National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/ 54677	Date: December 01, 2022
Circular Ref. No: 189/2022	

To All NSE Members

Sub: **SEBI Order in the matter of Flanking Research and Investment Advisor**

SEBI vide its order no. CGM/GG/QJC2/WRO/WRO/21679/2022-23 dated November 30, 2022, has directed that below mentioned entities is restrained from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of five years from the date of the SEBI Order;

NAME	PAN
Flanking Research and Investment Advisor (Proprietor – Mr. Tarun Chandani) (SEBI Registration no. INA000010195)	BBDPC8554N

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.

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

Mr. Rajkumar Jain (Extension: 23457), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Atish Agarwal
Senior Manager

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National Stock Exchange of India

SEBI Order in the matter of Flanking Research and Investment Advisor

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CGM/GG/QJC2/WRO/WRO/21679/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992

In respect of:

S. No.	Name of the Noticee(s)	PAN
1.	**Flanking Research and Investment Advisor (Proprietor – Mr. Tarun Chandani) (SEBI Registration no. INA000010195)**	**BBDPC8554N**

Background:

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had initiated inspection of Flanking Research and Investment Advisor (Proprietor - Mr. Tarun Chandani) (hereinafter referred to as **"Noticee"**) who is registered as an Investment Adviser (hereinafter referred to as **"IA"**) with SEBI. The findings of the inspection report, which were based on the complaints received against the Noticee, led to issuance of a Show Cause Notice dated June 30, 2022 (hereinafter referred to as "**SCN**") against the Noticee. The present proceedings emanate from the said SCN wherein the Noticee has been *prima facie* alleged to have violated the following provisions:
   (i) Regulation 13(a), 15(12), 25(1) and 25(2) read with Regulation 24(3) and Clause 8 of Code of Conduct specified under Third Schedule read with Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **"IA Regulations"**) for failing to furnish complete information and discharge its obligations during inspection conducted by SEBI.

(ii) Regulation 13(b) of IA Regulations for failing to inform SEBI regarding material information related to its activities.

(iii) SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations for non-redressal of SCORES complaints.

(iv) Clause 1(iv) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 for displaying incorrect information about SCORES complaints.

(v) Regulation 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"**) for misleading clients about number of pending SCORES complaints.

(vi) Regulation 3 (a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) for engaging in acts to defraud clients.

(vii) Regulation 15(1), Clause 1, 2 and 8 of Code of Conduct as specified in Third Schedule read with regulation 15 (9) of IA Regulations for failing to act in a fiduciary capacity to its clients and honest manner to its clients.

(viii) Regulation 15(3) and 15(4) of IA Regulations for engaging in activities other than investment advisory.

(ix) Regulation 15(1), 17(a), (c) and (d) of IA Regulations, Clauses 1, 2, 5, 6, and 8 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations, Regulation 3(a), (b), (c), (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992 for improper risk profiling and suitability assessment of clients and engaging in acts to defraud clients.

Service of SCN, Personal Hearing, Replies and Submissions from the Noticee:

2. I note from the records available before me that attempts were made to serve the SCN to the Noticee via Speed Post at the addresses available in the records of SEBI. The delivery failed with remarks *"Item Returned Addressee*

Left without instructions". The attempts to serve the SCN via Affixtures also failed. Accordingly, the SCN had to be served upon the Noticee by way of newspaper publication on July 20, 2022 in the Indore Editions of The Times of India and Nai Dunia. However, the Noticee neither filed any reply/objections to the SCN nor sought any personal hearing.

3. Nevertheless, the Noticee was granted an opportunity of personal hearing on October 18, 2022. However, no appearance was made by the Noticee at the scheduled date of hearing. In conformity with the principles of natural justice, another opportunity of hearing was provided to the Noticee on November 03, 2022. The Noticee again failed to appear before me at the scheduled date and time. The hearing notice was served through newspaper publication on October 14, 2022 and October 29, 2022 in the Indore Editions of The Times of India and Nai Dunia.

Consideration of submissions and findings:

4. I note that considerable attempts have been made to serve the SCN to the Noticee and two hearing opportunities have been granted to the Noticee. Despite the same, no response or appearance has been made by the Noticee. Under the circumstances, I observe that sufficient steps have been taken to ensure principles of natural justice for the Noticee.

5. In this context, I rely upon the observations of the Hon'ble Securities Appellate Tribunal in ***Sanjay Kumar Tayal & Ors. vs. SEBI (Order dated February 11, 2014 in Appeal no. 68 of 2013)***, wherein it had observed: *"... Appellants have neither filed reply to Show Cause Notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices."* Even though the Noticee has remained *ex parte*, I nonetheless find it relevant that I should be guided by the documents available on record.

6. I also note that the Hon'ble High Court of Madhya Pradesh, vide its order dated November 04, 2020 in the matter of bail application filed by one Alok Kumar has declared that Tarun Chandani, the main owner of Flanking Research and Investment Advisor is still absconding.

7. Accordingly, I am constrained to deal with the matter on merit based on the material available on record.

8. I note that the SCN contains multiple allegations against the Noticee, and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs.

9. Before dealing with the same, the following basic facts pertaining to the matter are to be noted:

   a. Flanking Research and Investment Advisor (Proprietor - Mr. Tarun Chandani) is registered as an IA with SEBI with effect from April 02, 2018 having SEBI Registration no. INA000010195. Flanking Research and Investment Advisor is a proprietorship firm whose proprietor is Mr. Tarun Chandani.

   b. As per the records, its registered office is at Office No. 208-209, 2nd Floor, Apollo Premier, Plot No. 1, Scheme No. 54, PU-4, Vijay Nagar, Indore, Madhya Pradesh - 452010. Its website address is https://www.flankingresearch.com. Contact details are 9977431313/ 9009746226/ 9111931313/ 9111654999 and email ids are tarunchandani1304@gmail.com, chandani.disha@gmail.com and info@flankingresearch.com.

   c. SEBI had initiated inspection of Noticee, which was ordered, vide order no. HO/07/2021-2021 dated September 17, 2020. The focus of the inspection was to look into the compliance of regulatory requirements stipulated under SEBI Act, 1992, IA Regulations, and other circulars and guidelines framed thereunder. The period of inspection was from April 1, 2019 till the date of inspection.

   d. The Inspection Report was prepared based on the information such as Risk Profiling Forms, Know Your Client Forms, invoices, emails,

audio call recordings, received from complainants, who had lodged complaints on SEBI SCORES against the Noticee, as detailed below:

Sl. No.	Name of Complainant	SCORES Regn. No
1.	Subhransu Dash	SEBIE/MP20/0002020/1
2.	Anirudha Gade	SEBIE/MP20/0001578/1
3.	NV Subba Rao	SEBIE/MP20/0001120/1
4.	Sandhan Sahani	SEBIE/MP20/0001986/1
5.	Rajiya Kathat	SEBIE/MP20/0000523/1
6.	Namdev R Gawde	SEBIE/MP20/0000598/1
7.	Gurdas Singh	SEBIE/MP20/0000284/1
8.	Anil Kumar Singh	SEBIE/MP19/0002252/1

10. I note that the allegations stated in the SCN emanate from the observations / findings of the said inspection report. I now proceed to deal with each of the allegations contained in the SCN hereunder.

11. **Allegation I – Non-cooperation during SEBI inspection**

12. The provisions of IA Regulations alleged to have been violated by the Noticee read as follows:

*"**Conditions of certificate.***

***13.** The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-*

(a) the investment adviser shall abide by the provisions of the Act and these regulations;"

***15. (12)** Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.*

Obligation of investment adviser on inspection.

***25. (1)** It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including partners, directors, principal officer*

and persons associated with investment advice, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

***(2)** It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.*

***24.(3)** During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.*

***15.(9)** An investment adviser shall abide by Code of Conduct as specified in Third Schedule.*

Clause 8 of Code of Conduct

8. Compliance

An investment adviser including its partners, principal officer and persons associated with investment advice shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market."

13. From the material available on record, I note that SEBI, vide letter no. WRO/PLO/IMD/Insp/15746/2020 dated September 22, 2020, had informed the Noticee that an inspection of its books of accounts / records and other documents pertaining to its registration as an IA for the period from April 01, 2019 till the date of inspection would be carried out by SEBI, in terms of Regulation 23 of IA Regulations. I note that the said letter advised the Noticee to send its reply to the pre-inspection questionnaire by October 06, 2020. The aforesaid letter and pre-inspection questionnaire were also sent to the Noticee vide email dated September 22, 2020.

14. In response, the Noticee vide email dated October 06, 2020 had, inter-alia, informed as under:

"I am furnishing information and documents that are currently available and am unable to provide all information as stated in the inspection letter since the office is sealed and documents were seized due to raid held on July 25, 2020. Once the department releases seizure of documents, will furnish the remaining documents.

Please let us know of any other information to be provided to complete the investigation."

15. I note from the Inspection Report that the documents submitted by the Noticee to the Inspecting Authority did not include the client master data under which the list of clients, the services provided to them, the duration of service, the fees collected, the KYC and Risk Profiling Forms etc. were required to be provided. Details of client fee collected year-wise and scheme/ product-wise were also not submitted by the Noticee. I note that vide email dated November 17, 2020, the Noticee was again advised by SEBI to submit the required information by November 23, 2020. However, no submissions were received from the Noticee in this regard.

16. I also note that post completion of Inspection Report, SEBI conducted a site visit at the Registered Office Address of the Noticee on March 3, 2021 to ascertain whether the Noticee is active and to deliver the Inspection Report by hand to the Noticee for its comments. The office of the Noticee was found to be closed and hence the Inspection Report could not be delivered.

17. From the material available on record, I note that SEBI had obtained a copy of First Information Report No. 0626 dated July 25, 2020 (hereinafter referred to as **"FIR"**), filed by Crime Branch, Indore, wherein it is observed that a FIR has been filed against Flanking Research and Investment Advisor and others viz., Alok Kumar, under sections 418 (Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect), 419 (Punishment for cheating by personation), 420 (Cheating and dishonestly inducing delivery of property), 406 (Punishment for criminal breach of trust),

120B (Punishment of criminal conspiracy), 34 (Acts done by several persons in furtherance of common intention) of Indian Penal Code and under Section 6(1) of Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. The FIR, *inter alia*, alleges that:

a) Around 114 employees are providing share market tips to clients without having necessary qualifications, adequate knowledge and proper guidance.
b) On the basis of advice given by the employees, the clients are sending money into bank accounts of the Noticee.
c) Employees are assuming different names while speaking to clients as per instruction of their employer.
d) By promising unrealistic returns, the employees are cheating clients.

18. I note that the contents of FIR also include that the Noticee was not present in the office premises at the time of the visit by the Police. It also states that the office premises was sealed and Alok Kumar who was present in the office premises was taken into custody.

19. From the aforesaid facts and material on record, I find that while SEBI had sought information regarding inspection from the Noticee on September 22, 2020, the office premises of the Noticee was sealed by the Police on July 25, 2020. I also find that the Noticee had initially replied to SEBI on October 06, 2020 *inter alia* providing certain documents. The Noticee had also informed about sealing of office premises by the Police and that documents have been seized by the Police.

20. From the said facts and circumstances, I find that the Noticee was aware of the events that had taken place on July 25, 2020 and had certain documents related to investment advisory activities in his possession. I find that, subsequent to October 06, 2020, the Noticee has stopped responding to SEBI and has not co-operated or provided any further information to SEBI. Moreover, as stated in preceding parts of this order, the Hon'ble High Court of Madhya Pradesh has declared that the Noticee is absconding.

21. I, therefore, find that the Noticee has failed to fully co-operate and furnish information/documents during inspection as required by SEBI and thus, has violated Regulation 13(a), 15(12), 25(1) and 25(2) read with Regulation 24(3) and Clause 8 of Code of Conduct specified under Third Schedule read with Regulation 15(9) of IA Regulations.

22. **<u>Allegation II</u> – Failure to inform material change to SEBI**

23. Regulation 13(b) of IA Regulations reads as under:

> *"**13. (b)** the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;"*

24. As noted in preceding parts of this order, a FIR was filed against the Noticee. The factual details of the FIR have already been noted above, which include that the office premises of the Noticee was sealed by Police authorities on July 25, 2020. I also note that, post July 25, 2020, there were no credit transactions in lieu of advisory services in the bank accounts of the Noticee. The website of the Noticee also states that the office is closed. From these facts, it is inferred that the investment advisory activity of the Noticee was halted from July 25, 2020.

25. I note from the Inspection Report that SEBI had been corresponding with the Noticee through SCORES portal after July 25, 2020, however, the Noticee did not reveal the fact that the office premises had been sealed by the Police. This information was communicated by the Noticee to SEBI only on October 06, 2020 in response to SEBI's letter regarding inspection.

26. I note that the expression used in Regulation 13(b) is "*the investment adviser shall forthwith inform the Board in writing…..or misleading in any material particular or if there is any material change in the information already submitted".* Thus, an IA is required to immediately inform SEBI if any material particular is found to be misleading or in case of any material change in the information already

submitted to SEBI. Based on the records available before me, I find that the information such as filing of FIR against the Noticee, sealing of office premises and halting of its services to clients were crucial information from the perspective of an IA which should have been immediately informed as contemplated under the IA Regulations. I, therefore, find that Noticee has violated Regulation 13(b) of IA Regulations.

27. **Allegation III – Non-redressal of investor grievances**

28. Clauses 9 and 13 of SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014 read as follows:

> ***"9.*** *All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.*
>
> ***13.*** *Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance."*

29. Regulation 21(1) and 28(f) of IA Regulations read as follows:

> *"**21. (1)** An investment adviser shall redress client grievances promptly.*
>
> ***28.*** *An investment adviser who –*
> *(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,*
> *shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008."*

30. From the available records, I note that, as on November 30, 2020, 13 complaints from unique complainants were pending against the Noticee in

SCORES portal for more than 30 days. I also note that the Noticee did not submit Action Taken Report in respect of these complaints.

31. I note that the aforesaid provisions require an IA to resolve investor complaints and file Action Taken Report within 30 days of receipt of the complaint. Failure to do so is deemed to constitute non-redressal of investor grievance in terms Regulation 21(1) read with Clause 13 of the circular cited above.

32. Based on the material available before me, I, therefore, find that the Noticee has violated SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations.

33. **<u>Allegation IV</u> – Wrong disclosure of complaints' status on website**

34. Clause 1(iv) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 reads as follows:

> ***(iv) Display of complaints status on website***
>
> *In order to bring more transparency and enable the investors to take informed decision regarding availing of advisory services, IAs shall display the following information on the homepage (without scrolling) of their website/mobile app. The information should be displayed properly using font size of 12 or above and made available on monthly basis (within 7 days of end of the previous month):*

Number of complaints				
At the beginning of the month	*Received during the month*	*Resolved during the month*	*Pending during the month*	*Reasons for pendency*

35. From the records available before me, I note that, as on November 30, 2020, 14 complaints were pending against the Noticee on the SCORES portal. I note that the Noticee, as on December 15, 2020, has displayed the following information on its website:

No. of complaints				
At the Beginning of the month	**Received during the month**	**Resolved during the month**	**Pending at the end of the month**	**Reasons for pendency**
10	00	01	09	In communication with client

36. From the above, I find that the Noticee has displayed the number of pending complaints as 9 whereas 14 complaints were pending against the Noticee. Accordingly, I find that by displaying incorrect number of pending complaints on its website, the Noticee has violated Clause 1(iv) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

37. **<u>Allegation V</u> – Dissemination of false information and mis-selling to clients**

38. The SCN alleges that the Noticee violated Regulations 4(2)(k) and 4(2)(s) of PFUTP Regulations by disseminating false information on its website about number of pending complaints and thereby, misled the clients and influenced their decision.

39. Regulation 4(2)(k) and 4(2)(s) of PFUTP Regulations read as follows:

> *"**4. Prohibition of manipulative, fraudulent and unfair trade practices***
> *(1) ….*
> *(2) Dealing in securities shall be deemed to be a manipulative, fraudulent or an unfair trade practice if it involves any of the following:—*
> *….*
> *(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;*
> *(s) mis-selling of securities or services relating to securities market;*
> *Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—*
> *(i) knowingly making a false or misleading statement, or*
> *(ii) knowingly concealing or omitting material facts, or*
> *(iii) knowingly concealing the associated risk, or*
> *(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer;"*

40. I note that in terms of Regulations 4(2)(k) and 4(2)(s) of PFUTP Regulations, dealing in securities is deemed to be a manipulative, fraudulent or an unfair trade practice if the person knowingly making a false or misleading statement to influence the decision of investors or mis-sells securities or services related to securities market.

41. As noted above, the Noticee has wrongly displayed the number of pending complaints as 9 instead of 14. Upon a reading of the provisions of Regulations 4(2)(k) and 4(2)(s) of PFUTP Regulations, I am convinced that the act of wrongful disclosure of complaints alleged against the Noticee cannot bring it within the ambit of fraudulent practice envisaged therein and thus, the allegation does not stand established.

42. **<u>Allegation VI</u> – Irregularities in Risk Profiling and Suitability Assessment**

43. The SCN alleges that consequent to improper risk profiling and suitability assessment of clients and engaging in acts to defraud clients, the Noticee has violated Regulation 15(1), 17(a), (c) and (d) of IA Regulations, Clauses 1, 2, 5, 6, and 8 of Code of Conduct as specified in Third Schedule of IA Regulations read with regulation 15(9) of IA Regulations and Regulation 3(a), (b), (c), (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act, 1992.

44. While other provisions as stated in the allegations have been reproduced in preceding parts of this order, Regulation 15(1), 17(a), (c) and (d), Clauses 1, 2, 5 and 6 of Code of Conduct for IA as specified in Third Schedule of IA Regulations read as follows:

> *"**15. (1)** An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.*
>
> ***17.** Investment adviser shall ensure that,-*
> *(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;*

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d) It has a reasonable basis for believing that a recommendation or transaction entered into:

(i) meets the client's investment objectives;

(ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.

Clause 1, 2, 5 and 6 of Code of Conduct

1. Honesty and fairness

An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.

2. Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives"

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

6. Fair and reasonable charges

An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable."

45. Regulation 3(a), (b), (c), (d) of PFUTP Regulations reads as follows:

*"**3. Prohibition of certain dealings in securities***

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under."

46. Section 12A(a), (b) and (c) of SEBI Act, 1992 reads as follows:

"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;"

47. From the material available on record, I note that as per the Risk Profile Form (hereinafter referred to as **"RPF"**) for the clients of the Noticee, the risk classification score range is as under:

S. No.	Risk Score Range	Risk Status
1	0 – 159	Low Risk
2	160 – 320	Medium Risk
3	320+ above	High Risk

48. I note that the question of 'investment goal' in RPF provides three answer options, namely, 1) Capital Appreciation, 2) Regular Income and 3) Capital

Appreciation and Regular Income. The weights assigned to these options are 10, 30 and 20, respectively. I note that, as a matter of basic financial understanding, an investor opting for Regular Income would be associated as a risk-averse investor compared to an investor opting for Capital Appreciation. Thus, investors selecting Capital Appreciation should be considered under higher risk than those selecting Regular Income as their investment goal. However, the risk weights assigned by the Noticee is contradictory to this basic financial philosophy. I, thus, find that the Noticee has misrepresented to clients and not attributed appropriate weights to client responses by considering investment goal of Regular Income to be riskier than Capital Appreciation.

49. I also note that as per the website of Noticee, the charges for the products offered by the Noticee are as follows:

Product	**Monthly**	**Quarterly**	**Half yearly**
Signature cash	20,000	50,000	75,000
Intraday cash	NA	20,000	35,000
HNI cash/future	110,000	280,000	510,000
Basic Commodity	20,000	55,000	100,000
Future premium	25,000	70,000	130,000
Cash premium	12,000	30,000	45,000
Customized equity future	160,000	390,000	680,000

50. I note that various complainants have provided supporting documents such as RPF, suitability report, invoices etc. while dealing as clients with the Noticee. The observations on the same are discussed hereunder.

Client Name: Mr. Subhransu Sekhar Dash

51. I note that the Noticee had undertaken risk profiling of a client named Mr. Subhransu Sekhar Dash (hereinafter referred to as **"Client1"**) on February 03, 2020. As per the RPF, Client1 had a risk rating score of 240 and was rated under 'Medium Risk' category by the Noticee. As per the invoices provided by Client1, following payment details are noted:

Invoice No.	Invoice date	Package	Service duration Opted	Service Charge	Amount paid (incl. taxes) (in Rs.)
3447	Feb 03, 2020	Intraday cash	Quarterly	20,000	2,000
3459	Feb 04, 2020	Intraday cash	Quarterly	20,000	18,000
3500	Feb 06, 2020	Signature Cash	Half Yearly	75,000	27,000
3625	Feb 15, 2020	Intraday Future	Quarterly	40,000	40,000
3630	Feb 15, 2020	Nifty Option	Quarterly	15,000	10,000
3687	Feb 19, 2020	Nifty Option	Half Yearly	25,000	20,000
3689	Feb 19, 2020	Future premium	Quarterly	70,000	45,000
3733	Feb 19, 2020	Cash premium	Half Yearly	45,000	40,000
3724	Feb 20, 2020	HNI Option	Quarterly	40,000	10,000
3884	Feb 29, 2020	Cash premium	Half Yearly	45,000	38,700
				TOTAL	**2,50,700**

52. From the above, I note that Client1 was offered 7 different services within the first month of becoming a client of the Noticee, and has paid a total of Rs. 2,50,700/- for the same. As per the RPF, the annual income of Client1 is less than Rs. 1 lakh and the proposed investment amount is also less than Rs.1 lakh. I, thus, find that, Noticee has disregarded such responses of Client1 in the RPF and has charged Rs. 2,50,700/- to Client1 by selling various products. This amount in itself is more than the proposed investment amount of Client1.

53. I further note that the RPF states that Client1 has no experience with equity, commodity and forex investments. It is also stated that Client1 prefers low risk and low return over high risk and high return. As per the suitability report issued to Client1, 'Intraday Cash' service is stated to be most appropriate as per his risk profile. However, the Noticee has offered various other services such as 'Intraday Future', 'Nifty Option' etc. within a short span of one month, which are in the segment of futures and options and considered risky in nature. I find that such services were not suitable for Client1 as per his risk profile. I, thus, find that the Noticee has not been honest and fair in its dealings with its

client and provided investment advice which is not appropriate to the risk profile of the client.

54. I also note that the invoices provided by Client1 show that he has been charged Rs. 78,700/- as 'Half Yearly' fee for 'Cash Premium' service which is quoted at Rs. 45,000/-. I note that Client1 has been offered 'Nifty Option' service twice within a period of four days, wherein paid amount is different from the quoted service charge and the period for which services are offered is not mentioned. I note that the service charge mentioned and the amount paid by Client1 are also differing in most instances. I, thus, find that that there is no rationale and consistency in the quantum of fee charged by the Noticee.

Client Name: Mr. Anirudha Chandrakant Gade

55. I note that, as per RPF, a client named Mr. Anirudha Chandrakant Gade (hereinafter referred to as **"Client2"**) has been assessed under 'medium risk' category. As per the invoices provided by Client2, following payment details are noted:

Invoice No.	Invoice date	Package	Service duration Opted	Service Charge	Amount paid (incl. taxes) (in Rs.)
3167	Jan 21, 2020	Cash premium	Monthly	12,000	9,000
3335	Jan 28, 2020	Cash premium	Half yearly	45,000	15,500
3401	Jan 31, 2020	Future premium	Quarterly	70,000	15,500
3697	Feb 20, 2020	HNI Future	Quarterly	2,80,000	20,000
				TOTAL	**59,000**

56. I note that "Cash Premium" is the most appropriate service for Client2 as per his suitability assessment report. I note that after initially offering 'Cash Premium' service to Client2, other services viz. 'Future Premium' and 'HNI Future' which were not suitable to him were provided and the Noticee charged a fees of Rs. 35,500/- for these services. Such products dealing in futures segment are leveraged products and generally not meant for investors having 'medium risk' appetite. I, thus, find that the Noticee has offered services that were not appropriate to the risk profile of the client.

57. I also note that same service is sold to Client2 before completion of the earlier service i.e. 'Cash Premium' service having duration of one month was sold on January 21, 2020 and again on January 28, 2020 for a duration of six months. From the RPF of Client2, I note that, in response to a question regarding *"What is your experience with Equity, Commodity, Forex investment",* it is stated that the client has an extensive experience which is contrary to his experience of less than 3 years as responded in another question of RPF. I, therefore, find that the Noticee has not appropriately interpreted client responses to questions in order to correctly ascertain risk profile of the client.

Client Name: Mr. N.V. Subba Rao

58. I note that risk profiling of a client named Mr. N.V. Subba Rao (hereinafter referred to as **"Client3"**) has been undertaken by the Noticee on November 27, 2019. The client obtained a risk rating score of 200 and was categorized as 'medium risk' client. As per the invoices provided by Client3, following payment details are noted:

Invoice No.	**Invoice date**	**Package**	**Service duration Opted**	**Service Charge**	**Amount paid (incl. taxes) (in Rs.)**
2270	Nov 27, 2019	Intraday Cash	Quarterly	20,000	3,000
2294	Nov 28, 2019	Intraday Cash	Quarterly	20,000	17,000
2316	Nov 29, 2019	HNI Option	Half Yearly	70,000	74,100
2425	Dec 06, 2019	Customized Equity Future	Half Yearly	5,70,000	2,95,900
3262	Jan 25, 2020	Future Premium	Half Yearly	1,30,000	1,22,000
				TOTAL	**5,12,000**

59. I note that, as per his suitability assessment, Client3 was initially sold 'Intraday cash' service. However, within 2 days, Client3 was sold 'HNI Option' service and also offered 'Customized Equity Future' and 'Future Premium' services subsequently within a period of two months. I find that such services related to 'Futures and Options' segment are associated with 'high risk' products. I also note that the RPF of Client3 states that he falls within the age bracket of 55 – 60 years, has 4+ dependents to financially support, more than 50% of his

monthly income is allocated to pay off debt and has proposed investment amount between Rs. 1 - 2 lakhs. I note that the Noticee has sold 'high risk' products and charged fees of Rs. 5,12,000/- within two months from Client3.

60. I, thus, find that the Noticee has charged unreasonable fees which is itself much more than the proposed investment amount of Client3 and provided services which were not appropriate to the risk profile of the client.

Other clients

61. I further note that complaints against the Noticee have been filed by other clients, namely, Mr. Sandhan Sahani, Mr. Rajiya Kathat, Mr. Namdev Gawde, Mr. Gurdas Singh and Mr. Anil Kumar Singh. The documents submitted by these clients of the Noticee show that the amounts received by the Noticee is different from the service charge quoted on the invoices. I also note that same service has been offered and charged for different duration within a few days.

62. In view of the aforesaid observations based on the complaints, I find that the Noticee has not been fair and transparent in its dealing with clients. The Noticee has offered and charged clients with such services which were inappropriate to their respective risk profile. I find that the fees received by the Noticee is not consistent and reasonable and in some cases, more than the investment amount proposed by a client. I also find that the Noticee has failed in properly assessing the risk profile of clients by wrongly interpreting client responses and not attributing appropriate weights to certain answers in the RPF. I find that the Noticee has provided advice/services which are inconsistent with clients' experience, investment objectives and risk appetite. I find that such acts of Noticee are in complete disregard to the responsibility entrusted upon him under the provisions of IA Regulations to act in a fiduciary capacity and in the best interest of its clients.

63. I also note that the Noticee has received a total of Rs. 13,46,41,183/- in its bank accounts during the period May 05, 2018 to August 26, 2020, as detailed hereunder:

Sl. No.	Bank Name & Account No.	Period	Last Entry date	Total Credits (in Rs.)
1.	Axis Bank 918020042121125	May 05, 2018 to August 26, 2020	August 26, 2020	8,87,00,000
2.	HDFC Bank 50200032060721	June 30, 2018 to July 25, 2020	July 25, 2020	1,80,00,000
3.	Bank of India 885320110000377	May 10, 2018 to July 24, 2020	July 24, 2020	4,41,183
4.	State Bank of India 38011522560	October 12, 2018 to July 26, 2020	July 25, 2020	2,75,00,000
			TOTAL AMOUNT	13,46,41,183

64. I, therefore, find the Noticee to be in violation of Regulation 15(1), 17(a), (c), (d), Clauses 1, 2, 5, 6 and 8 of the Code of Conduct for IA as specified in Third Schedule read with regulation 15(9) of IA Regulations. Ensuring suitability of the service offered to its clients is the basic tenet for a registered IA. I find that the acts of Noticee, of providing advice contrary to the risk profile of clients, without proper rationale and charging arbitrary and unreasonable fees, were done with the purpose of enhancing his income by dealing with clients in a deceptive and fraudulent manner. As these violations have been committed by the Noticee while acting as an IA and in the due course of his advisory business, I find that the Noticee has committed the 'fraud' while associating himself with the securities market. Accordingly, I also find the Noticee to be in violation of Regulation 3 (a), (b), (c), (d) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, 1992.

65. **<u>Allegation VII</u> – Violation of provisions of PFUTP Regulations, Code of Conduct for IA and Engagement in activities other than investment advisory**

66. While the other alleged provisions have been reproduced in preceding parts of this order, Regulation 15(3) and 15(4) of IA Regulations read as follows:

> *"**15. (3)** An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.*
>
> ***(4)** An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services*

are clearly segregated from all its other activities, in the manner as prescribed hereunder."

67. From the available material on record, I note that Mr. Sandhan Sahani (hereinafter referred to as **"Complainant"**), had lodged a complaint having SCORES Regn. No. SEBIE/MP20/0001986/1 against the Noticee on SCORES portal, *inter-alia*, alleging that the Noticee has not returned his money. I note that the Complainant, vide his SCORES complaint and other communications with SEBI, had alleged the following:

a) The man posing as Tarun Chandani on phone no. 9926904215 had taken fees from the Complainant on behalf of Flanking Research and Investment Advisor but no service was provided and to cover losses, the Complainant had to use credit card.
b) Tarun Chandani was not willing to return him his money. The Complainant alleged that he has not received any service from the Noticee till date.
c) The Complainant was asked to pay as investment amount, say Rs.10 lakhs from credit card, from which the Noticee would pay profits along with reversal and after certain days the Noticee kept on increasing the amounts. Thus, the Noticee would take huge sums as subscription fees, then ask for more and more money without being transparent about things and run away at the end with people's hard earned money.
d) All payments were made by the Complainant to the Noticee from PayU Money link.
e) The email id of the aforesaid person, who claimed to be representative of Flanking Research and Investment Advisor and who had communicated with Complainant, is priyank.sharma8269@gmail.com.

68. I note that following transactions between the Complainant and the Noticee took place through Axis Bank account and PayU money wallet:

Table No. 1:

Transaction Date and Time	***Particulars***	***Credit***	***Debit***
2019-02-07 11:00:38.0	*SANDHAN SAHANI*	*8000*	
2019-02-08 13:44:14.0	*SANDHAN SAHANI*	*4000*	
2019-02-13 08:09:55.0	*SANDHAN SAHANI*	*3000*	
2019-02-25 22:37:19.0	*SANDHAN SAHANI*	*49000*	
2019-03-14 11:40:59.0	*SANDHAN SAHANI*	*203236*	
2019-03-14 17:51:07.0	*SANDHAN SAHANI*	*416382*	
2019-03-14 21:26:23.0	*SANDHAN SAHANI*	*90000*	
2019-03-14 21:28:39.0	*SANDHAN SAHANI*	*42646*	
2019-03-14 21:30:45.0	*SANDHAN SAHANI*	*100000*	
2019-04-04 09:54:49.0	*SANDHAN SAHANI*	*100000*	
2019-04-16 14:26:44.0	*SANDHAN SAHANI*	*400000*	
2019-04-16 14:31:03.0	*SANDHAN SAHANI*	*200000*	
26/04/2019	*NEFT/MB/AXMB191160547298/Sandhan*		*1060000*
2019-04-28 11:57:17.0	*SANDHAN SAHANI*	*400000*	
2019-04-28 12:04:21.0	*SANDHAN SAHANI*	*200000*	
2019-04-28 12:06:57.0	*SANDHAN SAHANI*	*103600*	
2019-04-28 12:41:31.0	*SANDHAN SAHANI*	*87000*	
29/05/2019	*NEFT/MB/AXMB191491885883/Sandhan*		*970000*
2019-05-30 21:40:02.0	*SANDHAN SAHANI*	*500000*	
2019-05-30 21:42:20.0	*SANDHAN SAHANI*	*400000*	
2019-05-30 21:45:35.0	*SANDHAN SAHANI*	*300000*	
2019-05-30 21:48:17.0	*SANDHAN SAHANI*	*200000*	
2019-05-30 21:51:14.0	*SANDHAN SAHANI*	*160000*	
01/07/2019	*NEFT/MB/AXMB191822524410/Sandhan*		*464000*

Transaction Date and Time	Particulars	Credit	Debit
2019-07-02 12:51:12.0	SANDHAN SAHANI	200000	
2019-07-02 12:54:39.0	SANDHAN SAHANI	164000	
2019-07-02 12:58:38.0	SANDHAN SAHANI	100000	
01/08/2019	IMPS/P2A/921312334687/Sandha/HDFCBAN/X531223/		200017.7
01/08/2019	IMPS/P2A/921312335085/Sandha/HDFCBAN/X531223/		150017.7
01/08/2019	NEFT/MB/AXMB192133395364/Sandhan		1000000
01/08/2019	IMPS/P2A/921317518140/Sandha/HDFCBAN/X531223/		200017.7
2019-08-02 23:34:59.0	SANDHAN SAHANI	400000	
2019-08-02 23:39:50.0	SANDHAN SAHANI	500000	
2019-08-02 23:44:35.0	SANDHAN SAHANI	160000	
2019-08-02 23:54:12.0	SANDHAN SAHANI	200000	
2019-08-02 23:56:11.0	SANDHAN SAHANI	200000	
2019-08-03 00:04:45.0	SANDHAN SAHANI	100000	
26/08/2019	IMPS/P2A/923815216001/Sandha/HDFCBAN/X531223/		200017.7
26/08/2019	IMPS/P2A/923815216128/Sandha/HDFCBAN/X531223/		200017.7
26/08/2019	IMPS/P2A/923815216214/Sandha/HDFCBAN/X531223/		200017.7
26/08/2019	IMPS/P2A/923815216337/Sandha/HDFCBAN/X531223/		80005.9
31/08/2019	IMPS/P2A/924317433538/Sandha/HDFCBAN/X531223/		150017.7
04/09/2019	IMPS/P2A/924719347901/Sandha/HDFCBAN/X531223/		200017.7
04/09/2019	IMPS/P2A/924719349090/Sandha/HDFCBAN/X531223/		200017.7
04/09/2019	IMPS/P2A/924719349406/Sandha/HDFCBAN/X531223/		200017.7
04/09/2019	IMPS/P2A/924719349748/Sandha/HDFCBAN/X531223/		200017.7
04/09/2019	IMPS/P2A/924719349983/Sandha/HDFCBAN/X531223/		200017.7
2019-09-04 12:15:59.0	SANDHAN SAHANI	500000	
2019-09-04 12:20:21.0	SANDHAN SAHANI	200000	
2019-09-04 12:28:08.0	SANDHAN SAHANI	200000	
2019-09-04 12:30:13.0	SANDHAN SAHANI	50000	
2019-09-09 12:01:07.0	SANDHAN SAHANI	300000	
2019-10-02 22:46:41.0	SANDHAN SAHANI	200000	
2019-10-02 22:49:31.0	SANDHAN SAHANI	200000	

Transaction Date and Time	Particulars	Credit	Debit
2019-10-02 22:51:30.0	SANDHAN SAHANI	200000	
03/10/2019	NEFT/MB/AXMB192764992582/Sandhan		500000
03/10/2019	IMPS/P2A/927623116441/Sandha/HDFCBAN/X531223/		200017.7
05/10/2019	IMPS/P2A/927810929043/Sandha/HDFCBAN/X531223/		200017.7
05/10/2019	IMPS/P2A/927810929255/Sandha/HDFCBAN/X531223/		200017.7
05/10/2019	IMPS/P2A/927810929422/Sandha/HDFCBAN/X531223/		200017.7
20/10/2019	IMPS/P2A/929321683370/Sandha/HDFCBAN/X531223/		50005.9
2019-10-20 21:49:54.0	SANDHAN SAHANI	1000000	
01/11/2019	IMPS/P2A/930518331453/Sandha/HDFCBAN/X531223/		200017.7
01/11/2019	IMPS/P2A/930518331900/Sandha/HDFCBAN/X531223/		200017.7
01/11/2019	IMPS/P2A/930518332171/Sandha/HDFCBAN/X531223/		200017.7
01/11/2019	IMPS/P2A/930518332580/Sandha/HDFCBAN/X531223/		200017.7
01/11/2019	IMPS/P2A/930518332773/Sandha/HDFCBAN/X531223/		200017.7
04/11/2019	IMPS/P2A/930820728693/Sandha/HDFCBAN/X531223/		200017.7
04/11/2019	IMPS/P2A/930820728884/Sandha/HDFCBAN/X531223/		200017.7
04/11/2019	IMPS/P2A/930820729072/Sandha/HDFCBAN/X531223/		200017.7
04/11/2019	IMPS/P2A/930820729191/Sandha/HDFCBAN/X531223/		200017.7
04/11/2019	IMPS/P2A/930820729372/Sandha/HDFCBAN/X531223/		200017.7
2019-11-04 10:16:43.0	SANDHAN SAHANI	500000	
2019-11-04 10:21:32.0	SANDHAN SAHANI	500000	
05/11/2019	IMPS/P2A/930919507655/Sandha/HDFCBAN/X531223/		200017.7
05/11/2019	IMPS/P2A/930919507788/Sandha/HDFCBAN/X531223/		16005.9
2019-11-05 09:02:30.0	SANDHAN SAHANI	800000	
2019-11-05 09:04:50.0	SANDHAN SAHANI	200000	
2019-11-06 16:22:54.0	SANDHAN SAHANI	200000	
2019-11-07 11:42:26.0	SANDHAN SAHANI	16000	
20/11/2019	IMPS/P2A/932409575337/Sandha/HDFCBAN/X531223/		200017.7
20/11/2019	IMPS/P2A/932409575782/Sandha/HDFCBAN/X531223/		200017.7
01/12/2019	IMPS/P2A/933518999682/Sandha/HDFCBAN/X531223/		200017.7
01/12/2019	IMPS/P2A/933518000115/Sandha/HDFCBAN/X531223/		200017.7
01/12/2019	IMPS/P2A/933518000668/Sandha/HDFCBAN/X531223/		100005.9
04/12/2019	IMPS/P2A/933816125765/Sandha/HDFCBAN/X531223/		200017.7
04/12/2019	IMPS/P2A/933816126150/Sandha/HDFCBAN/X531223/		200017.7
04/12/2019	IMPS/P2A/933816126742/Sandha/HDFCBAN/X531223/		200017.7
04/12/2019	IMPS/P2A/933816127365/Sandha/HDFCBAN/X531223/		200017.7
04/12/2019	IMPS/P2A/933817216392/Sandha/HDFCBAN/X531223/		200017.7

Transaction Date and Time	Particulars	Credit	Debit
05/12/2019	IMPS/P2A/933918700151/Sandha/HDFCBAN/X531223/		200017.7
05/12/2019	IMPS/P2A/933918700525/Sandha/HDFCBAN/X531223/		200017.7
05/12/2019	IMPS/P2A/933918700646/Sandha/HDFCBAN/X531223/		200017.7
05/12/2019	IMPS/P2A/933918700757/Sandha/HDFCBAN/X531223/		200017.7
05/12/2019	IMPS/P2A/933919779657/Sandha/HDFCBAN/X531223/		200017.7
2019-12-05 13:10:09.0	SANDHAN SAHANI	600000	
2019-12-05 13:18:13.0	SANDHAN SAHANI	400000	
2019-12-05 13:46:16.0	SANDHAN SAHANI	500000	
06/12/2019	IMPS/P2A/934011331911/Sandha/HDFCBAN/X531223/		200017.7
2019-12-06 14:35:52.0	SANDHAN SAHANI	700000	
01/01/2020	IMPS/P2A/000116816558/Sandha/HDFCBAN/X531223/		200017.7
01/01/2020	IMPS/P2A/000116817036/Sandha/HDFCBAN/X531223/		200017.7
01/01/2020	IMPS/P2A/000116817579/Sandha/HDFCBAN/X531223/		200017.7
01/01/2020	IMPS/P2A/000116818476/Sandha/HDFCBAN/X531223/		200017.7
01/01/2020	IMPS/P2A/000116819572/Sandha/HDFCBAN/X531223/		200017.7
02/01/2020	IMPS/P2A/000219113222/Sandha/HDFCBAN/X531223/		200017.7
02/01/2020	IMPS/P2A/000219114055/Sandha/HDFCBAN/X531223/		200017.7
02/01/2020	IMPS/P2A/000219114344/Sandha/HDFCBAN/X531223/		200017.7
02/01/2020	IMPS/P2A/000219114656/Sandha/HDFCBAN/X531223/		200017.7
02/01/2020	IMPS/P2A/000219114883/Sandha/HDFCBAN/X531223/		200017.7
2020-01-03 23:28:53.0	SANDHAN SAHANI	500000	
2020-01-03 23:33:15.0	SANDHAN SAHANI	500000	
06/01/2020	IMPS/P2A/000620690592/Sandha/HDFCBAN/X531223/		200017.7
06/01/2020	IMPS/P2A/000620691402/Sandha/HDFCBAN/X531223/		200017.7
06/01/2020	IMPS/P2A/000620692066/Sandha/HDFCBAN/X531223/		200017.7
06/01/2020	IMPS/P2A/000620693971/Sandha/HDFCBAN/X531223/		200017.7
06/01/2020	IMPS/P2A/000620695233/Sandha/HDFCBAN/X531223/		200017.7
2020-01-08 12:43:21.0	SANDHAN SAHANI	500000	
13/01/2020	IMPS/P2A/001318769952/Sandha/HDFCBAN/X531223/		200017.7
13/01/2020	IMPS/P2A/001318770884/Sandha/HDFCBAN/X531223/		200017.7
13/01/2020	IMPS/P2A/001318771590/Sandha/HDFCBAN/X531223/		100005.9
30/01/2020	IMPS/P2A/003010572621/Sandha/HDFCBAN/X531223/		200017.7
30/01/2020	IMPS/P2A/003010572970/Sandha/HDFCBAN/X531223/		200017.7
30/01/2020	IMPS/P2A/003010573963/Sandha/HDFCBAN/X531223/		200017.7
30/01/2020	IMPS/P2A/003011611916/Sandha/HDFCBAN/X531223/		200017.7
30/01/2020	IMPS/P2A/003011612496/Sandha/HDFCBAN/X531223/		200017.7
	Total	**14756864**	**17046768.2**

69. Based on the above table, the SCN alleges that the Complainant has made payments at regular intervals to the Noticee through PayU Money and the Noticee has made payment of fixed amount every month at regular intervals through its Axis bank account to the Complainant. Based on the WhatsApp conversations provided by the Complainant to SEBI, the SCN alleges that the person on behalf of the Noticee has confirmed return of the money along with profit to the Complainant, which indicates that the Noticee is assuring profit commitment to clients.

70. The SCN alleges that analysis of the account statements of the Noticee shows that similar fixed payments, were being made to other persons by the Noticee and cites following transactions in this regard:

Table No. 2:

Transaction Date	***Chq. no.***	***Particulars***	***Debit (in Rs.)***
29/08/2019	*-*	*IMPS/P2A/924119525283/Incusp/YESBANK/X001133/*	*50,005.90*
30/08/2019	*-*	*IMPS/P2A/924215844072/Incusp/YESBANK/X001133/*	*2,00,017.70*
30/08/2019	*-*	*IMPS/P2A/924215844315/Incusp/YESBANK/X001133/*	*2,00,017.70*
30/08/2019	*-*	*IMPS/P2A/924215844591/Incusp/YESBANK/X001133/*	*1,00,005.90*
30/08/2019	*-*	*IMPS/P2A/924215846545/Incusp/YESBANK/X001133/*	*26,775.90*
17/09/2019	*195869*	*BRN-CLG-CHQ PAID TO INCUSPAZE SOLUT/YES BANK LTD*	*9,09,583.00*
11/10/2019	*-*	*IMPS/P2A/928420560574/Incusp/YESBANK/X001133/*	*2,00,017.70*
11/10/2019	*-*	*IMPS/P2A/928420560804/Incusp/YESBANK/X001133/*	*2,00,017.70*
11/10/2019	*-*	*IMPS/P2A/928420561227/Incusp/YESBANK/X001133/*	*2,00,017.70*
11/10/2019	*-*	*IMPS/P2A/928420561395/Incusp/YESBANK/X001133/*	*2,00,017.70*
11/10/2019	*-*	*IMPS/P2A/928420561915/Incusp/YESBANK/X001133/*	*2,00,017.70*
21/10/2019	*-*	*IMPS/P2A/929414010657/Incusp/YESBANK/X001133/*	*92,005.90*
10/12/2019	*-*	*NEFT/MB/AXMB193448659036/Incusp*	*10,00,000.00*
13/12/2019	*-*	*IMPS/P2A/934715631770/Incusp/YESBANK/X001133/*	*91,005.90*
13/12/2019	*-*	*IMPS/P2A/934715636027/Incusp/YESBANK/X001133/*	*502.95*
26/12/2019	*-*	*IMPS/P2A/936020185290/Incusp/YESBANK/X001133/*	*2,00,017.70*
26/12/2019	*-*	*IMPS/P2A/936020185542/Incusp/YESBANK/X001133/*	*2,00,017.70*
26/12/2019	*-*	*IMPS/P2A/936020186702/Incusp/YESBANK/X001133/*	*1,00,005.90*
17/01/2020	*-*	*IMPS/P2A/001719729389/Incusp/YESBANK/X001133/*	*1,00,005.90*
21/01/2020	*-*	*IMPS/P2A/002120763917/Incusp/YESBANK/X001133/*	*1,00,005.90*
22/01/2020	*-*	*IMPS/P2A/002219436409/Incusp/YESBANK/X001133/*	*1,00,005.90*
23/01/2020	*-*	*IMPS/P2A/002316843354/Incusp/YESBANK/X001133/*	*1,00,005.90*

Transaction Date	*Chq. no.*	*Particulars*	*Debit (in Rs.)*
23/01/2020	*-*	*IMPS/P2A/002320300463/Incusp/YESBANK/X001133/*	*1,00,005.90*
28/01/2020	*-*	*IMPS/P2A/002809604096/Incusp/YESBANK/X001133/*	*3.95*
13/02/2020	*-*	*IMPS/P2A/004416377213/Incusp/YESBANK/X001133/*	*2,00,017.70*
14/02/2020	*-*	*IMPS/P2A/004516764531/Incusp/YESBANK/X001133/*	*1,00,005.90*
15/02/2020	*-*	*IMPS/P2A/004615204219/Incusp/YESBANK/X001133/*	*1,50,017.70*
18/02/2020	*-*	*IMPS/P2A/004915461672/Incusp/YESBANK/X001133/*	*1,50,017.70*
18/02/2020	*-*	*IMPS/P2A/004918698530/Incusp/YESBANK/X001133/*	*50,005.90*
19/02/2020	*-*	*IMPS/P2A/005012587559/Incusp/YESBANK/X001133/*	*1,00,005.90*
19/02/2020	*-*	*IMPS/P2A/005018124729/Incusp/YESBANK/X001133/*	*1,00,005.90*
20/02/2020	*-*	*IMPS/P2A/005119071616/Incusp/YESBANK/X001133/*	*1,00,005.90*
23/03/2020	*-*	*IMPS/P2A/008312075995/Incusp/YESBANK/X001133/*	*2,00,000.00*
23/03/2020	*-*	*IMPS/P2A/008312076310/Incusp/YESBANK/X001133/*	*1,00,000.00*
23/03/2020	*-*	*IMPS/P2A/008312077560/Incusp/YESBANK/X001133/*	*1,50,000.00*
18/06/2020	*-*	*IMPS/P2A/017018579891/Incusp/YESBANK/X001133/*	*50,005.90*
30/06/2020	*-*	*IMPS/P2A/018215580498/Incusp/YESBANK/X001133/*	*50,005.90*
01/07/2020	*-*	*IMPS/P2A/018312158446/Incusp/YESBANK/X001133/*	*40,005.90*
06/07/2020	*-*	*IMPS/P2A/018817869773/Incusp/YESBANK/X001133/*	*2,00,017.70*
08/07/2020	*-*	*IMPS/P2A/019018155791/Incusp/YESBANK/X001133/*	*50,005.90*
16/07/2020	*-*	*IMPS/P2A/019810545682/Incusp/YESBANK/X001133/*	*50,005.90*
17/07/2020	*-*	*IMPS/P2A/019910133463/Incusp/YESBANK/X001133/*	*1,00,005.90*
21/07/2020	*-*	*IMPS/P2A/020311354714/Incusp/YESBANK/X001133/*	*50,005.90*
22/07/2020	*-*	*IMPS/P2A/020415031683/Incusp/YESBANK/X001133/*	*50,005.90*
22/07/2020	*-*	*IMPS/P2A/020415046358/Incusp/YESBANK/X001133/*	*50,005.90*
		TOTAL	***67,60,237.50***

71. The SCN alleges that since performance/ return on investments in securities cannot be predicted and is subject to market risk, this act of providing fixed guaranteed returns from securities market is, *prima facie*, fraudulent and appears to have been done with the intention to bring in more customers and thereby increasing the income of the Noticee. It is alleged that the Noticee was falsely assuring returns to investors knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk. It is also alleged that the above act of Noticee was done with the purpose of enhancing the income of Noticee by defrauding its clients, which is fraudulent in terms of the definition of 'fraud' as defined in Regulation 2(1)(c) of PFUTP Regulations. Thus, it is alleged that the Noticee has violated the provisions of Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992.

72. It is alleged in the SCN that the aforesaid conduct shows that the Noticee acted in a dishonest manner and did not act in the best interest of the clients. Thus, it is alleged that the Noticee failed in its responsibility to act in fiduciary capacity to its clients which is in violation of Regulation 15(1) of IA Regulations. It is, thus, also alleged that the Noticee has violated Clause 1, 2 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations.

73. The SCN also alleges that the said bank transactions of the Noticee indicate that he has engaged in activities other than providing investment advice and, thereby, has violated Regulation 15(3) and 15(4) of IA Regulations.

74. I note that the allegation in SCN relates to the Noticee having made assured returns to clients and that this was done to defraud the clients, thereby violating the provisions of Regulation 3(a), (b), (c), (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992. Upon a perusal of Table No. 1 (i.e. the transactions between Complainant and the Noticee through Axis Bank account of Noticee and PayU money wallet) and Table No. 2 (showing debits on various dates of varying amounts from 29/08/2019 to 22/07/2020) above, it appears that the Noticee has been engaging himself in directly dealing with the funds of the clients. The outflow of money reflected in the bank account of the Noticee on various dates in favour of the Complainant evidences this. The real issue for consideration is not whether the Noticee made promises or paid assured returns to its clients but whether he engaged in activities outside the scope of investment advisory.

75. In this connection, I note that the SCN has alleged violation of Regulation 15(3) and 15(4) of IA Regulations which in my view is found substantiated in the facts of the matter. I note that an IA is supposed to engage in the business of providing investment advice to clients for consideration and the IA Regulations do not contemplate the IA to act as a portfolio manager or in other capacity, such that he would directly deal with the funds and securities of clients. Therefore, I find the Noticee to be primarily in violation of Regulation

15(3) and 15(4) of IA Regulations. Considering the same, the Noticee is also found to be in violation of Clause 1, 2 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations.

76. From the conversations exchanged between the Complainant and the Noticee via Whatsapp, screenshots of which have been attached by the Complainant, it is seen that the conversations basically revolved around money transfers which do not refer to investment in securities market. A few such instances are reproduced below:

(i) *"Uncle ek 1 ka bana dijiye aur ek 56k ka bana dijiye*
Par 20th July ko positively 1.56 return kar dijiye"

(ii) *"Ye uncle investment amount 10 lakhs ka ho gaya home loan ke liye"*

(iii) *"Aur 22.66 1st ko reversal ho jayega*
With profit"

(iv) *"Uncle next 12 mahine tak aur kuch paise mat mangiye*
4.5 fix hai mera EMI aur tax ke liye
Usse zyada nahi chahiye"

77. The tone and tenor of the conversations point towards some clandestine understanding between the two of them with respect to certain money transfers between them and also towards purposes like home loans etc. Ex-facie the transactions reflected in the conversations do not have the semblance of investment in securities market.

78. It is also noticed from the complaint that the Noticee was directly taking Complainant's money and investing himself and transferring returns to the Complainant from time to time. The allegation that the Noticee was engaged in making guaranteed or fixed returns is misplaced as it undermines the main violation done by the registered IA which is that of directly dealing with client funds. Hence, I am not inclined to examine the allegation of making assured

returns being in violation of Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992 on merits.

79. On the other hand, in my view, the Noticee appears to have utilized his registration as an IA to convince the clients to transfer their funds into his account which constitutes “fraud” on the clients in the larger sense, for which I have noted that other actions of State Government are in motion. However, the linkage of Noticee’s dealings in the securities market is not available on record. To put it in perspective, if the Noticee has taken ‘deposits’ or made other investments utilizing the client funds, the allegation of violation of PFUTP Regulations may not lie. Adequate proof with respect to commission of ‘fraud’ in connection with dealing in securities market is absent in the matter. I also note that the grievance contained in the complaint does not fall within the scope of IA Regulation.

80. The SCN had called upon the Noticee to show cause as to (i) why suitable directions for debarment from accessing the securities market and prohibition on buying , selling or dealing in securities and suitable directions for refund of fees collected as a consideration for the investment advice rendered under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992 should not be issued against it and (ii) why suitable directions for imposing penalty under sections 11B(2) and 11(4A) read with sections 15HA, 15HB (for violations prior to March 08, 2019) and 15EB (for violations subsequent to March 08, 2019) of SEBI Act, 1992 should not be issued against it for the aforesaid alleged violations.

Conclusion:

81. Thus, I find that the Noticee, as a registered IA, has failed to furnish complete information and discharge its obligations during inspection conducted by SEBI. The Noticee has been found to have not informed SEBI regarding material information related to its investment advisory activities. It is also established that the Noticee did not redress complaints and displayed incorrect information regarding complaints. I find it significant that the Noticee

engaged in activities other than investment advisory, which apparently involved receipt of funds from public. In this connection, I find that there is a specific complaint of Sandhan Sahani which, in my opinion, does not establish fraud in terms of PFUTP Regulations. In this regard, I note that there are State level actions initiated against the Noticee under various sections of Indian Penal Code and under Section 6(1) of Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000. The Noticee has, however, acted in a fraudulent manner while dealing with clients as the risk profiling and suitability assessment of clients were done with the motive of enhancing his income and not with a view to actually assess the risk taking ability of the clients. This, in turn, led to wrong products being sold to the wrong category of clients. I, therefore, find that the Noticee, as an IA, while dealing with clients, for the purpose of securities market investments, has in fact acted fraudulently as contemplated under Regulation 3(a), (b), (c), (d) of the PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, 1992. I also note that the Noticee has not responded to the instant proceedings. Further, as noted elsewhere in this order, the Hon'ble High Court of Madhya Pradesh has declared the Noticee to be absconding. I, therefore, find these violations by the Noticee to be serious in nature which makes the Noticee liable for penalty under Sections 11B(2) and 11(4A) of SEBI Act, 1992 and related directions under Sections 11(1), 11(4) and 11B(1) of SEBI Act, 1992.

Directions:

82. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 of the SEBI Act, 1992, in the interest of securing market integrity and protection of investors' interest, do hereby direct that:

    a. The Noticee is restrained from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of five years from the date of this order;

b. The Noticee is also restrained for a period of five years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and from associating with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;
c. The Noticee shall not undertake, either directly or indirectly, investment advisory services or any activity in the securities market, for a period of five years from the date of this order;
d. The Noticee is directed to resolve all complaints received through SEBI's SCORES portal or otherwise within a period of three months from the date of this order;
e. The Noticee is directed to refund the amounts collected as fees from his clients after adjusting the charges for the services rendered by him, within a period of six months from the date of the order;
f. 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, about this order and invite claims giving details of modalities for refund, including the details of contact person such as names, addresses and contact details of person to be approached for refund, within 15 days from the date of this order;
g. The refunds to the claimants 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 refunds;
h. The Noticee shall within a period of nine months from the date of this order, furnish a compliance report to SEBI, duly certified by a Chartered Accountant, certifying that the directions at (d)-(g) above have been complied with;

i. The Noticee shall be liable to pay monetary penalty as provided hereunder:

Violation	Provisions under which penalty imposed	Amount of Penalty (INR)
Regulation 13(a), 15(12), 25(1) and 25(2) read with Regulation 24(3) and Clause 8 of Code of Conduct specified under Third Schedule read with Regulation 15(9) of IA Regulations	15EB of SEBI Act, 1992	3,00,000
Regulation 13(b) of IA Regulations	15EB of SEBI Act, 1992	1,00,000
SEBI Circular no. CIR/OIAE/1/2014 dated December 18, 2014 and Regulation 21(1) read with Regulation 28(f) of IA Regulations and Clause 1(iv) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019	15EB of SEBI Act, 1992	1,00,000
Regulation 15(3) and 15(4) of IA Regulations and Clause 1, 2 and 8 of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations	15HB/15EB of SEBI Act, 1992*	10,00,000
Regulation 15(1), 17(a), (c), (d) and Clauses 1, 2, 5, 6 and 8 of the Code of Conduct for IA as specified in Third Schedule read with regulation 15(9) of IA Regulations	15HB/15EB of SEBI Act, 1992*	5,00,000
Regulation 3 (a), (b), (c), (d) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, 1992	15HA of SEBI Act, 1992	15,00,000
Total		**35,00,000**

** Section 15HB of SEBI Act, 1992 (for violations prior to March 08, 2019) and Section 15EB of SEBI Act, 1992 thereafter*

j. The Noticee shall remit / pay the said amount of penalties within forty- five days from the date of receipt of this order. The Noticee shall remit / pay the said amount of penalties through either by way

of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT > Orders > Orders of Chairman/ Members > PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for : (like penalties /disgorgement/recovery/settlement amount/legal charges along with order details)	

83. This order shall come into force with immediate effect.

Sd/-

Date: November 30, 2022 **GEETHA G.**

Place: Mumbai **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA