maximize gains.
- Contact Details: 288, Vijay Nagar, Near Bombay Hospital, Indore 452010 (MP)
Phone: +91 9303044155
Email: info@capitalgain.co.in

7. From the above, I find that the Noticees, through the website www.capitalgain.co.in were providing recommendations to individual clients. Therefore, in my view they were offering investment advice to the clients through the website www.capitalgain.co.in. From the copy of archived webpages as available on record, I also note that the following services were offered through the said website:

- a) Stock Cash
- b) Stock Future
- c) Stock Option
- d) Nifty Future
- e) Bullion (Base Metal + Energy)
- f) All MCX Premium
- g) Cash Premium

8. I note that prices for different packages were mentioned on the website. A sample of Investment Advisory Services Package Pricing mentioned on the website is as follows:

Stock Option	
<i>Number of Calls</i>	<i>2-3 per day</i>
<i>Type</i>	<i>Delivery</i>
<i>Mode of Delivery</i>	<i>SMS</i>
<i>Monthly Pricing</i>	<i>Rs.7,000</i>
<i>Quarterly Pricing</i>	<i>Rs.12,000</i>
<i>Half Yearly Pricing</i>	<i>Rs.18,000</i>
<i>Yearly Pricing</i>	<i>Rs.28,000</i>
Pay Now	

9. The pricing details of some of the packages, as mentioned on the website, are as follows:

Name of the Package	Monthly	Quarterly	Half-Yearly	Yearly
Stock Option	7,000	12,000	18,000	28,000
Positional	10,000	15,000	25,000	45,000
Combo Future + Option	12,000	30,000	45,000	70,000
Index Future	7,000	12,000	20,000	30,000

10. Further, as per the payment tab of archive webpages of the website www.capitalgain.co.in, I note that in order to make payments for availing the services of the Noticee, the following bank account details were provided at the website:

Bank	SBI	ICICI Bank	IndusInd Bank
Account Name	Rakesh Narwani	Capital Gain Financial Services	Rakesh Narwani
Account Number	34039328479	004105501278	100042551149
Account Type	Saving	Current	Saving
Branch	Burhar (MP)	Malav Parisar, Indore	INDB0000085
NEFT / IFSC Code	SBIN0007223	ICIC0000041	Vapi (Gujarat)

In view of the facts that the packages mentioned on the website of the Noticees' also had prices mentioned therein and payment gateway was provided on the website, I find that the Noticees were giving investment advice *in lieu* of consideration and were thus acting as 'investment adviser' in terms of Regulation 2(1)(m) of the IA Regulations, 2013.

11. During examination, SEBI procured the KYC documents, Account Opening Forms and bank statements of the aforesaid bank accounts. The analysis of the said documents revealed that the aforesaid bank accounts belonged to Shri Rakesh Narwani, proprietor of M/s. Capital Gain Financial Services. Further, analysis of bank statements also revealed multiple credit entries whose total was as follows:

- ICICI Bank Account No. – Credit of Rs. 1.21 Crore (November, 2016 to October, 2018)
- State Bank of India Account No. – Credit of Rs.4 Lakh (June, 2019 to June, 2020)

- IndusInd Bank – Credit of Rs.1.01 Crore (November, 2016 to May, 2020).

12. I note from the Noticees' submissions in respect of the allegations in the SCN that they have admitted that investment advisory services were being offered to clients / investors for a fee, without holding any certificate of registration from SEBI. They have pleaded that they were doing so due to ignorance and lack of knowledge about SEBI laws and the requirement to obtain registration from SEBI. They have further submitted that the amount collected by them is lesser than the amount mentioned in the SCN, as there were several personal deposits, contra entries and inter transfer between bank in the accounts which were not related to the business. According to the Noticees, the actual receipt of fees from the clients was around Rs.90 lakhs only, out of which around Rs.45 lakhs has been refunded, which can be checked through the details enclosed with the reply.
13. In the above regard, I note that ignorance of law cannot be accepted as a ground for avoiding liability arising out of violation of such laws. Hence, the Noticees' plea to that effect is unacceptable. Further, through the Noticees have claimed that not all credit entries in his bank accounts were related to their investment advisory business, they have failed to substantiate the said claim through sufficient documentary evidences and explanations about individual credit entries which were purportedly not related to their business. Thus, I am inclined to hold that the credit entries in the said three bank accounts aggregating to Rs.2.26 Crores are pertaining to funds received by the Noticees from clients / investors while offering unregistered investment advisory services.
14. 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, will be covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations, 2013. I note that the Noticees were acting as investment adviser as held in para 10 above and have also admitted that they were running the abovementioned website and were providing investment advisory services to clients for monetary consideration. I therefore find that Noticees were acting as investment adviser, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

15. 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:”

16. 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.

17. 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 along with 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.
18. 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 holding itself out and were acting as an IA, although the Noticees were not registered with SEBI in the capacity of IA. Hence, the Noticees are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.
19. I note that in the case of Shri C. Paranitharan and others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, *inter alia* directing the Noticees therein to refund the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, Hon'ble SAT vide common order dated September 21, 2022 *inter alia* directed the appellants there into deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow

account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

20. I note that the Noticees have claimed to have refunded a total of Rs.45 Lakh to his clients. In this regard, they have provided copies of two agreements purportedly showing that payments of Rs.18,05,041 and Rs.7,40,000 had been made to persons named Dr. Prafulla Appasaheb Dalvi and Shri Mohan Lal Kashyap, respectively. The Noticee is given liberty to produce the proof of said payment to the Chartered Accountant, a report from whom is being directed to be submitted for certifying the refunds to be made by the Noticee.

Directions:

21. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11(1), 11(4) and 11B(1) read with of Section 19 of the SEBI Act, 1992 hereby direct that:
- (a) The Noticees (M/s. Capital Gains Financial Services, proprietor: Rakesh Narwani) shall within a period of three (3) months from the date of this Order, refund the money received from any investors/clients, as fees or consideration or in any other form, in respect of his unregistered investment advisory activities.
 - (b) The Noticees shall, within 15 days from the date of this Order, 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. A period of two (2) months from the date of the publication of the public notice shall be provided to the investors/clients for submitting their claims.
 - (c) The repayments to the investors/clients 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) Within a period of 15 days after completing the refund as directed in para 21(a) above, the Noticees shall file a report with SEBI detailing the amount refunded to investors / clients, which should be addressed to the “Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051”. The above mentioned report should be duly certified by an independent Chartered Accountant and should indicate the amount of refund, mode of payment by bank transactions, name of the parties, communication address, mobile / telephone numbers, etc.
- (e) The remaining balance amount shall be deposited with SEBI which shall be kept in an escrow account for a period of one year for distribution to clients / investors who were availing the investment advisory services from the Noticee. Thereafter, the remaining amount, if any, shall 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 refund / depositing balance amount with SEBI, as directed above. Further, banks are directed to allow debit from the bank accounts of the Noticees, only for the purpose of making refund to the clients/ investors who were availing the investment advisory services from the Noticees and for depositing balance amount with SEBI, as directed in this Order.
- (g) The Noticees are debarred from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of this Order or till the expiry of six (6) months from the date of completion of refund to clients / investors along with depositing of balance amount, if any, with SEBI, as directed in paragraph 21(a) and 21(e) above, whichever is later.

- (h) Upon submission of report on completion of refund to clients / investors to SEBI and deposit of the balance amount, if any, with SEBI, the direction at paragraph 21(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 paragraph 21(g), 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.
22. The direction for refund to clients / investors and depositing the balance amount with SEBI, as given in paragraph 21(a) and 21(e) above, shall not preclude the clients / investors to pursue any other legal remedy 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.
23. The above directions shall come into force with immediate effect.
24. A copy of this Order shall be served upon the Noticees, recognized Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with.

Date: November 23, 2022

Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA