

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/55178	Date: January 09, 2023
Circular Ref. No: 03/2022	

To All NSE Members

Sub: Final Order in the matter of Capitalaim Financial Advisory Pvt. Ltd.

This is with reference to NSE Circular No. NSE/INVG/47269 dated February 08, 2021, in respect of SEBI Order No. WTM/MPB/IMD /WRO/ 174 /2021 dated February 08, 2021.

SEBI now vide its order no. WTM/ASB/WRO/WRO/22755/2022-23 dated January 09, 2023 has directed that below mentioned entities shall continue to be prohibited from accessing the securities market and further be restrained from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or on behalf of any of his clients through their accounts for a period mentioned in below table from the date of this Order. However, while calculating the period of restraint /debarment as directed, the period of restraint /prohibition already undergone by the Noticee as per the directions contained in the Interim Order dated February 08, 2021 shall be set off against the period of restraint / prohibition directed above

Entity No.	Name of the Entity	PAN	Debarment Period
1	Capitalaim Financial Advisory Pvt.Ltd.	AAFCC0828E	5 Years
2	Abhijeet Bajpai	AKOPB2348A	5 Years
3	Anant Tiwari	AOZPT7238L	2 Years
4	Debabrata Bhattacharjee	AKKPB4039N	2 Years
5	Sheetal Foujdar	AVLPB6079L	2 Years

Further, entities 1 and 2 are directed to resolve the complaints pending against Capitalaim Financial on the SCORES platform and otherwise, within a period of 30 days from the date of this Order and furnish a report to SEBI. Such report shall be filed within 3 months of this Order.

National Stock Exchange of India

In case of failure to comply with the aforesaid directions, the debarment shall continue to be in force beyond the period of five years till the date of compliance by the said entities.

Further, the proceedings initiated against Ms. Abhilasha Verma (PAN: AMHPV0559J) vide the Interim Order, are disposed of without any further directions.

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. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

National Stock Exchange of India

ANNEXURE: Final Order in the matter of Capitalaim Financial Advisory Pvt. Ltd.

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1) AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND REGULATION 35 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.

IN RESPECT OF –

S. No.	NAME	PAN
1.	CAPITALAIM FINANCIAL ADVISORY PVT. LTD.	AAFCC0828E
2.	ABHIJEET BAJPAI	AKOPB2348A
3.	ANANT TIWARI	AOZPT7238L
4.	DEBABRATA BHATTACHARJEE	AKKPB4039N
5.	SHEETAL FOUJDAR	AVLPB6079L
6.	ABHILASHA VERMA	AMHPV0559J

IN THE MATTER OF CAPITALAIM FINANCIAL ADVISORY PVT. LTD.

BACKGROUND

- The present proceedings emanate from an *Ad Interim Ex Parte Order no. WTM/MPB/IMD/WRO/174/2021 dated February 08, 2021 (“Interim Order”)*, issued by Securities and Exchange Board of India (“SEBI”) against the following entities, viz.
 - Capitalaim Financial Advisory Pvt. Ltd. (“**Capitalaim Financial /Noticee 1**”);
 - Abhijeet Bajpai (“**Noticee 2**”);
 - Anant Tiwari (“**Noticee 3**”);
 - Debabrata Bhattacharjee (“**Noticee 4**”);
 - Sheetal Foujdar (“**Noticee 5**”) and
 - Abhilasha Verma (“**Noticee 6**”).
- The Interim Order was issued pursuant to the findings of an inspection conducted by SEBI, during the period from November 04 to 08, 2019

(“**Inspection**”), into the affairs of Noticee 1 (SEBI registered Investment Adviser, granted a Certificate of Registration with effect from April 11, 2014: Regn. No. INA000001563) and its Directors i.e. Noticee nos. 2 to 6. The inspection was carried out to ascertain whether the business of Noticee 1 was conducted as per the provisions of the SEBI (Investment Advisers) Regulations, 2013 (“**Investment Adviser Regulations**”).

3. The Inspection brought out the following *prima facie* violations that were allegedly committed by the Noticees (discussed in detail in the subsequent paragraphs of this Order):
 - a. Noticee 1 and its Directors, viz. Noticees 2 to 6, failed to carry out risk profiling and suitability assessment of client(s) in violation of the Investment Adviser Regulations.
 - b. Noticee 1 and its Directors, viz. Noticees 2 to 6, had not charged fair and reasonable fee(s) from client(s) in violation of the Investment Adviser Regulations.
 - c. By adopting the aforementioned *modus operandi*, Noticees 1 to 6 knowingly employed a scheme to defraud client(s) in connection with their dealings in securities and to maximize revenue generation at the expense of their clients in violation of the provisions of the SEBI Act, 1992 (“**SEBI Act**”) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”).
4. Vide the Interim Order, pending conclusion of enquiry and in order to protect the interests of investors and the integrity of securities market, the following directions under Sections 11(1), 11(4), 11B(1) and 11D of the SEBI Act and Regulation 35 of the Intermediaries Regulations were issued to the Noticees, by SEBI:

“34.1 *Capitalaim Financial and its present directors, namely, Mr. Abhijeet Bajpai and Mr. Anant Tiwari are directed:*

34.1.1 *not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or*

indirectly, in any manner whatsoever or on behalf of any of its clients through their accounts;

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

34.1.3 not to divert any funds raised from investors, kept in bank account(s) and/or in their custody;

34.1.4 to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this Order;

34.1.5 not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, including money lying in bank accounts except with the prior permission of SEBI;

34.1.6 to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;

34.1.7 to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order dated February 08, 2021 reproducing the directions mentioned in paragraph 34 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this Order.

34.2 The past Directors of Capitalaim, viz., Mr. Debabrata Bhattacharjee, Ms. Sheetal Foujdar and Ms. Abhilasha Verma, are directed not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever.”

5. The Noticees were advised to file their reply /objections, if any, to the Interim Order within 21 days from the date of its receipt and to also indicate whether they desired to avail an opportunity of personal hearing.
6. Pursuant to service of the Interim Order, Noticee 1 and its Director, Abhijeet Bajpai, replied vide letters dated February 22, 2021 and March 1, 2021 and March 26, 2021, detailing their preliminary submissions and also requesting SEBI to provide inspection of documents along an opportunity of hearing. The inspection of documents concluded on March 22, 2021 and thereafter, the Noticees filed an additional reply dated March 26, 2021.
7. Noticee 3 replied to the Interim Order vide a letter dated April 20, 2021. Noticee 4 submitted his reply to the Interim Order vide a letter dated May 9, 2021 while Noticees 5 and 6 replied to the Interim Order vide separate letters dated May 4, 2021.
8. Thereafter, opportunity of hearing was granted to the Noticees on April 22, 2021, May 18, 2021, June 23, 2021, July 06, 2021 and April 26, 2022. However, the aforementioned hearings (except July 06, 2021) were adjourned at the Noticees' request. Further, while seeking an adjournment of the hearing scheduled on April 26, 2022, the Noticees vide letter dated April 24, 2022, relying on the Supreme Court of India's judgment dated February 18, 2022, in the matter of ***T. Takano vs. SEBI, Civil Appeal no. 487-488 of 2022***, also requested for the complete inspection report and list of complaints received by SEBI on the SEBI Complaints Redress System ("**SCORES**") against Noticee 1. The Noticees also filed their submissions to the allegations contained in the Interim Order vide the aforementioned letter. The documents requested by the Noticees were provided to them vide SEBI letter dated May 10, 2022.
9. Subsequently, an opportunity of hearing was granted to the Noticees on July 6, 2022. On the aforementioned date, the Noticees appeared for the hearing and were represented by the Director, Abhijeet Bajpai along with Advocates Prakash Shah and Kushal Shah, who reiterated the contents of the replies

/submissions filed by the Noticees as mentioned in the previous paragraphs. Upon completion of the hearing, the Noticees were granted a week's time to file additional submissions in the matter. Accordingly, vide a letter dated July 13, 2022, the Noticees submitted additional written submissions. The replies submitted by the Noticees are reproduced and discussed in the subsequent paragraphs of this Order.

FINDINGS

10. I have taken into consideration the allegations contained in the Interim Order along with the (a) replies dated February 22, 2021, March 1, 2021, March 26, 2021, April 24, 2022 and July 13, 2022 filed by Noticees 1 and 2, (b) reply dated April 20, 2021 filed by Noticee 3, (c) reply dated May 9, 2021 filed by Noticee 4, (d) replies dated May 4, 2021 filed by Noticees 5 and 6.
11. **PRELIMINARY OBJECTION RAISED BY NOTICEE NOS. 1 AND 2:** Before I proceed with the determination of issues in the matter, I find it appropriate to first deal with the preliminary objection raised by Noticee nos. 1 and 2 regarding the issuance of the Interim Order post the Inspection carried out by SEBI. The Noticees have submitted that: *"Post Inspection, there was no letter of deficiency issued /additional documents sought by SEBI to us. Prior to the aforementioned Inspection, there was also an inspection of our Books of Accounts for the period April 1, 2015 to September 30, 2016 ("F. Y. 2015–16 Inspection") pursuant to which, we were in receipt of a letter dated September 18, 2017 w.r.t. the findings of the inspection. We had replied to the same vide our letter dated October 9, 2017. Pertinently, with regard to the said inspection, a letter of deficiency was issued to us on March 12, 2018 and we have replied to the same by our letter dated May 16, 2018 duly stating the corrective action taken by us. The passing of the Interim Order has caused great prejudice to us since we had stopped taking new clients w.e.f. February 2020; hence, there was no urgency in passing of the Interim Order."*
12. I note that the Interim Order was issued in exercise of the powers contained under Sections 11, 11B and 11D of the SEBI Act, which provide for the issuance

of any directions *inter alia* against an intermediary if certain conditions prescribed therein are satisfied. As detailed in the Interim Order, the same was necessitated because of the Noticees' conduct in acting against the interests of their clients /investors and which *prima facie* also amounted to violation of the SEBI Act, Investment Adviser Regulations and the PFUTP Regulations. Considering the aforesaid, I do not find any merit in the contention advanced by Noticees 1 and 2.

13. I shall now proceed to deal with the following *prima facie* violations as alleged in the Interim Order against the Noticees, in light of the replies submitted by them:

A. Allegation no. 1: Noticee 1 was *prima facie* alleged to have violated the provisions of the Investment Adviser Regulations on account of:

- *having failed to carry out risk profiling and suitability assessment of client(s) and Non-communication of risk profile to clients.*
- *having sold products meant for high risk bearing clients sold to medium risk bearing clients.*
- *having sold advisory services prior to risk profiling and suitability assessment of client(s).*

B. Allegation no. 2: Noticee 1 was *prima facie* alleged to have violated the provisions of the Investment Adviser Regulations on account of:

- *having collected unreasonable fees disproportionate to the annual income /proposed investment.*
- *having locked in the clients by advance fee for sale of products without refund along with charging arbitrary and unreasonable fee (a) from the same client for the same service and (b) from different clients for the same service.*

C. Allegation no. 3: Noticee 1 was *prima facie* alleged to have violated the provisions of the SEBI Act and the PFUTP Regulations since they knowingly employed a scheme to defraud client(s) in connection with their

dealings in securities and to maximize revenue generation at the clients' expense.

ALLEGATION No. 1: RISK PROFILING – Noticee 1 was *prima facie* alleged to have violated the provisions of the Investment Adviser Regulations on account of having failed to carry out risk profiling and suitability assessment of client(s).

13.1 **Risk profiling and Non-communication of risk profile to clients:** The Inspection of Noticee 1 as carried out by SEBI involved examining the risk profile of a sample size of 52 clients. The Inspection revealed that in respect of 27 out of the 52 clients (more than 50% of the sample size), e-mails sent by Noticee 1 to the said clients did not contain any attachments of their risk profiling and assessment. The aforementioned failure by Noticee 1 to carry out risk profiling and assessment and further, communicate the risk profiling to its clients was *prima facie* alleged to be in violation of Regulation 15(9) read with Clauses 1 and 5 of the Code of Conduct specified under Schedule III and Regulations 16(e) of the Investment Adviser Regulations.

13.2 The relevant provisions of law as under:

PROVISIONS OF THE INVESTMENT ADVISERS REGULATIONS:

“Regulation 15(9)

An investment adviser shall abide by Code of Conduct as specified in Third Schedule:

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

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.*
4. **Information about clients:** *An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.*
5. **Information to its clients:** *An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.*

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

- (a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including (i) age; (ii) investment objectives including time for which they wish to stay invested, the purposes of the investment; (iii) income details; (iv) existing investments/ assets; (v) risk appetite/ tolerance; (vi) liability/borrowing details.*
- (b) it has a process for assessing the risk a client is willing and able to take, including: (i) assessing a client's capacity for absorbing loss; (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital; (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.*
- (e) risk profile of the client is communicated to the client after risk assessment is done;"*

13.3 In their replies, Noticees 1 and 2 submitted as under:

- a. We have complied with the risk profiling of every client and have communicated the same to them. Further, we have also taken a confirmation from every client before starting the service.*
- b. The software of Capitalaim Financial is designed in such a manner that the services of the client do not start before the Risk Profiling and Assessment Form has been sent and the KYC details have been input in the said software. Pertinently, sample Risk Profiling Questionnaire ("RPQ") of ten clients are annexed at Annexure 10 to 19 of written submissions dated April 24, 2022. The services were sold with respect to the Risk Bearing Capacity of the clients.*

13.4 The Inspection revealed that e-mails sent by Capitalaim Financial to 27 out of the 52 clients did not contain any attachment of risk profiling and assessment. Vide its replies, Noticee 1 submitted that *"it had complied with the risk profiling of every client and had communicated the same to them. Further, it had also taken a confirmation from every client before starting the service."* To

substantiate the aforementioned contention, Noticee 1 also submitted sample risk profiling and assessment form of 10 clients.

- 13.5 I note that while denying the findings of the Inspection, Noticee 1 has nonetheless failed to counter the deficiencies observed with regard to the failure to carry out and forward completed risk profiling and assessment forms to its 27 clients. In this context, attention is drawn to the provisions of Regulation 15(9) read with Clause 4 of the Code of Conduct specified under Schedule III and Regulations 16(a) and (b) of the Investment Adviser Regulations, which impose an obligation upon the registered investment adviser to ensure collection of relevant information from the client for determining and quantifying his /her risk appetite, before providing investment advice /services. Further, Regulation 16(e) of the said Regulations states that the registered investment adviser is under an obligation to communicate the risk profile to the client after the completion of his /her risk assessment.
- 13.6 The process of Risk profiling and assessment adopted by Noticee 1 involved calculation of the risk tolerance level of a client through a total of 14 questions, 3 of which were subjective and without any qualifying marks being awarded while the remaining 11 resulted in allocation of qualifying marks for determining the risk appetite of a client. The risk profiling and assessment form captures the details of the risk appetite of the client (low, medium or high) on the basis of the marks allocated during the profiling and assessment process. The rationale behind the requirement for carrying out and communicating risk profiling and assessment of a client, by a registered investment adviser, is to ensure that the client is made aware of his /her risk appetite and is also provided with an opportunity to verify as to whether or not, a correct risk profiling and assessment has been arrived at by the registered investment adviser. That such a requirement exists also stands confirmed from the e-mails sent by Noticee 1 (customer.support@capitalaim.com) to its clients wherein it was stated *"As per our conversation, we found that your profile is at High Risk. ... Here we are sending /attaching your risk assessment form. If any of the information is incorrect, kindly reply to rectify it and if all the information is correct then confirm for the same so that we can proceed further..."*

13.7 Further, upon an analysis of the information submitted by the Noticees with respect to 10 of its clients (who were not part of the Inspection), the following is observed:

TABLE I		
SL. No.	CLIENT	OBSERVATIONS WITH REGARD TO THE SUBMISSIONS
1.	AFSAR ALI	Risk profiling and assessment (“ RPA ”) was done on May 9, 2018 and e-mail attaching the completed risk profiling and assessment form (“ RPAF ”) was sent to the client on the same date. Confirmation of the RPAF was received vide client’s e-mail dated May 15, 2018.
2.	AMIT KUMAR ROY	RPA was done on September 22, 2017 and e-mail attaching the completed RPAF was sent to the client on the same date. However, it is observed that the e-mail was sent to an ID (amitkrroy123@rediffmail.com) which was different from the one contained in the KYC verified by NSDL Database Management Ltd. (“ NDML ”) KRA (amstkrroy123@rediffmail.com). Further, proof of confirmation of RPAF by the client is not available.
3.	CHANDRAKALA RAUT	RPA was done on August 6, 2019 and e-mail attaching the completed RPAF was sent to the client on the same date. However, it is observed that the e-mail was sent to an ID (mailamol@gmail.com) which was different from the one contained in the submitted (not verified) KYC details (mailamol27@gmail.com). Further, proof of confirmation of RPAF by the client is not available.
4.	JOHN JOSEPH	RPA was done on March 14, 2018 and e-mail attaching the completed RPAF was sent to the client on the same date. However, it is observed that the e-mail was sent to an ID (jose24k@rediffmail.com) which was different from the one contained in the KYC verified by NDML KRA (johnymelazhakath@yahoo.co.in). Further, proof of confirmation of RPAF by the client is not available.
5.	KUSAL MAITY	RPA was done on October 24, 2019 and e-mail attaching the completed RPAF was sent to the client on October 25, 2019. Two reminder e-mails were sent to the client on October 29, 2019. Confirmation of RPAF was received vide client’s e-mail dated November 2, 2019.

6.	NARYAN BISWAS	RPA was done on May 1, 2018; however, e-mail attaching the completed RPAF was sent to the client on July 31, 2018. Confirmation of RPAF was received vide client's e-mail dated August 1, 2018.
7.	PARVEEZ KHAN	RPA was done on September 3, 2018 and e-mail attaching the completed RPAF was sent to the client on the same date. However, it is observed that the e-mail was sent to an ID (parvezkhang5@gmail.com) which was different from the one contained in the KYC verified by CDSL Ventures Limited ("CVL") KRA (parvez2020@yahoo.com). Further, proof of confirmation of RPAF by the client is not available.
8.	RAKESH KUMAR SINGHAL	RPA was done on October 5, 2018 and e-mail attaching the completed RPAF was sent to the client on October 10, 2018. Confirmation of RPAF was received vide client's e-mail dated October 11, 2018.
9.	SANDEEP KUMAR	RPA was done on September 12, 2018 and e-mail attaching the completed RPAF was sent to the client on the same date. Proof of confirmation of RPAF by the client is not available.
10.	VINOD KUMAR	RPA was done on September 17, 2018 and e-mail attaching the completed RPAF was sent to the client on the same date. Proof of confirmation of RPAF by the client is not available.

13.8 From the above, it is noted that even in respect of the RPAFs of sample clients as submitted by Noticee 1, the confirmation was obtained only from 4 out of 10 clients (serial no. 1, 5, 6 and 8). It is noted that in respect of 3 clients (serial no. 2, 4 and 7), the RPAFs were sent to e-mail IDs that were different from the one contained in the KYC details verified by NDML and CVL. The Noticee's business model states that the KYC procedure initiated by it involves verification of copies of documents submitted by clients with the originals and thereafter, uploading of such verified documents by the Noticee on either NDML or CVL website. Considering the aforesaid admission, it is indeed baffling that Noticee 1 would sent completed RPAF of the said clients to e-mail IDs that were different from the one contained in the KYC details verified by NDML and CVL especially since by its very own admission, the details were uploaded by the Noticee itself. It is also noted that in the e-mails by which all completed RPAFs were sent to Noticee 1's clients, it was stated: "Kindly give your confirmation

within 24 working hours for the same. If your reply is not received within 24 working hours, it will be considered as your deemed consent /confirmation.”

This clearly indicates that the clients were provided with a very limited time to confirm the risk profiling and assessment arrived at by the Noticee 1 failing which, deemed consent would be considered. Incidentally, in respect of the client indicated at serial no. 5, Noticee 1 sent two reminders for confirmation of RPAF while choosing to accept non–receipt of affirmative consent from 6 clients (serial no. 2–4, 7, 9 and 10: no reminders were sent to said clients) as confirmation for the completed RPAF. The aforesaid is significant in light of Noticee 1’s admission that *“the services of the client do not start before the Risk Profiling and Assessment Form has been sent and a confirmation is received from such client.”*

13.9 Upon a consideration of the above, I find that Noticee 1 had failed to determine and quantify clients’ risk appetite, before providing investment advice /services and further, failed to communicate the risk profile to its clients in violation of the provisions of Regulation 15(9) read with Clauses 1 and 5 of the Code of Conduct specified under Schedule III and Regulations 16(e) of the Investment Adviser Regulations.

13.10 **Products meant for high risk clients sold to medium risk clients:** The Inspection revealed that Noticee 1 sold products /services under the ‘*High Risk Category*’ to clients falling under the ‘*Medium Risk Category*’. The failure by Noticee 1 to act with due skill, care, diligence, honesty and in the best interest of its clients was *prima facie* alleged to be in violation of Regulations 15(1), 15(9) read with Clauses 1 and 2 of the Code of Conduct specified under Schedule III and Regulation 17 of the Investment Adviser Regulations.

13.11 The relevant provisions of law as under:

PROVISIONS OF THE INVESTMENT ADVISERS REGULATIONS:

“Regulation 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.

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

- 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.*

Regulation 17 – Suitability:

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.*
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.”*

13.12 The Inspection revealed that Noticee1 had a policy for suitability assessment of its clients on the basis of which products were classified as either '*High Risk*' or '*Medium Risk*' as under:

TABLE II	
PRODUCTS SUITABLE FOR HIGH RISK BEARERS	PRODUCTS SUITABLE FOR MEDIUM RISK BEARERS
1. BONZER PACK EQUITY 2. BONZER PACK FUTURE 3. FUTURE POSITIONAL 4. BONZER PACK COMMODITY 5. BULLION POSITIONAL 6. PREMIUM FUTURE 7. PREMIUM OPTION 8. NIFTY PREMIUM 9. PREMIUM BULLION 10. STOCK FUTURE BASIC 11. STOCK OPTION BASIC 12. NIFTY BASIC 13. BULLION METAL BASIC 14. AGRI PACK BASIC	1. PREMIUM STOCK 2. STOCK CASH BASIC 3. STOCK EXPRESS 4. FOREX 5. BTST /STBT FUTURE

13.13 Of the sample size of 52 clients that were examined in the Inspection, it was revealed that products /services under the '*High Risk Category*' were sold to 5 clients falling under the '*Medium Risk Category*', as under:

TABLE III			
SL. No.	CLIENT	RISK CATEGORY	PRODUCTS /SERVICES SOLD
1.	GOPAL KRISHNAN CHANDEL	MEDIUM	PREMIUM OPTION PREMIUM FUTURE
2.	NAGAYYA CHETTY KRISHNAMURTHY		PREMIUM FUTURE TIPS BONZER PACK
3.	NARAYAN BISWAS		PREMIUM FUTURE BONZER SPECIAL FUTURE NCDEX-AGRI
4.	PARVEEZ KHAN		BONZER SPECIAL CASH BONZER SPECIAL FUTURE BONZER SPECIAL MCX
5.	SUDHAKAR RAO		BONZER SPECIAL FUTURE BONZER SPECIAL MCX BONZER SPECIAL CASH

13.14 As can be observed from Tables II and III, the products offered /sold to Noticee 1's clients were variants of the '*High Risk*' products suitable for high risk clients. None of the above mentioned clients were sold '*Medium Risk*' products.

13.15 In their replies, Noticees 1 and 2 submitted as under:

a. With regard to the table mentioned above, it is stated as under:

SL. No.	NAME OF CLIENT	PARTICULARS	SUPPORTING DOCUMENT
1.	GOPAL KRISHNAN CHANDEL	INITIALLY AS PER THE RISK PROFILE OF MR. GOPAL ON JULY 9, 2018, HE WAS IN MEDIUM RISK CATEGORY.	COPY OF THE RISK PROFILE IS ENCLOSED.
		PURSUANT TO THE ORIGINAL RISK PROFILING, A RE-RISK PROFILING WAS DONE OF MR. GOPAL WHEREIN HIS RISK APPETITE WAS STATED AS "HIGH".	COPY OF THE RE-RISK PROFILING IS ENCLOSED.
		A COPY OF RE-RISK PROFILING WAS COMMUNICATED TO MR. GOPAL VIDE OUR E-MAIL DATED 10.08.2018.	COPY OF THE E-MAIL IS ENCLOSED.
2.	NARAYAN BISWAS	INITIALLY, AS PER THE RISK PROFILE OF MR. NARAYAN, HE WAS IN MEDIUM RISK CATEGORY. PURSUANT TO THE ORIGINAL RISK PROFILING, A RE-RISK PROFILING WAS DONE WHEREIN HIS RISK APPETITE WAS STATED AS "HIGH". RE-RISK PROFILING WAS COMMUNICATED TO MR. GOPAL VIDE OUR E-MAIL DATED 1.10.2018.	COPY OF THE E-MAIL IS ENCLOSED.
3.	PARVEEZ KHAN	RPAF DATED 24.09.2018 OF MR. PARVEZ STATES THAT RISK PROFILING SCORE AS 29, WHICH FALLS INTO HIGH RISK APPETITE. HENCE, SEBI HAS INADVERTENTLY MENTIONED HIS AS MEDIUM RISK INSTEAD OF HIGH RISK PROFILE.	COPY OF THE RISK PROFILE IS ENCLOSED.
4.	SUDHAKAR RAO	RPAF DATED 23.08.2018 OF MR. SUDHAKAR STATES THE RISK PROFILING SCORE AS 27, WHICH FALLS INTO HIGH RISK APPETITE. HENCE, SEBI HAS INADVERTENTLY MENTIONED HIS AS MEDIUM RISK INSTEAD OF HIGH RISK PROFILE.	COPY OF THE RISK PROFILE IS ENCLOSED.

13.16 I note that Noticee 1 has sought to contend that the findings of the Inspection were incorrect in so far as (a) entities at serial no. 1 and 3 of Table III are concerned (page 15) since the products were sold to them pursuant to re-risk profiling and assessment being conducted and also for (b) entities at serial no. 4 and 5 of Table III since SEBI had inadvertently mentioned their risk profile as 'Medium Risk' instead of 'High Risk'.

13.17 As per Regulation 17 of the Investment Adviser Regulations, a registered investment adviser is mandated with an obligation to *inter alia* ensure that:

- (a) *Investment advice provided is appropriate to the client's risk profile;*
- (b) *Investments are selected based on the client's investment objectives and financial adequacy and a belief in the client's risk tolerance and understanding of the transaction;*
- (c) *It understands the nature and risk associated with the products selected for the client.*

13.18 I note that Noticee 1 has not denied the findings of the Inspection with regard to entity at serial no. 2 of Table III (page 15) and therefore, I find the allegation that Noticee 1 sold products /services under the '*High Risk Category*' to clients falling under the '*Medium Risk Category*' is made out.

13.19 Without prejudice to the foregoing, as regards the entities at serial no. 1 and 3 of Table III, I note that Noticee 1 has contended that products were sold only after re-risk profiling and assessment were conducted. In this context, it is observed that with respect to the entity at serial no. 1, the re-risk profiling and assessment was carried out over a very short duration of time (first RPAF – July 9, 2018 and second RPAF – August 10, 2018) without there being any evidence of the client having accepted the first and second /revised RPAF. In the absence of any evidence to corroborate the acceptance of re-risk profiling and assessment, I am inclined to conclude that it is improbable that such a client would have provided different answers /responses to the same questions contained in the RPAF over a short period of time.

13.20 Further, with regard to the entity at serial no. 3 of Table III, Noticee 1 has submitted an e-mail dated August 1, 2018, wherein the client had confirmed acceptance of the revised RPAF forwarded vide the Noticee's e-mail dated July 31, 2018. However, a perusal of the Noticee's e-mail dated July 31, 2018, reveals that the revised RPAF was never sent to the client since the e-mail had no such attachment (the attachment mentioned was a file '*Team.PNG*' of zero

bytes). Having regard to the aforementioned, I am not inclined to accept the Noticee's submissions in this regard.

13.21 I further note that as regards entities at serial no. 4 and 5 of Table III, I am not inclined to accept Noticee 1's submission since the RPAF themselves indicate that while the marks allocated post risk profiling and assessment were in the range of '*High Risk*', the clients were nonetheless indicated as having '*Medium Risk*' appetite by Noticee 1 itself. I therefore find no merit in Noticee 1's submission.

13.22 In view of the above, I find that as a result of having sold products /services under the '*High Risk Category*' to clients falling under the '*Medium Risk Category*', Noticee 1 failed to act with due skill, care, diligence, honesty and in the best interest of its clients, in violation of Regulations 15(1), 15(9) read with Clauses 1 and 2 of the Code of Conduct specified under Schedule III and Regulation 17 of the Investment Adviser Regulations.

13.23 ***Advisory services sold prior to RPA:*** The Inspection revealed that Noticee 1 sold products /services and collected fees for the same from its clients even before carrying out RPA. The aforementioned action of Noticee 1 was *prima facie* alleged to be in violation of Regulation 15(9) read with Clauses 1 and 2 of the Code of Conduct specified under Schedule III and Regulation 17(a) of the Investment Adviser Regulations.

13.24 In their replies, Noticees 1 and 2 submitted as under:

- a. *With regard to the 32 instances as observed in the aforesaid allegation, all the clients have paid advance money in the bank account and as per the internal policy of Capitalaim Financial, no investment advisory shall start before the process of Risk profiling is complete. SEBI in the Interim Order has not made out a case stating the comparison of the date of payment and the date of start of service.*

13.25 Of the sample size of 52 clients that were examined in the Inspection, it was revealed that Noticee 1 had sold products /services and collected advisory fees from 32 such clients even before carrying out RPA, as under:

TABLE IV				
SL. No.	CLIENT	DATE OF PAYMENT RECEIVED FROM CLIENTS	DATE ON WHICH RISK PROFILE IS DONE AS PER RISK PROFILE FORM	DIFFERENCE IN DAYS
1	AKASH JAIN	AUGUST 19, 2019	AUGUST 20, 2019	1
2	MD ZAHID	JULY 25, 2018	JULY 27, 2018	2
3	ADITYA MISHRA	AUGUST 7, 2019	AUGUST 8, 2019	1
4	AFSAR ALI	MAY 8, 2018	MAY 9, 2018	1
5	AJEESH KUMAR	MAY 28, 2018	MAY 29, 2018	1
6	ALOK MAHROTRA	JUNE 30, 2018	JULY 3, 2018	3
7	BALKISHAN DHAKER	MAY 30, 2019	JUNE 3, 2019	4
8	BALBIR SINGH MANDI	SEPTEMBER 3, 2018	SEPTEMBER 7, 2018	4
9	GOPAL KRISHNAN CHANDEL	JULY 4, 2018	JULY 9, 2018	5
10	JADHAV CHANDRA PRAKASH	MARCH 8, 2018	MARCH 13, 2018	5
11	JAYANTIBHAI PRAJAPATI	MARCH 13, 2018	MARCH 15, 2018	2
12	JITENDRA	SEPTEMBER 27, 2017	OCTOBER 10, 2017	13
13	JOHN JOSEPH	MARCH 8, 2018	MARCH 14, 2018	6
14	KAILASH CHOUDHARY	JUNE 5, 2018	JUNE 20, 2018	15
15	KUMAR ABHAY	JUNE 14, 2018	JUNE 15, 2018	1
16	MANAS RANJAN PARIDA	JANUARY 15, 2018	JANUARY 16, 2018	1
17	MANISHA GARG	SEPTEMBER 28, 2018	JANUARY 8, 2019	102
18	NARAYAN BISWAS	APRIL 30, 2018	MAY 1, 2018	1
19	PARVEZ KHAN	AUGUST 30, 2018	SEPTEMBER 3, 2018	4
20	PRASHANT BHOSALE	AUGUST 28, 2018	OCTOBER 8, 2018	41
21	PRASHANT SINGH	JULY 25, 2018	JULY 30, 2018	5
22	RAHUL VISHNUPANT JAWALE	APRIL 18, 2018	APRIL 20, 2018	2
23	RAKESH KUMAR SINGHAL	OCTOBER 4 , 2018	OCTOBER 5, 2018	1
24	RAMESH MULJIBHAI ASHIYANI	JULY 24, 2018	JULY 25, 2018	1

TABLE IV				
SL. No.	CLIENT	DATE OF PAYMENT RECEIVED FROM CLIENTS	DATE ON WHICH RISK PROFILE IS DONE AS PER RISK PROFILE FORM	DIFFERENCE IN DAYS
25	RAMESHCHANDRA AMRUTLAL PATEL	SEPTEMBER 22, 2018	SEPTEMBER 26, 2018	4
26	RAVI SHARMA	MAY 6, 2019	MAY 7, 2019	1
27	SANDEEP KUMAR	SEPTEMBER 11, 2018	SEPTEMBER 12, 2018	1
28	SATYANARAYAN GOURISHANKAR JAISWAL	FEBRUARY 28, 2018	MARCH 1, 2018	1
29	SHARDA SIDDHANT NIKAM	MARCH 7, 2018	MARCH 10, 2018	3
30	SHREELAKSHMI S.	APRIL 5, 2019	APRIL 6, 2019	1
31	VIKAS KUMAR DUBEY	MAY 23, 2019	MAY 29, 2019	6
32	VINOD KUMAR	SEPTEMBER 15, 2018	SEPTEMBER 17, 2018	2

13.26 From the above mentioned Table, it is also observed that in some cases, the time period between the date of receipt of fees from clients vis-a-vis date when RPA was carried out by Noticee 1, was two weeks or more (sl. No. 12, 14, 17 and 20 of Table IV).

13.27 Further, contrary to Noticee 1's submission that investment advisory was not started before completion of RPA, the following facts confirm that the Noticee had not only sold products /services and collected fees from clients but also started services prior to carrying out RPA:

- a. In the case Jitendra (serial no. 12 of Table IV), the payment was received on September 27, 2017 while the RPA was only done on October 10, 2017. As noted from Table VII at page 27 (see serial no. 6), Noticee 1 had issued an invoice dated September 27, 2017, for confirmation of service charges received from Jitendra and had also started the service on that date, which confirms that investment advisory service was started prior to carrying out RPA of the said client.

- b. Further, in the case of John Joseph (serial no. 13 of Table IV), the payment was received on March 8, 2018 while the RPA was only done on March 14, 2018. As noted from Table VII at page 26 (see serial no. 3), Noticee 1 had issued an invoice dated March 8, 2018, for confirmation of service charges received from John Joseph and had also started the service on that date, which confirms that investment advisory service was started prior to carrying out RPA of the said client. Further, from Table I at page 10 (see serial no. 4 therein), while the e-mail attaching the completed RPAF was sent to John Joseph on the same date, it was nonetheless observed that the e-mail was sent to an ID (jose24k@rediffmail.com) which was different from the one mentioned in the KYC verified by NDML KRA (johnymelazhakath@yahoo.co.in). Further, proof of confirmation of RPAF by John Joseph is not available. It is also pertinent to note that John Joseph was provided with a very limited time to confirm the risk profiling and assessment arrived at by the Noticee 1 failing which, deemed consent would be considered.

13.28 Upon a consideration of the aforementioned, I find that Noticee 1 had sold products /services and collected advisory fees from its clients prior to carrying out /completing RPA, thereby violating Regulation 15(9) read with Clauses 1 and 2 of the Code of Conduct specified under Schedule III and Regulation 17(a) of the Investment Adviser Regulations.

ALLEGATION NO. 2: UNREASONABLE /UNFAIR FEES CHARGED FROM CLIENTS – Noticee 1 was *prima facie* alleged to have violated the provisions of the Investment Adviser Regulations on account of having collected unreasonable /unfair fees from its clients.

14.1 Unreasonable fee /disproportionate fees to the annual income/proposed investment: Of the sample size of 52 clients that were examined in the Inspection, it was revealed that Noticee 1 had charged fees from 18 such clients which were disproportionate to their annual income as disclosed in their respective RPAF. The details of such clients are provided below:

TABLE V				
SL. No.	CLIENT	FEES RECEIVED FROM CLIENT IN INR	ANNUAL INCOME AS PER RPAF IN INR	PROPOSED INVESTMENT BY CLIENT AS PER RPAF IN INR
1	JITENDRA	25,35,676	LESS THAN 5 LAKH	LESS THAN 5 LAKH
2	NANDLAL KUSHWAHA	18,34,813	LESS THAN 5 LAKH	LESS THAN 5 LAKH
3	BALBIR SINGH MANDI	12,59,888	MORE THAN 15 LAKH	5 LAKH TO 10 LAKH
4	PRASHANT SINGH	12,00,000	5 TO 10 LAKHS	LESS THAN 5 LAKH
5	KUMAR ABHAY	11,79,032	MORE THAN 15 LAKH	5 LAKH TO 10 LAKH
6	AZAD MOHD	11,76,692	5 TO 10 LAKHS	LESS THAN 5 LAKH
7	PARVEZ KHAN	11,55,111	5 TO 10 LAKHS	LESS THAN 5 LAKH
8	SUDHAKAR RAO	11,52,750	MORE THAN 15 LAKH	LESS THAN 5 LAKH
9	SANDEEP KUMAR	10,30,263	MORE THAN 15 LAKH	LESS THAN 5 LAKH
10	RAHUL VISHNUPANT JAWALE	8,78,610	5 TO 10 LAKHS	LESS THAN 5 LAKH
11	ACHAL JHINGRAN	8,40,000	10 LAKH TO 15 LAKH	5 LAKH TO 10 LAKH
12	RAMESH MULJIBHAI ASHIYANI	8,31,000	10 LAKH TO 15 LAKH	LESS THAN 5 LAKH
13	SHREELAKSHMI S	7,64,044	LESS THAN 5 LAKH	LESS THAN 5 LAKH
14	PRAVEEN KUMAR	7,28,697	5 TO 10 LAKHS	LESS THAN 5 LAKH
15	AFSAR ALI	6,92,500	10 LAKH TO 15 LAKH	LESS THAN 5 LAKH
16	BALKISHAN DHAKER	6,80,000	LESS THAN 5 LAKH	LESS THAN 5 LAKH
17	NARAYAN BISWAS	6,77,549	LESS THAN 5 LAKH	LESS THAN 5 LAKH
18	MAULIK GANESHBHAI AMRELIA	4,48,502	LESS THAN 5 LAKH	LESS THAN 5 LAKH

14.2 In their replies, Noticees 1 and 2 submitted as under:

- a. We have always charged fees on a reasonable basis. Further, it is submitted that in case there would have been an unreasonable fee charged, we would not have received a good response from the clients. Yet in seven years (2014 to 2021), we have served over 11,000 clients.
- b. With regard to the 18 instances mentioned in the Interim Order, in certain cases, there has been a re-risk profiling and the clients had subsequently increased the proposed investment.
- c. With respect to Balbir Singh Mandi, adverse inference is drawn on the basis of the fact that total fee of INR 12,59,888 was received from him whereas his Annual Income was more than INR 15,00,000 and the proposed investment as per RPQ, it was between INR 5,00,000 to INR 10,00,000. It is submitted:
 - As per his RPQ, his risk appetite was 32 (score), which falls under the category of High Risk Profile (which is between scores of 26 to 40).
 - Pertinently, in respect of the fees charged, it is humbly submitted that the total fees of INR 12,59,888 as indicated was for multiple services and for multiple periods as under:

NAME OF SERVICE	PERIOD OF SERVICE	AMOUNT	DATE OF INVOICE	ANNEXURE No.
BONZER SPECIAL FUTURE RECOMMENDATION (AS CLIENT HAD MADE SEPARATE PAYMENT, SEPARATE BILLS WERE GENERATED)	15.10.2018 TO 14.10.2019 (YEARLY)	2,34,888	14.10.2018	2
		50,000	14.10.2018	2A
BONZER SPECIAL CASH RECOMMENDATION	8.09.2018 TO 8.03.2019 (SIX MONTHS)	1,60,000	8.09.2018	2B
BONZER SPECIAL CASH RECOMMENDATION	9.03.2019 TO 9.09.2019 (SIX MONTHS)	1,60,000	9.03.2019	2C
BONZER SPECIAL MCX RECOMMENDATION	27.03.2019 TO 27.09.2019 (SIX MONTHS)	1,60,000	27.03.2019	2D
PREMIUM MCX BME RECOMMENDATION	27.09.2018 TO 27.09.2019 (YEARLY)	1,50,000	27.09.2018	2E
PREMIUM INDEX FUTURE RECOMMENDATION	5.10.2018 TO 5.10.2019 (YEARLY)	3,45,000	5.10.2018	2F
TOTAL		12,59,888		

- In fact, the services ranged for various time period /frame i.e. half yearly, yearly, etc. Hence, the fees were charged on the basis of

service offered and on his instructions. In fact, on perusal of the aforesaid table, it is submitted that as he was satisfied with our services he took the services again. For example, he took the service of Bonzer Special Cash Recommendation for a period from 8.09.2018 to 8.03.2019 (Six months) on 8.09.2018. Pertinently, as he was satisfied with our services he took the service again on 9.03.2019 for the period from 9.03.2019 to 9.09.2019 (Six months).

d. Additionally, in respect of one Prashant Singh, adverse inference is drawn on the basis of the fact that a total fees of INR 12,00,000 was received from him whereas his annual income was between INR 5,00,000 to INR 10,00,000 and the proposed investment as per RPQ was less than INR 5,00,000. It is submitted:

- As per revised Risk Profiling dated 20.08.2018, his proposed investment was INR 10,00,000 to 20,00,000 and his income was above 15,00,000.
- Pertinently, in respect of fees charges, the total fee of INR 12,00,000 was for multiple services and for multiple periods as under:

NAME OF SERVICE	PERIOD OF SERVICE	AMOUNT	DATE OF INVOICE	ANNEXURE No.
STOCK CASH RECOMMENDATION	31.07.2018 TO 31.08.2018	12,500	31.07.2018	4
BONZER SPECIAL CASH RECOMMENDATION	31.07.2018 TO 31.07.2019	2,99,878	31.07.2018	4A
MCX BME RECOMMENDATION	6.08.2018 TO 5.08.2019	70,000	5.08.2018	4B
PREMIUM INDEX FUTURE RECOMMENDATION	10.08.2018 TO 10.08.2019	3,45,000	10.08.2018	4C
BASE METALS AND ENERGY RECOMMENDATION	23.08.2019 TO 22.10.2019	13,221	22.08.2018	4D
FOREX RECOMMENDATION	24.08.2018 TO 24.08.2019	59,400	21.08.2018	4E
PREMIUM FUTURE RECOMMENDATION	1.04.2019 TO 1.03.2020	81,000	31.03.2019	4F
MCX POSITIONAL RECOMMENDATION	1.04.2019 TO 1.05.2020	1,41,000	31.03.2019	4G
INDEX OPTION RECOMMENDATION	1.04.2019 TO 1.04.2020	1,78,000	31.03.2019	4H
TOTAL		12,00,000		

- In fact, the services ranged for various time period /frame i.e. half yearly, yearly, etc. Hence, the fees were charged on the basis of service offered and on his instructions.

14.3 The Noticee has not denied the findings of the Inspection but rather, has contended that the fees charges were reasonable. As per the Investment

Adviser Regulations, principle based determination of fee by the registered intermediary is permitted subject to such fee being *reasonable and justifiable*. In other words, while SEBI has not specified any limit for fees to be charged by the registered intermediary, Clause 6 of the Code of Conduct specified in Schedule III of the Investment Adviser Regulations nonetheless states in clear terms that: *any fee charged has to be reasonable and justifiable*. In this context, *reasonable and justifiable* for a registered intermediary with respect to the fee charged from a client has to be construed taking into consideration the specific risk appetite of a client including his /her capacity for absorbing financial loss of capital. From the details of fees levied on clients as captured in Table V, I find that Noticee 1 had collected fees which were unreasonable and disproportionate to their annual income as disclosed in their respective RPAF.

14.4 As regards the contention that for some clients, fees were charged pursuant to a re-risk profiling, I note that the Noticee has only adduced evidence in respect of the entity at serial no. 7 of Table V. Having regard to the findings at paragraph 13.19 of pages 17 – 18, I find no merit in the Noticee's submission.

14.5 ***Locking in the clients by advance fee for sale of products along with charging arbitrary and unreasonable fee (a) from the same client for the same service and (b) from different clients for the same service:*** Of the sample size of 52 clients that were examined in the Inspection, it was found that Noticee 1 had sold the same advisory product /service to clients on the first day of service and subsequent sale in quick succession to their first service or before the end of tenure of their earlier service. An illustration is provided below:

TABLE VI						
SL. No.	INVOICE DATE	SERVICE	PERIOD OF SERVICE	SERVICE CHARGES IN INR	SERVICE START DATE	SERVICE END DATE
1	26.09.2017	BONZER CASH	90 DAYS	66,150/-	26.09.2017	26.12.2017
2	29.09.2017	BONZER CASH	180 DAYS	75,000/-	29.09.2017	29.03.2018
THE ABOVE SERVICES WERE SOLD TO AMIT KUMAR ROY						

14.6 In its replies, Noticee 1 has contended that fees were charged on a reasonable basis.

14.7 The details in Table VI clearly indicates that the amounts charged for the second instance was just after two days from the start of the tenure of first service. This, in effect, locked in the client to continue with same service of Noticee 1 without providing any opportunity to sever ties in case of any dissatisfaction with the first service. Further, arbitrary fees were charged for same services from the same client disregarding proportionality of the period of services. Thus, for the same service, client was charged INR 66,150 for 90 days and INR 75,000 for 180 days. The service period for both the services were overlapping and operational for certain period of time i.e. the overlapping period was September 29, 2017 to December 26, 2017. Upon a consideration of the aforementioned, it is evident that Noticee 1 did not act in the best interests of its clients.

14.8 The Inspection revealed several instances where products /services were sold which overlapped in their tenure and were operational at the same time as under:

TABLE VII							
SL. No.	CLIENT	SERVICE	INVOICE DATE	SERVICE CHARGES IN INR	SERVICE START DATE	SERVICE END DATE	PERIOD OF SERVICE
1.	BALBIR SINGH MANDI	BONZER SPECIAL FUTURE RECOMMENDATION	14.10.2018	2,34,888	15.10.2018	14.10.2019	365 DAYS
		BONZER SPECIAL FUTURE RECOMMENDATION	14.10.2018	50,000	15.10.2018	14.10.2019	365 DAYS
2.	JADHAV CHANDRA PRAKASH	STOCK XPRESS	14.03.2018	11,500	14.03.2018	14.06.2018	90 DAYS
		STOCK XPRESS	17.03.2018	32,500	17.03.2018	17.06.2018	90 DAYS
		STOCK XPRESS	23.03.2018	47,500	23.03.2018	23.03.2019	365 DAYS
3.	JOHN JOSEPH	STOCK FUTURES	08.03.2018	5,000	08.03.2018	08.05.2018	60 DAYS
		STOCK FUTURES	20.03.2018	11,500	20.03.2018	20.05.2018	60 DAYS
4.		STOCK CASH	02.04.2019	12,500	02.04.2019	03.06.2019	60 DAYS

TABLE VII							
SL. No.	CLIENT	SERVICE	INVOICE DATE	SERVICE CHARGES IN INR	SERVICE START DATE	SERVICE END DATE	PERIOD OF SERVICE
	VINAY KUMAR RANA	STOCK CASH	20.03.2019	50,000	20.03.2019	20.03.2020	365 DAYS
5.	VINOD KUMAR	PREMIUM MCX BME	25.10.2018	1,00,000	25.10.2018	25.04.2019	180 DAYS
		PREMIUM MCX BME	25.10.2018	1,50,000	25.10.2018	25.04.2019	180 DAYS
6.	JITENDRA	BONZER CASH	27.09.2017	1,53,500	27.09.2017	27.09.2018	365 DAYS
		BONZER PACK	28.09.2017	2,06,500	28.09.2017	28.09.2018	365 DAYS
		BONZER CASH	30.09.2017	2,30,000	30.09.2017	30.09.2018	365 DAYS
		BONZER CASH	31.10.2017	2,16,000	31.10.2017	31.10.2018	365 DAYS
		BONZER PACK	13.11.2017	18,200	13.11.2017	13.11.2018	365 DAYS
		PREMIUM NIFTY	31.10.2017	2,13,800	31.10.2017	31.10.2018	365 DAYS
		PREMIUM NIFTY	11.10.2017	4,00,000	11.10.2017	11.10.2018	365 DAYS
		PREMIUM NIFTY	28.11.2017	1,27,200	28.11.2017	28.05.2018	180 DAYS
		PREMIUM NIFTY	14.12.2017	3,54,488	19.12.2017	19.01.2018	30 DAYS
7.	NANDLAL KUSHWAHA	ADVANTAGE COMMODITY	21.11.2017	6,250	21.11.2017	21.12.2017	30 DAYS
		ADVANTAGE COMMODITY	23.11.2017	51,072	23.11.2017	23.12.2017	30 DAYS
		ADVANTAGE COMMODITY	24.11.2017	85,120	24.11.2017	24.12.2017	30 DAYS
		ADVANTAGE COMMODITY	24.11.2017	9,192	24.11.2017	24.12.2017	30 DAYS
		ADVANTAGE COMMODITY	27.11.2017	15,322	27.11.2017	27.12.2017	30 DAYS
		ADVANTAGE COMMODITY	30.11.2017	12,000	30.11.2017	30.12.2017	30 DAYS
		ADVANTAGE COMMODITY	08.12.2017	48,000	08.12.2017	08.01.2018	30 DAYS
		ADVANTAGE COMMODITY	08.12.2017	48,000	08.12.2017	08.01.2018	30 DAYS
		ADVANTAGE COMMODITY	08.12.2017	5,500	08.12.2017	08.01.2018	30 DAYS
		ADVANTAGE COMMODITY	08.12.2017	40,800	08.12.2017	08.01.2018	30 DAYS
		BONZER PACK	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS

TABLE VII							
SL. No.	CLIENT	SERVICE	INVOICE DATE	SERVICE CHARGES IN INR	SERVICE START DATE	SERVICE END DATE	PERIOD OF SERVICE
		BONZER PACK	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS
		BONZER PACK	30.11.2017	5,400	30.11.2017	30.12.2017	30 DAYS
		BONZER PACK	30.11.2017	1,540	30.11.2017	30.12.2017	30 DAYS
		BONZER PACK	30.11.2017	10,000	30.11.2017	30.12.2017	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	49,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	20.12.2017	13,000	20.12.2017	20.01.2018	30 DAYS
		BONZER PACK	28.12.2017	10,000	28.12.2017	28.01.2018	30 DAYS
		BONZER CASH	30.11.2017	15,000	30.11.2017	30.12.2017	30 DAYS
		BONZER CASH	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS
		BONZER CASH	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS
		BONZER CASH	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS
		BONZER CASH	30.11.2017	49,000	30.11.2017	30.12.2017	30 DAYS
		BONZER CASH	30.11.2017	13,840	30.11.2017	30.12.2017	30 DAYS
		TRIPLE ADVANTAGE	21.12.2017	3,56,000	21.12.2017	21.12.2018	365 DAYS
		TRIPLE ADVANTAGE	28.12.2017	2,25,000	28.12.2017	28.12.2018	365 DAYS

14.9 The contents of Table VII clearly demonstrate the instances of arbitrary and unreasonable fee from the same client for the same service as under:

- a. In the case of client Jadhav Chandra Prakash, the first service was for 3 months' tenure and fees charged was INR 11,500. For the same service provided, fees charged at second instance was INR 32,500 for a period of 3 months and for third time was INR 47,500 for a period of 1 year.

- b. In the case of client Jitendra, one service for Bonzer cash was for 6 months' tenure and fees charged was INR 1,27,200. For the same service, INR 3,54,488 was charged for a one month period, i.e. almost triple the amount of fees for same service while the period for which fees was charged was significantly reduced.

14.10 As regards the Noticee's contention in respect of the fees charged from Balbir Singh Mandi, I note that vide its reply dated April 24, 2022, it had also submitted a copy of its fees structure (Annexure 24 therein) to SEBI. On perusing the aforesaid document, it is observed that the same pertains to the services provided by Capitalaim Financial to its clients. The fee structure for the '*Bonzer Pack*' was as under:

TABLE VIII					
PERIOD	MONTHLY	2 MONTHLY	QUARTERLY	HALF YEARLY	YEARLY
AMOUNT IN INR	30000	51000	79500	139500	230000

14.11 Noticee 1 has submitted that the fee charged from Balbir Singh Mandi (serial no. 1 of Table VII) was by way of two invoices (Annexures 2 and 2A of the reply dated July 13, 2022) while the duration of the service was one year. The Inspection has clearly brought out that the same service was sold twice to Balbir Singh Mandi (Bonzer Special Future Recommendation), with the same tenure with differing service charges. Having regard to Table VII, if the client had indeed availed of the '*Bonzer Pack*' for a yearly period, the amount due from him would have been INR 2,30,000 and not INR 2,84,888 as was charged from him.

14.12 From the preceding paragraphs, it is observed that considering the annual income and /or proposed investment by the clients, Noticee 1 had not charged fair and reasonable fees from its clients. Further, Noticee 1 had adopted dishonest business practices by making the client subscribe to multiple subscriptions of the same package on the same day /next day /soon thereafter and charging unreasonable and arbitrary fee for the same service /product with complete disregard to duration of service offered and out of line with its own card rates. These acts of Noticee 1 were meant to generate more fees for itself

and was clearly not in the interest of its clients. In view of the aforesaid, Noticee 1 failed in its responsibility to act in fiduciary capacity to its client in violation of Regulation 15(1) of Investment Adviser Regulations and Clauses 1 and 6 of Code of Conduct specified in Schedule III read with Regulation 15(9) of Investment Adviser Regulations.

15. ***Allegation no. 3:*** From the preceding paragraphs, it is observed that the Noticee 1 failed to carry out risk profiling and suitability assessment of client(s) and had not charged fair and reasonable fee(s) from client(s) in violation of the Investment Adviser Regulations. By adopting the aforementioned *modus operandi*, Noticee nos. 1 to 6 knowingly employed a scheme to defraud client(s) through their dealings in securities in order to maximize their revenue generation at the expense of their clients in violation of the provisions of the SEBI Act and the PFUTP Regulations:

PROVISIONS OF THE SEBI ACT:

“Section 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”*

PROVISIONS OF THE PFUTP REGULATIONS:

Regulation 2(1)(c):

- “(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
 - (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
 - (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
 - (4) a promise made without any intention of performing it;*
 - (5) a representation made in a reckless and careless manner whether it be true or false;*
 - (6) any such act or omission as any other law specifically declares to be fraudulent,*
 - (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
 - (8) a false statement made without reasonable ground for believing it to be true.*
 - (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly ...”

Regulation 3. *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.”*

15.1 In their replies, Noticees 1 and 2 submitted as under:

- a. *We have stopped registering new clients since February 2020 (approximately 1 year prior to passing of the Interim Order). In fact, as on date, around two and a half years have passed from the date of registration of our last client. Our business has come to a standstill. Hence, we desire to surrender our Certificate of Registration and have made an application on July 13, 2022. We do not intend to continue our business in the future.*
- b. *We have complied with all the provisions of the Investment Adviser Regulations.*
- c. *Regulation 4(s) of the PFUTP Regulations relates to ‘mis–selling of securities or services relating to securities market’. However, the said provision was amended w.e.f. 1.02.2019. Prior to the aforesaid, the regulation read as ‘mis–selling of units of mutual fund scheme’. Hence, alleged violation till 1.02.2019 is not applicable to our case.*
- d. *We crave to refer and rely upon the Order dated May 28, 2021, passed by the Learned Whole Time Member, SEBI in the matter of Tatia Global Venture Ltd. wherein it is inter alia mentioned that Section 12A(a), (b), (c) of the SEBI Act and Regulations 3(b), (c) and (d), 4(1) and 4(2)(f) & (r) of the PFUTP Regulations deal with fraud /manipulation /unfair trade practices while dealing in securities and in relation to securities market. Further, it is also stated that Section 12A(a), (b), (c) of the SEBI Act may be invoked in cases in connection with the issue, purchase or sale of any securities. In our case, there is no purchase /sale and /or dealing of*

- securities. Our role is merely of providing investment advice. In view therefore, the allegations of PFUTP Regulations are not applicable to us.
- e. Additionally, reference of Section 27 of the SEBI Act is also mentioned in the abovementioned Order of the learned Whole Time Member, SEBI, that at the relevant time, the aforementioned provision did not provide for vicarious liability in respect of the civil liability of the Company arising out of the violations committed by such Company.

15.2 In his reply dated April 20, 2021, Noticee 3 *inter alia* submitted as under:

- i. Initially in June 2013, I had joined Capitalaim Financial as a relationship manager. Pursuant to my appointment and a review of my performance, I was promoted to Sales Manager and then the Assistant Vice President of the Company.
- ii. In June 2018, I was offered a position of Director of Capitalaim Financial since Sheetal Foujdar (past Director) had resigned. Pertinently, the statutory requirement needed at least 2 Directors to maintain compliance as per the MCA requirements. Since I had been working in the Company for a long time, I accepted the same and was inducted as a Director of Capitalaim Financial.
- iii. Thereto, in April 2019, due to my personal career growth opportunity and due to unavoidable circumstances, I had given my letter of resignation to the Board of Directors of Capitalaim Financial. In response thereto, Capitalaim Financial vide letter dated April 16, 2019, informed me that because of the resignation of Debabrata Bhattacharjee, there were only two Directors in the Company i.e. me and Abhijeet Bajpai. Hence, they requested me to continue as a Director until such time a new Director was found.
- iv. During my tenure as a Director, I did not play any active role in the Board of the Company. I was never a signatory to any bank account of Capitalaim Financial nor was I involved in the day-to-day functioning of the Company. I was never involved in the decision making process of Capitalaim Financial. Further, in the Interim Order, there has been no

specific mention of any adverse inference against me. Apart from my salary, I have not received any gain /advantage from Capitalaim Financial.

15.3 In his reply dated May 9, 2021, Noticee 4 *inter alia* submitted as under:

- i. *Initially in December 2012, I had joined Capitalaim Financial as an Executive. Pursuant to my appointment and a review of my performance, I was promoted and was leading the Research Department. As Sheetal Foujdar (past Director) had resigned, Anant Tiwari was made the Director. Further, I was informed that to maintain the right balance in the Board of Directors (since I was in the research department), I was offered the position of Director vide the Company's letter dated September 14, 2018. I accepted the said offer and was inducted as a Director with effect from November 15, 2018.*
- ii. *Vide my letter dated April 8, 2019, I expressed my desire to resign from the Directorship of Capitalaim Financial since I had to shift to my native place, Kolkata. In response thereto, Capitalaim Financial vide letter dated April 16, 2019, informed me that since Noticee 3, Anant Tiwari had also expressed his desire to resign from the Company, there were only two Directors in the Company i.e. me and Abhijeet Bajpai. Hence, they requested me to continue as a Director until such time a new Director was found. Subsequently, I resigned as a Director with effect from June 30, 2020.*
- iii. *During my tenure as a Director, I did not play any active role in the Board of the Company. I was never a signatory to any bank account of Capitalaim Financial nor was I involved in the day-to-day functioning of the Company. I was never involved in the decision making process of Capitalaim Financial. Further, in the Interim Order, there has been no specific mention of any adverse inference against me. Apart from my salary, I have not received any gain /advantage from Capitalaim Financial.*

15.4 In her reply dated May 4, 2021, Noticee 5 *inter alia* submitted as under:

- i. *I was appointed as a Director of Capitalaim Financial with effect from September 10, 2015 and had resigned with effect from October 22, 2018. With regards to my involvement in Capitalaim Financial, I state that Company in the Board resolution dated October 3, 2015 (annexed with the reply and which was also provided to SEBI in the inspection of 2016–17), had specifically mentioned that: “Mrs. Sheetal Foujdar is excluding herself from day-to-day activities of the Company due to family commitments.” I was therefore not involved in the day-to-day activities of the Company.*
- ii. *I am a teacher by profession and was working in Daisy Dales School for the period October 2017 to March 2020. Copy of the letter dated April 1, 2021, received from Daisy Dales School is enclosed.*

15.5 In her reply dated May 4, 2021, Noticee 6 *inter alia* submitted as under:

- ii. *I was appointed as a Director of Capitalaim Financial with effect from December 31, 2013 and had resigned with effect from October 10, 2015. After my resignation, I was not associated in any manner with the Company. I am attaching copies of my Income Tax Returns for the Assessment Year 2014–15 and 2015–16, which clearly indicate that I had not received any salary /incentive or any income whatsoever from Capitalaim Financial during the course of my Directorship.*
- iii. *Further, the Interim Order is passed pursuant to the Inspection carried out by SEBI during the period November 4 to 8, 2019 post my resignation.*

15.6 As has been discussed in the preceding paragraphs, the following conduct of Noticee 1 is reiterated hereunder:

- a. Out of the sample size of 52 clients, the Noticee failed to carry out and communicate the risk profiling and assessment to 27 clients.
- b. The Noticee had sold products which were not appropriate with its clients' risk profile.

- c. The Noticee had sold and collected fees for its advisory services from its clients prior to carrying out risk profiling and assessment.
- d. The Noticee had charged unreasonable fees from its clients, which were disproportionate to their annual income /proposed investment.
- e. The Noticee had sold same services / packages to same clients on multiple occasions at different service charges for future period /overlapping period.

15.7 Sections 12(a)–(c) of the SEBI Act read with Regulations 3(a)–(d) of the PFUTP Regulations *inter alia* state that no person (including a registered intermediary) shall directly or indirectly use or employ any scheme or device to defraud in connection with dealing in securities; or engage in any act, practice, course of business which operates as fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the said Act or the Rules and Regulations made thereunder.

15.8 The Noticee's conduct (as detailed in the preceding paragraphs) exposes the deceptive devices adopted by them to defraud its clients in connection with their dealings in securities. The aforementioned was done to maximize its income through the fees collected under advisory services disregarding the interest of its clients. In my considered view, the deceptive devices employed by Noticee 1 are covered within the definition of '*fraud*' under Regulation 2(1)(c) of the PFUTP Regulations and therefore, amount to a violation of the provisions of Sections 12(a)–(c) of the SEBI Act read with Regulations 3(a)–(d) of the PFUTP Regulations.

15.9 As per the information obtained from MCA website '*MCA21 Portal*', the past and present Directors of Capitalaim during the period April 11, 2014 till the date of the Interim Order were as under:

TABLE IX				
SL. No.	NAME	DATE OF APPOINTMENT	DATE OF CESSATION	DESIGNATION
1.	ABHIJEET BAJPAI	29.11.2012	-	PRESENT DIRECTOR
2.	ANANT TIWARI*	22.10.2018	-	PRESENT DIRECTOR
3.	DEBABRATA BHATTACHARJEE	15.11.2018	30.06.2020	PAST DIRECTOR
4.	SHEETAL FOUJDAR	10.09.2015	22.10.2018	PAST DIRECTOR
5.	ABHILASHA VERMA	31.12.2013	10.10.2015	PAST DIRECTOR
* ANANT TIWARI IS NO LONGER A DIRECTOR IN NOTICEE 1 WITH EFFECT FROM MARCH 22, 2021.				

15.10 As far as Noticee 2 is concerned, I note that he continues to be a Director in Noticee 1 as on date. In his submissions, while placing reliance on the **SEBI Order dated December 21, 2021, passed in the matter of K–Lifestyle and Industries Ltd.**, Noticee 2 has contended that: “Section 27, as it existed prior to March 8, 2019 did not provide for vicarious liability in respect of the civil liability of the Company arising out of the violations committed by such Company.” In this respect, I note from the SEBI Act that post the amendment by way of the Finance Act, 2018 and with effect from March 8, 2019, the word ‘offence’ in the Section 27 was changed to ‘contravention’. Thus, the Noticee’s defence is that since prior to March 8, 2019, the word ‘offence’ found mention in the said Section, it could only be applicable to criminal proceedings and not the present proceeding, which is civil in nature. In this context,

- a. Reference is made to the judgement of Hon’ble Supreme Court in **Standard Chartered Bank and Others Vs. Directorate of Enforcement Others, Appeal (Civil) 1748 of 1999, Judgment dated February 24, 2006**, which was *inter alia* with respect to determination of the scope and applicability of

Section 68 of the Foreign Exchange Regulation Act, 1973 (“**FERA**”). For convenience of reference, the aforesaid provision is reproduced below:

“68. Offences by companies

1. *Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

2. *Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*

Explanation— For the purposes of this section -

- i. **“company”** means any Body Corporate and includes a firm or other association of individuals;

and

- ii. **“director”**, in relation to a firm, means a partner in the firm.”

- b. As noted from the above, the said provision of FERA is a mirror image of Section 27 of the SEBI Act. The Hon’ble Supreme Court while considering the import of the word ‘*offence*’ as occurring under Section 68 of FERA, had noted that in the absence of the definition of ‘*offence*’ being present in the

said Act, “an ‘offence’ only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone.” Further, the Hon’ble Supreme Court had relied on the case of ***In Brown v. All weather Mechanical co. [(1954) 2 QB 443]***, wherein it was held that: “a failure to do something prescribed by a statute may be described as an offence, though no criminal sanction is imposed but merely a pecuniary sanction recoverable as a civil debt.”

- c. In view of the above, the Hon’ble Supreme Court clarified that once it had been shown that contravention of the provisions of the Act had happened, the consequences flowing from such contravention could not be confined only to prosecutions.
- d. I note that the SEBI Act, much like FERA does not define ‘offence’. In the absence of such definition, the principle as enunciated by the Hon’ble Supreme Court in the above case shall apply. Further, as held by the Hon’ble Supreme Court in the above mentioned case, the consequences flowing from the contravention of Companies cannot be confined only to prosecutions. Thus, I am of the view that the replacement of the word ‘offence’ with ‘contravention’ in Section 27 of the SEBI Act operates merely as a clarification to denote that the power to pierce the corporate veil of a company always existed and continues to exist in respect of both civil and criminal proceedings under the SEBI Act. Accordingly, the defense advanced by Noticee 2 that prior to March 8, 2019, Section 27 of the SEBI Act was applicable only to a criminal proceedings and not the present proceedings, which is civil in nature, is erroneous.
- e. Accordingly, I find that Noticees 2 to 5 by virtue of being Directors are liable for the contraventions /offences of Noticee 1. It is noted that in their submissions, the aforementioned Noticees have not been able to show the contraventions /offences of Noticee 1 were committed without their knowledge or that they had exercised all due diligence to prevent the commission of such actions. That being the case, there is no ground to

exclude their liability for the contraventions /offences committed by Noticee 1.

15.11 I note that although Noticees 3 to 5 are liable for the conduct of Noticee 1 for the reasons detailed in paragraph 15.10, their submissions do indicate that they were not involved in the day-to-day activities or decision making process in the said Noticee. This position has also not been controverted by Noticees 1 and 2 in their submissions. In view of the same, I am of the considered view that the directions against them ought to be different from the directions issued to Noticees 1 and 2.

15.12 From the material available on record, there are complaints pending against the Noticee 1 on the SCORES. In this regard and in the interest of investors, I am of the considered view that a direction to Noticees 1 and 2 to resolve said complaints, is warranted.

15.13 With respect to Noticee 6, I am inclined to accept her submission that she was not a Director in Noticee 1 for the period when the Inspection was carried out by SEBI, as is borne out from Table IX above. Therefore, no adverse inference is made against her in these proceedings.

ORDER

16. In view of the foregoing, I, in exercise of powers conferred upon me under Sections 11(1), 11(4), 11B(1) and 11D of the SEBI Act and in the interest of investors, do hereby pass the following directions:

- a. Noticees 1 and 2 shall continue to be prohibited from accessing the securities market and further be restrained from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or on behalf of any of his clients through their accounts, for a period of **five years** from the date of this Order. However, while calculating the period of restraint /debarment as directed above, the period of restraint /prohibition already undergone by the Noticee as per the directions contained in the Interim

Order shall be set off against the period of restraint /prohibition directed above.

- b. Noticees 1 and 2 are directed to resolve the complaints pending against Capitalaim Financial on the SCORES platform and otherwise, within a period of 30 days from the date of this Order and furnish a report to SEBI. Such report shall be filed within 3 months of this Order.
- c. In case of failure of Noticees 1 and 2 to comply with the aforesaid directions at sub-para (b) above, the directions issued at sub-para (a) shall continue to be in force beyond the period of five years till the date of compliance with direction given in para (b) above, by the said Noticees.
- d. During the period of restraint, the existing holdings of securities, including the holdings of units of mutual funds, of Noticees 1 and 2, shall remain frozen.
- e. The restraint imposed vide the Interim Order on Noticees 1 and 2 not to divert any funds collected from investors, kept in bank account(s) and/or in their custody and not to alienate any assets, whether movable or immovable, or any interest or investment or charge on such assets held in the name of said Noticees, including money lying in bank accounts, shall continue except for making refunds to clients, with prior permission of SEBI, for the purpose of resolution of pending complaints, as directed at sub-paragraph (b) above. The said restraint shall stand vacated after pending complaints are resolved and a report, as mentioned at sub-paragraph (b) above is filed to the satisfaction of SEBI.
- f. Noticees 3, 4 and 5 shall continue to be prohibited from accessing the securities market and further be restrained from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or on behalf of any of his clients through their accounts, for a period of **two years** from the date of this Order. However, while calculating the period of restraint /debarment as directed above, the period of restraint /prohibition already

undergone by the Noticee as per the directions contained in the Interim Order shall be set off against the period of restraint /prohibition directed above.

- g. The proceedings initiated against Noticee 6 vide the Interim Order, are disposed of without any further directions.

17. The above directions shall come into force with immediate effect.

18. A copy of this Order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with. A copy of this Order shall also be sent to concerned police authorities and the Government of Madhya Pradesh.

Place: Mumbai
Date: January 9, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA