National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55294	Date: January 18, 2023
Circular Ref. No: 11/2023	

To All NSE Members

Sub: **SEBI Order in the matter of Capital Yield Research and Advisory**

SEBI vide its Order No. WTM/ASB/WRO/WRO/22919/2022–23 dated January 18, 2023 has hereby restrained Mr. Manish Lalwani, Proprietor - Capital Yield Research and Advisory (PAN:-AGCPL2573P) 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 3 (three) years from the date of the SEBI Order or till the expiry of 3 (three) years from the date of completion of refunds to Complainants /investors /clients along with depositing of balance amounts, if any, with SEBI, as directed in paragraphs 7(a) and 7(e) of the SEBI Order, whichever is later.

This order shall come into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under “Home Regulation-Members-Action against Members-Regulatory Actions”.

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

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

National Stock Exchange of India

Mr. Ojas Murudkar (Extension: 22378), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure: - SEBI Order in the matter of Capital Yield Research and Advisory

WTM /ASB /WRO/WRO/22919/ 2022–23

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTIONS 11(1), 11(4) AND 11B(1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

IN RESPECT OF –

NAME	PAN
MANISH LALWANI, PROPRIETOR – CAPITAL YIELD RESEARCH AND ADVISORY	AGCPL2573P

IN THE MATTER OF CAPITAL YIELD RESEARCH AND ADVISORY.

BACKGROUND

1. The present proceedings emanate from a complaint dated March 22, 2016, against Manish Lalwani, Proprietor–Capital Yield Research and Advisory ("**Noticee**"), received by Securities and Exchange Board of India ("**SEBI**") from Shri. Rasik Rai. Vide the aforementioned complaint, the complainant had alleged that he had received calls from several numbers whereby services pertaining to tips on stocks were offered through Capital Yield Research and Advisory.

2. SEBI forwarded a copy of the above mentioned complaint to the Special Task Force, Madhya Pradesh Police vide a letter dated February 10, 2017. Simultaneously, SEBI conducted an examination in the matter and thereafter, issued a *Show Cause Notice dated July 9, 2021* ("**SCN**"), against the Noticee on the basis of findings contained in the examination report, *inter alia* alleging that:

   i. The Noticee carried out investment advisory activities and held himself out as *'Investment Adviser'* without obtaining a Certificate of registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act, 1992

("**SEBI Act**") read with Regulation 3(1) of SEBI (Investment Advisers) Regulations, 2013 ("**Investment Advisers Regulations**").

3. Vide the SCN, the Noticee was also called upon to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, should not be issued against him for the violations alleged in the SCN.

4. The details with regard to service of SCN are provided as under:

SR. NO.	NOTICEE	SCN NO. AND DATE	SCN SENT THROUGH SPEED POST ACKNOWLEDGEMENT DUE ("SPAD") /E – MAIL AT THE FOLLOWING ADDRESS	DELIVERY STATUS	NEWSPAPER WHERE PUBLIC NOTICE WAS PUBLISHED
1.	MANISH LALWANI	SEBI/WRO/14766/1 DATED JULY 9, 2021	1. 196, 1ST AND 2ND FLOOR, SCHEME NO. 54, PU – 4, INDORE, 452010, MADHYA PRADESH.	RETURNED UNDELIVERED	ENGLISH – TIMES OF INDIA (INDORE EDITION) ON MARCH 4, 2022 HINDI – RAJ EXPRESS (INDORE EDITION) ON MARCH 4, 2022
2.		SEBI/WRO/ILO/NM/OW/P/02334/1/2022 DATED JANUARY 19, 2022	345, DWARKA PURI, SUDAMA NAGAR, INDORE, 452009, MADHYA PRADESH	RETURNED UNDELIVERED	
3.		SEBI/WRO/ILO/NM/OW/P/02334/1/2022 DATED JANUARY 19, 2022	1806, SECTOR D, SUDAMA NAGAR, INDORE, 452009, MADHYA PRADESH.	RETURNED UNDELIVERED	

5. The Noticee replied to the SCN vide a letter dated March 14, 2022.

6. Thereafter, an opportunity of hearing was granted to the Noticee on July 14, 2022 (rescheduled from the earlier date of hearing granted to him on August 10, 2022). The Noticee appeared for the hearing through his authorised representative, Abhishek Mishra, who made oral submissions in line with the reply filed to the SCN.

FINDINGS:

5.1 I have considered the SCN, the reply submitted by the Noticee along with all the material available on record. As per the SCN, the Noticee is alleged to have held himself out as an *'Investment Adviser'* without obtaining registration from SEBI in violation of the provisions of Section 12(1) of the SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations. The aforementioned provisions of law read as under:

Provisions of the SEBI Act:

*"**Section 12 of the SEBI Act – Registration of stock brokers, sub-brokers, share transfer agents, etc.***

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

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, Investment Adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be *deemed to have been obtained from the Board in accordance with the regulations providing for such registration."*

Provisions of the Investment Advisers Regulations:

*"**Regulation 3 of the Investment Advisers Regulations – Application for grant of certificate.***

3.(1) On and from the commencement of these regulations, no person shall act as an Investment Adviser or hold itself out as an Investment Adviser unless he has obtained a certificate of registration from the Board under these regulations:"

5.2 In his reply, the Noticee submitted as under:

a. *Being the sole proprietor Capital Yield Research and Advisory (incorporated in December 2015), I started the operations by opening bank accounts in ICICI Bank and IDBI Bank. I had also created a website, www.capitalyieldresearch.com through which consultancy business in financial services was carried on. The State Bank of India ("**SBI**") account is a personal account opened in 2010 much before the Investment Advisers Regulations came into force.*
b. *I used to charge fees from clients for tips in the share market but I never offered any assured returns. I closed the business in August 2016 and thereafter, opened Secure Investor Investment Advisory on account of personal reasons.*
c. *I became aware of the requirement to get registered with SEBI under the Investment Advisers Regulations somewhere in June 2017. Subsequent to the aforesaid, I took steps to close down the business of Secure Investor Investment Advisory.*
d. *I admit the fact that I was involved in the activities without obtaining registration from SEBI in accordance with the provisions of the SEBI Act and Investment Advisers Regulations. I did shut my business as soon as I became aware of such requirement. I had also closed down the above mentioned bank account and website. However, it was on account of*

ignorance of such requirement that the mistake of carrying on the business was committed.

e. *I had no intention of committing any fraud or crime and none of my client(s) had faced losses or raised any type of complaint barring Rasik Rai, which complaint was also resolved.*

f. *The amount collected by Capital Yield Research and Advisory is lesser than the amount of INR 20,00,000 mentioned in the SCN. Further, while the SCN had mentioned the credit entries, there was no reference to the debit entries which also included the expenses incurred while running a business such as employee salaries, rental cost for office premises, etc.*

g. *The net revenue can also be verified through the Income Tax Returns filed by me during that duration, which is also enclosed.*

5.3 From the material available on record, the following is observed:

i. The Noticee's website www.capitalyieldresearch.com *(the website is no longer active; however, archived pages of the website were downloaded from web.archive.org),* contained the following information:

a. *"Capital Yield offers advisory tips which basically provided excellent equity, commodity and forex services. We give the best platform to secure business goal with our experienced research analyst team. Our fantastic research analyst team offers an investor exceptional services … to make a very good business return."*

b. *An illustration of the products /services made available on the Noticee's website, to prospective clients /investors, were as under:*

- *Equity:*
  - *Stock Cash, Stock Cash Platinum, Stock Cash Premium, Stock Future Tips, Stock Future Premium.*
- *Commodity:*
  - *Commodity Bullion, Commodity NCDEX, HNI MCX, Base Metal & Energy, etc.*

➢ *Combo Service:*

- *MCX + NCDEX, Bullion + Metal + Energy, Combo (Cash + Future)*

c. Through the website [*www.capitalyieldresearch.com*](http://www.capitalyieldresearch.com), the Noticee offered prospective clients /investors, various subscription packages relating to recommendations for stocks in cash, futures and option, etc. An illustration of the pricing details for some of the services offered, for periods ranging from one month to a year, is reproduced below:

➢ *Stock Cash*

1 Month	–	*7999/-*
3 Month	–	*12999/-*
6 Month	–	*26999/-*
12 Month	–	*53999/-*

5.4 Payment for the services offered by the Noticee could be made at ICICI Bank Account No. 185905500330 and IDBI Bank Account No. 1040102000006309 (the bank accounts, which were mentioned on the Noticee's website were inactive as on July 9, 2021). From the Account Opening Forms ("**AOF**") and Know Your Client ("**KYC**") documents received from ICICI Bank and IDBI Bank, it is observed that:

a. the Noticee was the authorised signatory to access and operate the said bank accounts;

b. the nature of business in the ICICI AOF was recorded as '*Consultant Advisory*'.

c. the total credits received in the ICICI Bank Account No. 185905500330 for the period from December 17, 2015 to August 31, 2016 amounted to **INR 13,88,970**.

d. the total credits received in the IDBI Bank Account No. 1040102000006309 for the period from November 28, 2015 to September 6, 2016 amounted to **INR 7,45,678**.

BANK	**AS PER THE ACCOUNT OPENING FORM, AUTHORISED SIGNATORY TO ACCESS AND OPERATE THE A/C**	**AMOUNT IN *INR***
ICICI BANK ACCOUNT NO. 185905500330, VIJAY NAGAR, INDORE BRANCH.	*MANISH LALWANI*	*13,88,970*
IDBI BANK ACCOUNT NO. 1040102000006309, SUDAMA NAGAR, INDORE BRANCH.		*7,45,678*

5.5 Further, the Industrial License granted to the Noticee, by the concerned Nagar Palika Nigam, Indore, Madhya Pradesh (the aforementioned was part of the KYC documents submitted to ICICI Bank), had a validity period of one year i.e. from April 1, 2015 to March 31, 2016.

5.6 The definition as given in Regulation 2(m) of the Investment Advisers Regulations states that *'Investment Adviser'* shall mean *"any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an Investment Adviser, by whatever name called".* Further, Regulation 2(l) of the Investment Advisers Regulations defines *'Investment Advice'* as "*advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning."*

5.7 In his reply, the Noticee admittedly started offering investment advisory services as the sole proprietor of Capital Yield Research and Advisory, without having obtained a Certificate of registration from SEBI with effect from December 2015. The Noticee admittedly created a website, www.capitalyieldresearch.com for offering the said services to prospective clients /investors. These admissions when viewed in light of the observations contained in the preceding paragraphs and the definitions therein lead me to conclude that the Noticee had, for the period from December 2015 to September 2016, held himself out as *'Investment Adviser'* by offering to give *'Investment Advice'* related to investing in, purchasing and selling of securities in lieu of consideration received from prospective investors /clients through various investment packages offered for subscription on the aforementioned website.

5.8 Section 12(1) of the SEBI Act *inter alia* provides that no Investment Adviser shall buy, sell or deal in securities except under, and in accordance with, the conditions of a Certificate of registration obtained from the Board. Further, Regulation 3(1) of the Investment Advisers Regulations provides that no person shall act as an Investment Adviser or hold himself out as an Investment Adviser unless he has obtained a Certificate of Registration from the Board. It is pertinent to mention that the Noticee was never registered with SEBI, in any capacity as an intermediary. By operating as *'Investment Adviser'* as defined under Regulation 2(m) of the Investment Advisers Regulations, without obtaining registration from SEBI, I find that the Noticee violated Section 12(1) of SEBI Act read with Regulation 3(1) of the Investment Advisers Regulations.

5.9 Incidentally, I note that enforcement proceedings have also been initiated by SEBI, against the Noticee, for carrying out unregistered investment advisory services through his proprietary firm, Secure Investor Investment Advisory. An Order no. WTM /ASB /WRO/WRO/22921/2022–23 was issued by SEBI on January 18, 2023. The aforesaid has been considered while determining the directions issued in these proceedings.

6.1 The SCN had *inter alia* called upon the Noticee to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, should not be issued against him. In the instant proceedings, the amount of fees /consideration collected by the Noticee as a result of providing unregistered *'Investment Advice'* to investors, amounted to **INR 2,42,74,330** *(on the basis of amounts credited to the Noticee's ICICI Bank Account No.*

185905500330 – INR 13,88,970, IDBI Bank Account No. 1040102000006309 – INR 7,45,678 and *SBI Account No. 31402994993 – INR 2,21,39,683, for the period from September 10, 2010 to December 31, 2017*). However, as against the amount of *INR 2,21,39,683* indicated in the SCN, the total credit transactions in the Noticee's SBI Bank Account amount to *INR 22,13,682*. It therefore appears that the aforementioned amount was inadvertently mentioned in the SCN.

6.2 In his reply, the Noticee has contended that the amounts collected were lesser than the amount mentioned in the SCN as (a) *there were several personal deposits in the accounts, which were not related to the business as is also borne out from the Income Tax Return* and (b) there *was no reference to the debit entries which also included the expenses incurred while running a business such as employee salaries, rental cost for office premises, etc.* I am not inclined to accept the Noticee's submission since the amounts collected by him were for investment advisory activities without SEBI registration and could not have been utilised for any purpose other than refunding such amounts back to the clients. However, while the Income Tax Return submitted by the Noticee to substantiate the income earned from business during the Financial Year 2015–16, indicated an amount of INR 2,85,670 as income earned from business, the same does not correspond to the amounts admittedly received by him in the ICICI Bank and IDBI Bank Accounts as fee for unregistered investment advisory services, which totalled INR 21,34,648.

6.3 The Noticee submitted that the SBI Account was his Savings Account, which was opened much before the introduction of the Investment Advisers Regulations. I note that the aforementioned Bank Account was not mentioned on the Noticee's website and further, the period for which the amount has been calculated in the SCN i.e. September 10, 2010 to December 31, 2017, also included the period before the introduction of the Investment Advisers Regulations in 2013 and also before the Noticee admittedly carried out unregistered investment advisory activities i.e. December 2015.

6.4 Upon a perusal of the statement of the Noticee's *SBI Account No. 31402994993,* the following is observed:

a. For the period from September 10, 2010 to November 30, 2015, total credits received in the Account amounted to INR 14,37,560. In this context, since the Noticee admittedly started offering unregistered investment advisory services from December 2015 onwards, the amounts collected during the aforesaid period cannot be taken as fees collected by the Noticee.

b. For the period from December 2015 to June 2016 (the Noticee admittedly stopped the unregistered investment advisory business in June 2016), total credits received in the Account amounted to INR 3,87,193. The narrations contained in the statement for the Noticee's *SBI Account No. 31402994993* during the aforementioned period do not reveal any evidence of receipt of fees from investors /clients for the unregistered investment advisory services offered by him through Capital Yield Research and Advisory. Therefore, the amounts collected during the aforesaid period cannot be taken as fees collected by the Noticee towards unregistered investment advisory services.

6.5 In light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund an amount of **INR 21,34,648** (*ICICI Bank Account No. 185905500330 – INR 13,88,970, IDBI Bank Account No. 1040102000006309 – INR 7,45,678*) which was collected as fees in lieu of unregistered *'Investment Advice'* offered to its clients /investors (paragraph 6.2), and accordingly, a direction to the Noticee to refund such amount will be in the interest of investors in the securities market. I however, note that the SCN does not identity any particular investor or any specific group of investors who have suffered losses due to unauthorized activity carried out by the Noticee.

ORDER:

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

(a) The Noticee, **Manish Lalwani**, **Proprietor– Capital Yield Research and Advisory,** shall within a period of three months from the date of coming into force of this Order, refund the money received from any complainants /investors /clients, as fees /consideration or in any other form, in respect of its unregistered investment advisory activities.

(b) The Noticee shall cause to effect a public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, inviting claims from Complainants /investors /clients within a period of fifteen (15) days from the date of this Order. The said public notice shall detail the modalities for refund, including the details of the contact persons such as names, addresses and contact details. A period of two (2) months from the date of the publication of the public notice shall be provided to the Complainants /investors /clients for submitting their claims.

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

(d) After completing the refund as directed in paragraph 7(a) above, the Noticee shall file a report detailing the amount refunded to investors / clients, which should be addressed to the "*Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051*". The above mentioned report should be duly certified by an independent Chartered

Accountant and should indicate the amount of refund, mode of payment by bank transactions, name of the parties, communication address, mobile / telephone numbers, etc.

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

(f) The Noticee is restrained from selling his assets, properties and holding of mutual funds /shares /securities held by him in demat and physical form except for the sole purpose of making the refunds /depositing balance amount with SEBI, as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the Complainants /investors /clients who were availing the unregistered investment advisory services from the Noticee, as directed in this Order, from the bank accounts of the Noticee.

(g) The Noticee is debarred 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 **3 (three) years** from the date of this Order or till the expiry of **3 (three) years** from the date of completion of refunds to Complainants /investors /clients along with depositing of balance amounts, if any, with SEBI, as directed in paragraphs 7(a) and 7(e), whichever is later.

(h) Upon submission of reports on completion of refunds to complainants /investors /clients to SEBI and deposit of the balance amount if any, with SEBI, the direction at paragraph 7(f) shall cease to operate within fifteen days thereafter.

(i) The Noticee shall not undertake, either during or after the expiry of the period of debarment /restraint as mentioned in paragraph 7(g), either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

8. The above direction for refunds /repayment to clients /investors and depositing the balance amount with SEBI, as given in paragraphs 7(a) and 7(e) above, does not preclude such complainants /investors /clients to pursue other legal remedies available to them under any other law against the Noticee for refund of money or deficiency in service.

9. This Order shall come into force with immediate effect.

10. A copy of this Order shall be served upon the Noticee. A copy of this Order shall also be forwarded to the recognised Stock Exchanges, Depositories, Banks and Registrar and Transfer Agents for necessary compliance with the above directions and also the Government of Madhya Pradesh for its information.

Place: Mumbai
Date: January 18, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA