

National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55376	Date: January 25, 2023
Circular Ref. No: 17/2023	

To All NSE Members,

Sub: Final Order in the matter of Pinnacle Market Investment Advisory Private Limited

SEBI vide its Order No. WTM/SM/WRO/WRO/23160/2022-23 dated January 25, 2023, has hereby restrained and prohibited the below entities from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/complete repayment of refunds to complainants as directed at paragraph 54.1 of SEBI Order, whichever is later.

Sr. no.	Name of Entities	PAN
1.	Pinnacle Market Investment Advisory Private Limited	AAICP3799C
2.	Abhishek Patel	BJZPP1953J
3.	Shekhar Mishra	BSFPM5761E
4.	Parul Sahu	CTSPS2698F

Further, all open positions, if any, of the entities debarred in the Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by the Order.

The order comes into force with immediate effect.

The detailed order is available on SEBI website (<http://www.sebi.gov.in>).

National Stock Exchange of India

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. Rohit Swami (Extension: 23023), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Atish Agarwal
Senior Manager

ANNEXURE: Final Order in the matter of Pinnacle Market Investment Advisory Private Limited

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: S. K. MOHANTY, WHOLE TIME MEMBER

ORDER

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

In respect of:

Sr. No.	Name of Noticee	PAN
1.	Pinnacle Market Investment Advisory Private Limited	AAICP3799C
2.	Abhishek Patel	BJZPP1953J
3.	Shekhar Mishra	BSFPM5761E
4.	Parul Sahu	CTSPS2698F

(The entities mentioned above are individually known by their respective name or Noticee No. and collectively referred to as "Noticees")

In the matter of Pinnacle Market Investment Advisory Private Limited

Background:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received multiple complaints against Pinnacle Market Investment Advisory Private Limited (hereinafter referred as "**Pinnacle/Company/IA**") a SEBI registered Investment Adviser bearing registration no. INA000005614. Thereafter, SEBI examined information available on the website of Pinnacle and documents/ information received from complainants. Facts unearthed during the said examination pertaining to the investment advisory activity of Pinnacle are as under:

- i. Pinnacle has not informed SEBI forthwith about the appointment of its new Director.
- ii. Pinnacle has done improper risk profiling and has failed to abide by principles of suitability.
- iii. Pinnacle has not been fair and transparent in its dealing with its clients regarding the fees charged to the clients. It has adopted unethical business practices to deceive the clients by inducing them into buying multiple packages

- iv. Pinnacle was charging fees from its clients for services to be rendered in future.
- v. Pinnacle has provided execution services for its client.
- vi. Pinnacle has been assuring profits to its clients.
- vii. Pinnacle has not resolved the investor grievances as per prescribed timelines.
- viii. Pinnacle has not complied with SEBI's directions with respect to inspection.

2. Based on the afore stated factual findings revealed during the examination, a common Show Cause Notice dated March 28, 2022 (hereinafter referred to as "**SCN**") was issued to the *Noticees* alleging that Pinnacle and its Directors (*Noticees No. 2 to 4*) have acted in complete disregard to the responsibility entrusted on the Investment Advisor under the applicable provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"). Further, it was alleged that in the course of its investment advisory activities, Pinnacle and its Directors (*Noticees No. 2 to 4*) have acted in a fraudulent and manipulative manner while dealing with clients and have violated provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**").

3. It is noted from the records that the SCN was served on the *Noticees*. In response to the SCN, Pinnacle vide its letter dated April 26, 2022 submitted as follows;

3.1. With respect to the appointment of new Director, it is submitted that Pinnacle has not changed the control of the *Company* nor the shareholding pattern of the *Company*. Further, Pinnacle has not changed its Directors but had appointed one more Director, which is not a material event.

3.2. Pinnacle has stopped working since July 2020. The office premises have been vacated but its server and physical documents are still in the premises. However, Pinnacle cannot access its server and physical documents as the premises have been sealed by the Local Authority due to an ongoing dispute with the owner of the said premises.

4. *Noticee No. 1* in its reply had sought two months' additional time to submit a detailed reply in the matter and subsequently vide its letter dated May 27, 2022 while reiterating its earlier submissions, *inter alia* submitted as follows:

- 4.1. Risk Profiling of the clients was determined on the basis of scores generated through weight assign to every question. For example, if client is below 45 years of age, he has been given high score as he can take more risk and a senior citizen client has been given a low score as he cannot take more risk. Therefore, the allegation that the method of risk categorisation of Pinnacle is unfair and vague, is incorrect.
- 4.2. Pinnacle before giving any advice to a client, emails client's risk profile to the client. In some instances, Pinnacle had received the fees before sending the email but it had communicated the risk profile of the client over telephone to the client.
- 4.3. The employees of Pinnacle have not traded on behalf of its clients since for trading in option and commodities, one needs to be aware of ID and password of the client. So the allegation that trades were done without the consent of the client is incorrect.
- 4.4. Out of eight complaints received through SCORES, for three of its clients, Pinnacle has filed the ATR on time and for the remaining five clients, it has been communicating with them to resolve the complaints. Hence, it has not violated SEBI circular dated December 18, 2014.
- 4.5. *Noticee No. 1* had sought one month's time period to submit supporting documents in the matter.
5. Subsequently, vide hearing notice dated July 7, 2022 a personal hearing in the instant matter was scheduled on September 21, 2022 which was served on all the *Noticees*. On the day of the scheduled hearing, Mr. Rupesh Jain appeared as the Authorised Representative (hereinafter referred to as "**AR**") of Pinnacle. The AR reiterated the submissions made by Pinnacle in its reply and *inter alia* submitted as follows:
- 5.1. Pinnacle has a process to determine the risk profiling of its clients on the basis of scores generated through weights assigned to every question mentioned in the Risk Profiling Form.
- 5.2. Pinnacle has never provided any execution services. Any trade done could not have been executed without the consent of client.

5.3. The complaints received through SCORES complaint with respect to the entities mentioned at Sl. Nos. 3, 6 and 7 in the table at page 26 of the SCN, it may be noted that ATR was filed within the stipulated time.

5.4. The AR was given additional time to make further submissions, if any in the matter.

The other *Notices* in the matter failed to appear for the personal hearing for reasons best known to them inspite of due service of the hearing notice to them. Accordingly, the personal hearing in the matter was concluded.

Consideration of Issues and Findings

6. I note from the records that out of the 4 *Notices*, *Notices No. 2-4* have not filed any reply to the SCN, despite having got sufficient opportunities. Further only *Notice No. 1* has availed the opportunity of the personal hearing granted in the matter. Moreover, the AR of the *Notice No. 1* at the time of personal hearing was granted additional time to file further reply to the SCN if he wished to make any more submission. However, no reply has been received from *Notice No. 1* till date. In the light of the aforesaid factual position, I proceed to adjudicate the matter, based on materials available on record and the written reply and submissions filed by *Notice No. 1*, the contents of which have already been highlighted in the preceding paragraphs. After going through all the material, as aforesaid, available on record, I find that essentially, the issue that arises for determination in the present matter is whether Pinnacle and its Directors, while carrying out the activity of Pinnacle as an Investment Adviser, have violated the provisions of securities law as alleged in the SCN.

7. Now adverting to the aforesaid issue and the factual matrix of the case, I note that the *Notices* are not only facing allegation of non-compliance of provisions of SEBI Act and IA Regulations, but are also confronted with the violation of the provisions of PFUTP Regulations. The said allegations have emanated from the various alleged acts and omissions on the part of the *Notices* and have been considered separately under different heads in the following paragraphs.

Delay in furnishing details of Director

8. Before proceeding to adjudicate the above mentioned allegation, it becomes imperative to first have a look at the provision which has been alleged to have been violated. The same is reproduced hereunder for ready reference:

IA Regulations

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

(a)...

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

9. I note that the first charge on Pinnacle is that it has not forthwith informed to SEBI about the appointment of Ms. Parul Sahu as its Director. It is noted from the material available on record that at the time of registration with SEBI as a corporate entity, the Directors of Pinnacle were Mr. Abhishek Patel and Mr. Shekhar Mishra. Subsequently, vide letter dated July 23, 2018, Pinnacle has informed to SEBI that Ms. Parul Sahu is appointed as a Director vide Board Resolution of the Extra Ordinary General meeting of the *Company* held on December 30, 2016. Thus, factually it cannot be denied that there was a delay of 18 months by Pinnacle in informing SEBI about the appointment of its third Director, namely Ms. Parul Sahu from the date of her appointment i.e. from December 30, 2016. In this regard, *Noticee No. 1* has submitted that Pinnacle has not changed the control of the *Company* nor the shareholding pattern of the *Company*. Further, Pinnacle has not changed its Directors but had appointed one more Director, which is not a material event. I note that a company being a juristic person, all its deeds and functions are the results of acts done by certain natural persons who manages and govern its affairs. In that context, the role played by a Director is very significant and material in running day to day affairs of the company. A Director has been enjoined under the Companies Act, 2013 to act with due care, skill and diligence in managing the affairs of the company so as to ensure that the company's operations are within the confines of law. Though, a company is a separate and distinct entity, however, being a

juristic person, it has no mind of its own to think and act. It is observed that all the acts which are executed in the name of a incorporated entity, are actually discharged by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. As per the existing law and practice, a company acts through its Board of Directors and in the absence of any law prescribing for specific liability, it is Board of Directors, who are collectively liable for the acts or omission of a company. Under the circumstances, having a new Director assumes significance as an important development for the governance of the company since Director is a face of the company before the people, inside the company as well as outside the company. Thus, any change or addition to the composition of Board of Directors of a company is a material information and consequently, any change in the constitution of Board of Directors of a company whether by way of appointment of a new Director or resignation of an existing Director, is also a material information, having important implication for the efficient functioning and management of the company. In the instant matter, it is an undisputed fact that Pinnacle has informed to SEBI only on July 23, 2018 about the appointment of Ms. Parul Sahu as a Director, though she was inducted on the Board of the *Company* as far as back on December 30, 2016. Therefore, undeniably, there was a delay of around 18 months in informing about the appointment of a new Director in the *Company*. I find the contention of *Noticee No. 1* asserting that there is no change in the control of the *Company* and the *Company* had only appointed another Director, which is not a material information, is fraught with contradiction. On the one hand it has been argued that appointment of another Director is not a material change or information to be informed, while on the other hand, the submission is conspicuously silent as to why and under what circumstances, the *Noticee Company* felt it necessary to disclose or inform SEBI about the appointment of the said new Director after a long lapse of 18 months it really believed that the said information was not a material information. Under the circumstances, I am constrained to observe that the *Noticee Company* knew very well that the information about appointing an additional Director was a material information that was required to be informed to SEBI and yet it has clearly delayed in informing to

SEBI, the change in the constitution of its Board of Directors by way of appointment of a new Director, Ms. Parul Sahu, hence, has not acted in compliance with the conditions of its certificate of registration. I, therefore find that by not informing within reasonable time about the appointment of Ms. Parual Sahu as a Director of the *Company*, Pinnacle has violated regulation 13 (b) of IA Regulations.

Improper Risk Profiling

10. The next leg of allegation against the *Noticees* pertains to the issue of risk profiling. It would be appropriate first to refer to the relevant provisions of law which have a bearing on the allegations made against the *Noticees*. Accordingly, the said provisions are being reproduced hereunder for convenience and ready reference:

SEBI Act

12A. No person shall directly or indirectly—

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

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

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

PFUTP Regulations

Regulation 3 - Prohibition of certain dealings in securities

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 thereunder;

(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 thereunder.

IA Regulations

General Responsibility

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.

...

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

Risk profiling

16. Investment adviser shall ensure that, -

(a)...

(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.

(c) ...

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i)...

(ii) questionnaire is not structured in a way that it contains leading questions.

Suitability.

17. Investment adviser shall ensure that, -

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

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

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

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

(i) meets the client's investment objectives;

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

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

(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.

Code of Conduct

1. Honesty and fairness

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

2. Diligence

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

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.

8. Compliance

An investment adviser including its representatives shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

11. It is noted that regulation 16 of the IA Regulations provides the details / various indicative factors that are required to be considered for the purposes of risk profiling. The risk profile of each of its clients, as assessed by the IA needs to be communicated to respective clients. Further, regulation 17 of the IA Regulations envisages that the investment advice should be appropriate and proportionate to the risk profile of the client and an IA should have a documented process for selecting investment for its client based on the investment objectives of the client as well as his financial situation. The regulation also provides that the IA should have a reasonable basis to believe that the client is able to bear the risk related to the investments, being recommended by him / it to him (client).

12. From the scheme of the aforesaid provisions in the IA regulations governing the risk profiling of the investors, it is can be appreciated that the purpose of risk profiling as per the IA Regulations is that the IA should be able to ascertain the risk appetite of the client and then recommend a product/service suitable to a client having such risk profile. Further, the client can also assess his own risk profile before agreeing to accept the advice of an IA. In this regard, it is noted from a sample risk profiling forms that Pinnacle did not have an established process or mechanism, such as assigning specific scores or weights to each of the questions stated in the risk profiling form so as to consider and analyse the risk appetite of the client based on his specific responses to

each such question in his risk profiling form. As a result, the conclusion that is being arrived at with respect to the risk profile of a client, is based on how the information furnished by the client in the risk profiling form is perceived by the IA in a subjective manner, without placing reliance on an objective metric to determine the risk profile of a client. To illustrate the same, the answers given by certain clients to the questions in the risk profiling form, are tabulated below:

Table No. 1

Sl. No. as per RPF	Client Name	Niraj Tiwari	D K Rahul	Kapil Gupta	Ralu Prasad	Sunita Singh	Mamta Meshram	Alok Sharma
1	Age	25-45	25-45	25-45	25-45	45-55	45-55	55-60
3	Proposed Trading amount	< 1 lakh	< 1 lakh	<1 lakh	< 1 lakh	3-5 lakhs	<1 lakh	1-3 lakhs
5 (a)	Best describe your attitude about the next three years performance of this investment?	I need to see at least a little return	I'd have a hard time tolerating a loss	I don't mind if I lose money	I don't mind if I lose money	I need to see at least a little return	I don't mind if I lose money	I'd have a hard time tolerating a loss
6	Annual Income	5 -10 lakhs	5 -10 lakhs	3-5 lakhs	Below 3 lakhs	10-15 lakhs	3-5 lakhs	3-5 lakhs
21	High risk is associated with high return, medium risk is associated with medium returns and low risk is associated with low returns. What risk can you bear (not prefer)?	Medium	Medium	Medium	Medium	High	Medium	Medium
	Payment Received by IA as fees	4 lakhs	2.74 lakhs	2.7 lakhs	4.66 lakhs	20 lakhs	3.09 lakhs	10.46 lakhs
	Risk Category assigned by IA	High	High	High	High	Low	High	High

13. From the above table, it was observed that except for Ms. Sunita Singh, the rest of the clients had categorically mentioned that they can bear only 'medium' level of risk, but Pinnacle had categorized these clients as 'high' risk for the purpose of giving IA services to them. Further, in the case of Ms. Sunita Singh, Pinnacle had categorized her into 'low' risk category though she has claimed that she can bear 'high' risk. Another instance which shows that the method employed by Pinnacle to categorise the risk

profile of its clients was vague and ambiguous, is the risk categorisation of Mr. D K Rahul and Mr. Kapil Gupta. Both of the aforementioned clients belong to the same age category of 25-45 years and their proposed trading amount is less than INR 1 lakh, however their attitude towards the performance of their investment over the next three years is different. Mr. D K Rahul had informed the IA that he would have a hard time tolerating a loss whereas Mr. Kapil Gupta had informed the IA that he does not mind, if he loses money. But both the clients were categorised under 'high' risk category. Thus, instead of analysing the responses of each of its clients in a fair and objective manner linked to a well-defined objective metric viz. assignment of scores or weights etc., Pinnacle's approach to examine the responses to its own risk profiling questionnaire posed to its prospective clients appears to be very subjective, vague and ambiguous. One of the most glaring instances which would further demonstrate that Pinnacle had practically no system in place to assign any scores to the questions covered in the risk profiling form no process for assessing the risks that a client is willing and able to take, by objectively interpreting the clients' responses to its questions, is cited as follows:

Table No. 2

Question no in RPF		RPF 1 submitted by Delhirasa	RPF 2 submitted by Delhirasa	RPF submitted by Pinnacle to SEBI
Date and time of communication to client	Risk Profile Form	Emailed to client on January 29, 2020 at 14:45	PDF attachment	Emailed to client on January 29, 2020 at 12:33
1	Age	25-45	25-45	25-45
2	Investment Goal	Regular income	Regular income	Regular income
3	Proposed Trading Amount	< 1 lakh	< 1 lakh	< 1 lakh
5 (a)	Short Term Risk attitudes	I don't mind if I lose money	I don't mind if I lose money	I don't mind if I lose money
6	Annual Income	3-5 lakhs	3-5 lakhs	3-5 lakhs
7	Source of Income	Salary	Salary	Salary
19	Would you invest where a small return earned is associated with small risk instead of high return associated with high risk?	Strongly prefer	Strongly prefer	Strongly prefer
21	High risk is associated with high return, medium risk	High	Medium	High

	<i>is associated with medium returns and low risk is associated with low returns. What risk can you bear (not prefer)?</i>			
	<i>Risk Category assigned</i>	<i>Low Risk</i>	<i>Low Risk</i>	<i>High Risk</i>

14. From the table above, it can be observed that three risk profiling forms have been filled up pertaining to only one client and categorizing the same client both as 'low' risk as well as 'high' risk. If Pinnacle had a structured process of objectively interpreting the responses of its clients (to the risk profile questionnaire) by attributing appropriate weights / scores to each of the responses, then the same would have ruled out the possibility of assigning two different risk categorizations of the same client, that too the said divergent profiling was made on the same day. The above illustration clearly exhibits that there was no existence of a scientific / objective process for correctly assessing the risk profile of the clients.

15. Pinnacle has submitted that it has a process to determine the risk profile of its clients on the basis of scores generated through weight assigned to every question. However, on a perusal of the risk profiling forms, it is noted that neither any score has been given to the clients after they filed in the risk profiling form nor any metrics for giving score / weightage to different answers was indicated in the risk profiling form. Thus, the aforesaid submission of Pinnacle turns out to be a bald assertion without any supporting documents / material. I am therefore of the view that the aforesaid practice of risk profiling / assessment adopted by Pinnacle clearly shows that the very purpose of making the risk profiling of clients was not at all given any respect and a substantial part of its profiling exercise was done as a mere formality without paying any heed to the importance of this exercise which forms the corner stone of any investment activities in the securities market. In view of the above, I see that Pinnacle has completely failed in exercising due care and diligence in providing investment advisory services to its clients. Hence, it is held that Pinnacle has violated regulation 16 (b) and clause 2 of code of conduct for IA read with regulation 15 (9) of IA Regulations.

16. It has been alleged in the SCN that the question mentioned in the above tables at Sl. No. 21, "*High risk is associated with high return, medium risk is associated with medium returns and low risk is associated with low returns. What risk can you bear (not prefer)?*"

is a leading question which should not have been put before a prospective client. In this regard, it is observed that as per regulation 16 (d) (ii) of the IA regulations, any questions or any description in any questionnaires which is used with an intention to establish the level of risk a client is willing and able to take should be fair, clear and not misleading, and the IA should ensure that the questionnaire is not structured in a way that it contains leading questions so as to elicit pre-conceived answers from the clients, as expected by the IA to suit the convenience of the IA. However, it is observed from the above tables that the question mentioned above at Sl. No. 21 is surely a leading question which has been asked without first making a full disclosure before the client that investments in securities market is subject to market risk. In the absence of full context and background information about the risks of the securities market, such a question is suggestive in nature as it leads / guides the client (prospective) towards a desired answer. The expression '*High risk is associated with high return...*' would inevitably lead the client (prospective) to respond that he can bear high risk as it is associated with high return and the Pinnacle was silent about the high loss that may come along with the expectation of high risk. Pinnacle was trying to elicit response from its client (prospective) that was favourable for its business, as any indication of earning high returns can turn a prospective client to become an actual client from whom Pinnacle can earn fees but in the process the client remains ignorant about the high losses that may have to be borne by him by taking high risks. Pinnacle in its reply has chosen to remain silent on this allegation. Being a registered intermediary, Pinnacle is well aware of the associated risks of making an investment in the securities market and was silent about the high losses expected with high risk. Pinnacle had therefore knowingly concealed the said material fact and had not disclosed fairly to its clients that taking high risk would also mean chances of making a high loss on the investment and thus has failed to guide/advise clients to better understand the risks associated with a high risk product. Therefore, it is held that the above mentioned question in the risk profile questionnaire is a misleading question and that the said question (used for assessing risk profile of the client) is rather a leading question which should not have been covered in the risk profiling form. Hence such a misleading conduct on the part of Pinnacle has caused the violation of regulation 16 (d) (ii) of the IA regulations. The said conduct of Pinnacle also shows that Pinnacle was not acting honestly, fairly and in the best interests of its client as it had kept its own

interest of earning fees above the interests of its client who were not made aware of the potential loss that they can suffer on their high risk investment. Moreover, I find that Pinnacle has failed in its responsibility to act in a fiduciary capacity towards its clients as it has not acted in good faith towards its clients by keeping its own interest at higher pedestal at the cost of the interest of its clients. Hence, it is held that Pinnacle has violated regulation 15 (1) and clause 1 of code of conduct for IA read with regulation 15 (9) of IA Regulations.

17. One of the allegation levelled against Pinnacle is that in certain cases, Pinnacle had received payments even prior to communicating the risk profiling form to the client. Details of such instances are tabulated below:

Table No. 3

Sl. No.	Client Name	Date of communication of RPF	Date of invoice/ payment
1.	D.K. Rahul	May 04, 2018	May 02, 2018
2.	Bhagat Singh	October 22, 2018	Oct 10-16, 2018
3.	Kapil Gupta	Jun 18, 2019	Jun 17, 2019
4.	Mamta Meshram	July 05, 2019	July 04, 2019

18. I note that the very purpose for which the IA Regulations mandate that the IA must necessarily carry out risk profiling before selling his services, is that in the first place the IA has to verify the information submitted by the prospective clients and thereafter, it must give informed advice to the client which will be always in the best interest of its client. From the above table it is noted that the services have been sold by the IA even before communicating the risk profiling of the client to the client which demonstrates that the IA has scant regard for conducting any due diligence and for the sacrosanct regulatory principle that any kind of investment advice can be offered only after thorough analysis of the risk profile of the client. However, in the above mentioned instances the stage at which the IA is selling the investment product to its client, the client is yet to give his consent to the risk assessment done by the IA. Thus, at the stage when the client's consent is yet to be received by the IA, it cannot be conclusively said that the client's responses were correctly captured by the IA in the questionnaire and in the true spirit as intended by the client and that the client agrees with the risk assessment done by the IA. Therefore, selling of a product prior to communicating risk profile to the client is not an informed investment advice but is an act which serves the

interests of the IA only who pays scant regard to the provisions that requires prior gauging of risk tolerance capability of each client. Pinnacle has submitted that it had communicated the risk profile to its clients over telephone. However, Pinnacle has not backed its submission by any documentary evidence or by way of producing records that would show that the risk assessment was indeed finalised prior to generating invoice or there was a telephonic call to the respective clients just prior to generating invoice or this process of receiving telephonic acceptance was followed as a matter of practice by it for its other clients as well and it has documents to prove the same, etc. no confirmation from the said clients having received the risk profile assessment by the IA over telephone has been produced before me as well. Hence, the submission of Pinnacle in the absence of supporting evidence is unacceptable. The aforesaid conduct of Pinnacle has led to the violation of regulation 17 (d) (ii) of IA Regulations and clause 2 of code of conduct for IA read with regulation 15 (9) of IA Regulations.

19. It is further observed that as a consequence to the aforesaid approach of not having an objective process for assessing the risk profile of its clients, the clients who have stated that they can bear minimum or medium level of risk were categorized as high risk clients and vice-versa. Thus, it is very clear from the above discussion that Pinnacle was engaged in doing risk evaluation of its clients and assigning the clients a category of risk, in a reckless and careless manner without paying any heed to the intent and implication of responses given by its clients during the risk assessment process had happened with multiple clients as revealed during the examination which rules out the possibility of any inadvertent error on part of the IA. Moreover, as noted earlier in one instance, the IA in its questionnaire has even concealed the material fact from the knowledge of its prospective client that the investment in securities market is subject to market risk and was silent about the high loss that can be expected with high risk and this act of concealment was visibly done so as to induce the prospective client to sign up with Pinnacle to enable Pinnacle to earn fees by providing him recommendation for risky investment products which may be detrimental to the interests of the client. It is therefore held that the aforesaid act of Pinnacle was deceitful and was done with a fraudulent motive, hence comes under the purview of 'fraud' as defined under regulations 2(1)(c) (1) and 2(1)(c) (5) of PFUTP Regulations which has therefore led to

the violation of regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with Sections 12A(a), (b) and (c) of SEBI Act.

Failure to abide by Principles of Suitability

20. The next leg of allegation against Pinnacle is that it has not followed the requirement of suitability of advice to its clients. Before proceeding further, it will be appropriate to refer to the relevant Sections / regulations that have been allegedly violated by Pinnacle. It has been alleged that Pinnacle has failed to comply with regulations 15 (1) and 17 of IA Regulations and has also failed to abide by the code of conduct clauses no. 1, 2 and 6 of Third Schedule read with regulation 15(9) of IA Regulations. Further, it is also alleged that Pinnacle has violated regulation 3(a), (b), (c) and (d) of PFUTP regulations read with Sections 12A (a), (b) and (c) of SEBI Act. While the texts of all the aforesaid provisions have been reproduced in the preceding paragraph no. 10 except for clause 6 of code of conduct, which is now being reproduced below for reference:

Code of Conduct

6. Fair and reasonable charges

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

21. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear the investment related risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice he needs and expects from the IA. Thus, there is a clear onus on the IA to reasonably satisfy itself of the efficacy of its investment advice with respect to every specific client, keeping in mind the factors as stated above.

22. I note from the available record that Pinnacle has sold investment products to its clients without taking into consideration even the client's annual income and proposed trading/investment amount. The details of some such instances are tabulated below:

Table No. 4

Sl. No.	Client Name	Annual Income (in INR)	Proposed Trading amount (in INR)	Fees Charged by the IA (in INR)
1.	Alok Sharma	3-5 lakh	1-3 lakh	10.46 lakh
2.	Ralu Prasad	< 3 lakh	< 1 lakh	4.66 lakh
3.	Sunita Singh	10-15 lakh	3-5 lakh	20 lakh
4.	Niraj Tiwari	5-10 lakh	< 1 lakh	4 lakh
5.	Lalit Chadha	5-10 lakh	< 1 lakh	3.09 lakh
6.	Vikas Divekar	5-10 lakh	1-3 lakh	4.47 lakh

23. From the table above, it is noted that while the clients have mentioned their proposed trading amount in the risk profiling form, Pinnacle has charged service fees which are much more than their proposed trading amount and in certain cases, more than even their annual income, in complete disregard to their financial capacity.

24. Furthermore, it was noticed during the examination that the rationale/ process by which Pinnacle selects products for clients in the 'high' risk category based on the answers given by those clients in the risk profiling forms is unclear. For illustration, it was seen that in respect of clients viz. Ms. Mamta Meshram, Mr. Ralu Prasad and Mr. Kapil Gupta, although all three of them have given similar answers in their risk profiling form, Mr. Ralu Prasad who has the lowest annual income, has been charged the maximum fee and provided with more number of products than others. Details pertaining to the above are tabulated below:

Table No. 5

Client Name	Kapil Gupta	Ralu Prasad	Mamta Meshram
Age	25-45	25-45	45-55
Best describe your attitude about the next three years performance of this investment?	I don't mind if I lose money	I don't mind if I lose money	I don't mind if I lose money
High risk is associated with high return, medium risk is associated with medium returns and low risk is associated with low returns. What risk can you bear (not prefer)?	Medium	Medium	Medium
Proposed Trading Amount	<1 lakh	< 1 lakh	<1 lakh
Annual Income	3-5 lakh	Below 3 lakh	3-5 lakh
Risk Category assigned by IA	High	High	High
Payment Received by IA	2.7 lakh	4.66 lakh	3.09 lakh
Products offered to clients	Intraday Future HNI Future	Intraday Cash HNI Cash HNI Option HNI Future Jobbers (Cash) Pack	Intraday Cash HNI Cash HNI Option HNI Future

25. There is no second view that the role of an investment adviser like the *Noticee No. 1* is limited to assessing the risk profile of the clients and provide investment advice which is in line with the investment objective and the risk bearing capacity of its clients. However, as noted from the instances highlighted in Table Nos. 4 and 5 above that the IA has knowingly disregarded the sacrosanct parameters as prescribed under regulation 17 of IA Regulations, such as client's financial situation, his investment objectives, his risk appetite etc. and kept on selling multiple products and charging unreasonable fees from its clients, turning a blind eye to the actual financial status and investment needs of such clients. The above illustrations show that there is no rationale or justification behind charging fees to the tune of INR 10.46 lakh from a client (Mr. Alok Sharma) whose Annual Income as disclosed to the IA is INR 3-5 lakh and proposed investment amount was INR 1-3 lakh. Similarly, 5 investment products were sold to a client (Mr. Ralu Prasad) whose Annual Income was less than INR 3 lakh while the clients who were better placed were sold less number of products implying that the said client (Mr. Ralu Prasad) was more amenable and vulnerable to be influenced and exploited by the IA, than other clients. The only reasoning one can derive from the aforesaid irrational and inconsistent conduct of Pinnacle is that the IA was more interested in generating income for itself by unduly influencing and giving inappropriate investment advice rather than acting honestly, fairly and in the best interests of its clients. The enabling factor for the aforesaid conduct of Pinnacle was that it did not have a documented process for selecting investments for different categories of clients which gave the IA leeway to arbitrarily select investment products for its clients in complete disregard to client's investment objectives and financial situation.

26. It is further noted from the records that Pinnacle used to offer basic service packages to its clients in the beginning and later on used to sell them multiple products even before the expiry of the tenure of the initial product. There were instances where Pinnacle was forcing its clients to pay under one pretext or the other against their wishes or without disclosing the true and correct facts about the fee it had charged from those clients. Moreover, it was also noted that Pinnacle was not rendering any services to its clients once it had sold the product to them. A few such illustrations demonstrating the aforesaid conduct of Pinnacle are reproduced below:

26.1. Client Name - Ms. Sunita Singh: It was observed from the complaints of Ms. Sunita Singh dated June 1, 2017 and March 12, 2020, that she had paid INR 20 lakh as advisory fee and in turn had suffered a loss of INR 20 lakh by availing the services of Pinnacle. Further, she has stated that she had started with a basic payment of INR 5,000/- but the IA had forced/enticed her to pay more to opt for a better service and had promised to recover her earlier losses. Details regarding some of the payments made by Ms. Sunita Singh, based on the invoices raised on her by Pinnacle are given below:

Table No. 6

Invoice date	Package	Amount (INR)	RPF details
Oct 08, 2016	Intraday Cash (Oct 10-Nov 01, 2016)	5,000	Age – 50 years.
Nov 22, 2016	BTST Cash Nov 15 – Dec 05, 2016 Stock Future Nov 18 –Dec 19, 2016 HNI Cash Nov 02 – April 14, 2017 Nifty Option Nov 22 – Dec 28, 2016 Cash Positional Nov 16 – Dec 16, 2016 Option Nov 16 – Dec 29, 2016 Nifty Future Nov 18 – Dec 19, 2016	2,42,500	Annual income INR 10-15 lakh. Proposed trading amount INR 3-5 lakh. Risk category assigned by IA - Low Risk.
Jan 12, 2017	HNI Cash April 17, 2017– July 17, 2017 Intraday Future Dec 20, 2016 – Jan 23, 2018 HNI Future Jan 02 – Mar 03, 2017 BTST Future Jul 13, 2017 – Aug 11, 2017 Intraday Cash Jan 13, 2017 – April 13, 2017	4,19,000	
Total		6,61,500	

From the above table, it is noted that substantial amount of service fee was extracted from the client by allotting multiple packages in a very short span of time even when the tenure of initial package was still continuing, which is evidently in complete disregard to the intended trading amount and annual income (INR 10-15 lakh) declared by the client. Further, Pinnacle has extracted money from the client

by inducing the client to opt for a better service so as to recover the loss suffered by the client earlier by availing the IA's package.

26.2. Client Name – Mr. Alok Sharma: It is observed from the complaint of Mr. Alok Sharma dated February 19, 2020, that Pinnacle has guaranteed huge earnings on investment based on the advisory rendered by it. In this respect, the record shows that though Mr. Sharma had incurred losses, however, at the same time, he ended up paying a sum of INR 10 lakh to Pinnacle as a fee towards advisory services received from it. The complainant has also informed that the payment had to be made by him through credit card as Pinnacle harassed him to make payments otherwise the file would be closed. The payment details as seen from the invoices submitted by Pinnacle are given below:

Table No. 7

Invoice date	Package	Amount (in INR)	Duration	RPF Details
Aug 10, 2018	Option	7,552	Aug 13 – Sep 13, 2018	Age – 50 years.
Aug 14, 2018	Max Future	1,18,000	Aug 16 – Sep 10, 2018	Annual income INR 3-5 lakh.
Aug 20, 2018	HNI Option	52,510	Aug 21 – Oct 15, 2018	
Sep 04, 2018	HNI Option	12,390	Oct 16 – Oct 24, 2018	
Oct 09, 2018	HNI Cash	1,12,690	Oct 10 – Feb 04, 2019	Proposed trading amount INR 1-3 lakh.
Oct 19, 2018	HNI MCX	1,25,003	Oct 22 – Jan 21, 2019	
Oct 19, 2018	MCX Intraday	50,000	Oct 22 – Apr 22, 2019	
Oct 23, 2018	Max Future	50,300	Oct 23 – Nov 05, 2018	Risk category assigned by IA - High Risk.
Oct 27, 2018	Max Future	2,25,380	Nov 06 – Dec 26, 2018	
Nov 11, 2018	Max Future	1,40,007	Dec 27 – Jan 28, 2019	
Nov 21, 2018	Future Positional	1,25,021	Nov 22 – May 21, 2019	
Dec 03, 2018	Base Metal	22,502	Dec 04 – Mar 11, 2019	
Mar 11, 2019	Intraday Cash	5,000	Jun 11 – Jun 28, 2019	
Total		10,46,355		

From the above table it is seen that the client was initially sold a low priced package of INR 7,552/- and subsequently higher priced packages have been sold and Pinnacle had charged total fees of INR 10 lakh which is more than the annual income (INR 3-5 lakh) of the client. It is further observed that Pinnacle has charged disproportionate amount of fee for the same product for the various durations. For instance, Pinnacle had charged INR 50,300/- for Max Future for a period of two weeks. However, for a period of nearly seven weeks, Pinnacle had charged for the same product an amount of INR 2,25,380/- which is proportionately much more

than what was charged for two weeks earlier, indicating lack of transparency and consistency in charging fees.

26.3. Client Name – Mr. Niraj Tiwari: It is observed from the complaint of Mr. Niraj Tiwari dated July 30, 2020, that Pinnacle had promised dynamic profit during the initial stage of enrolment and pressurized him to pay INR 4 lakh. However, once payment was made, he was not provided any service. The details regarding payments made by Mr. Niraj Tiwari are given below:

Table No. 8

Invoice date	Package	Amount (in INR)	Duration	RPF details
26-May-2020	Cash Blue Chip	10,600	May 27 to Jun 22, 2020	Age – 25-45 years. Annual income INR 5-10 lakh. Proposed trading amount < INR 1 lakh. Risk category assigned by IA - High Risk.
26-May-2020	Cash Blue Chip	8,000	Jun 23 to Jul 14, 2020	
27-May-2020	Premium Cash	37,140	May 28 to Aug 06, 2020	
31-May-2020	Premium Option	74,340	Jun 02 to Sep 04, 2020	
10-Jun-2020	Premium Option	76,500	Sep 07 to Dec 11, 2020	
16-Jun-2020	Premium Cash	50,000	Aug 07 to Oct 09, 2020	
16-Jun-2020	Premium Future	100,000	Jan 20 to Apr 23, 2021	
16-Jun-2020	Premium Option	25,000	Dec 14 to Jan 02, 2021	
16-Jun-2020	Premium Option	18,420	Jan 04 to Jan 19, 2021	
Total		4,00,000		

It is observed from the invoices issued by Pinnacle to the client that the client was initially sold a low priced product, and subsequently, within a few days was sold higher priced packages and charged a total fee of INR 4 lakh. It is observed that while the duration of the first subscription to the package 'Premium Option' had just started, the client was sold the same package multiple times. It is further observed that Pinnacle has also charged disproportionate amount of fee for the same product for various durations. For instance, Pinnacle had charged INR 37,140/- for Premium Cash for a period of ten weeks. However, for a period of nine weeks, Pinnacle had again charged for the same product an amount of INR 50,000/-, indicating lack of transparency and consistency in charging fees. Moreover, inspite of selling multiple products to the client within a period of less than a month, no service was provided to the client.

27. The above illustrations show a common pattern in the way Pinnacle conducted its business of investment advisory. Initially the clients are on-boarded for a particular service for a basic fee. Then the client is made to upgrade or take the same service at a different rate. During this whole process, Pinnacle looks for ways to hoodwink the client and extract more money from the client on one pretext or the another either by assuring that it would recoup the earlier loss suffered by the client or threatening to stop the service. In this entire process, the only thing that is paramount for Pinnacle is to find some or the other ways to fill its coffers at the expense of its clients' interest and even to the detriment of their financial stability as it was forcing its clients to pay its fees by any means including by taking credit viz. through credit card etc. and was selling them multiple products for fees which were much beyond their financial capacity already declared by them to the IA in their risk profile form and was also not in line with their investment objective as the fees charged were much more than the amount that they wanted to invest in the market. Thus, not only Pinnacle has failed to abide by the principle of Suitability as laid down under regulation 17 of IA Regulations but also it has failed to abide by the fiduciary duty mandated to it under the IA Regulations and has not been honest and fair in its dealings with the clients. In the present matter, it is evident that Pinnacle has been acting in a manner so as to maximize its service fees by selling multiple advisory services to each client within a short period of time and even before completion of the earlier service to the clients, at unreasonable fees rather than rendering best possible advices to its clients. Thus, Pinnacle has put its own interest of earning more fees at the fore, thereby breaching the fundamental fiduciary duty mandated to it under the law. Further, Pinnacle has failed to exercise due skill, care and diligence in the best interests of its clients as not only multiple products have been sold to the clients that too even before the tenure of the initial product was over but there was also no consistency in charging fees towards rendering advisory services for the same product from the same client. More importantly, the conduct of Pinnacle was invariably against the investment objectives of the client and client's capacity for absorbing loss. In the light of the aforesaid details and in absence of any response from Pinnacle disputing the allegations made against it, I am constrained to find that Pinnacle's conduct as noted from the afore discussed transactions is in glaring violation

of regulations 15 (1) and 17 of IA Regulations and clauses 1, 2 and 6 of Code of Conduct read with regulation 15(9) of IA Regulations.

28. It is further noted that by selling multiple products to its clients within a short span of time by categorising the clients as 'high' risk clients or assuring the clients by stating that if they buy a new product, they would be able to recoup their previous loss are nothing but false promises made by Pinnacle to its clients as Pinnacle had no reasonable ground for believing it to be true. Moreover, Pinnacle had knowingly misrepresented to those clients that multiple services running concurrently can be in the best interests of the client, since being an IA, Pinnacle was very much aware that the associated investment risks of such multiple products were not consistent with the investment objective of the client and were also against the client's financial capacities, but kept on selling those clients multiple products which was certainly detrimental to the interest of the clients. I therefore have no hesitation in holding that the aforesaid conduct of Pinnacle is a fraudulent practice as defined under regulations 2(1)(c) (1) and 2(1)(c) (8) of PFUTP Regulations which has led to the violation of regulations 3(a), (b), (c) and (d) of PFUTP Regulations read with Sections 12A(a), (b) and (c) of SEBI Act.

Charging fees for services to be rendered in the future

29. It was also unearthed at the time of examination that Pinnacle was charging fees from its clients for services to be rendered in future. A few examples of such instances as seen from invoices are cited below:

Table No. 9

Sl. No.	Client Name	Product	Duration	Date of Payment /Invoice	Amount (in INR)
1.	Alok Sharma	Intraday Cash	Jun 11, 2019 – Jun 28, 2019	March 11, 2019	5,000
2.	Niraj Tiwari	Premium Future	Jan 20, 2021 – Apr 23, 2021	June 16, 2020	1,00,000
3.	D K Rahul	HNI Option	Aug 23, 2018 – Dec 04, 2018	May 19, 2018	80,000

30. With respect to the above allegation that *Noticees* have received fees from their clients for the services that were to be rendered in further, it is observed that no submission has been advanced with credible supporting evidence refuting the aforesaid allegation. I find that there is no justification for collecting fees for a service whose tenure

begins in the distant future. Under the situation, in the absence of any plausible justification for demanding fees well in advance from the clients against the advisory services to be rendered in future, I am constrained to hold that the said act is definitely not in the best interest of the clients as such advance payment of fees compels the client to avail the services of the IA and does not give him an option to change his decision, if the circumstances so change to the detriment of the client or he is not satisfied with the services of the IA. At this stage, I further find it relevant to reiterate that the *Noticees* have been alleged of receiving payment of fees even prior to communicating the risk profiling form to the client, which has been suitably dealt with in preceding paragraphs no. 17 and 18 above and the said alleged act has been found to be established. Now, the *Noticees* have gone a step ahead and have demanded and received substantial fees from their clients in advance for the advisory services to be rendered in future for which also, no justifiable explanation has been offered which could inspire any confidence in the conduct of the *Noticees* as such a practice does not behoove of a registered intermediary. Therefore, having considered the allegations and evidence made available, it is held that Pinnacle's conduct in collecting fees from its clients much in advance before rendering any IA services is in violation of clause 1 of Code of Conduct read with regulation 15(9) of IA Regulations.

Pinnacle employees executed trades in trading account of the client

31. Before proceeding further, it will be appropriate to refer to the applicable provisions for the alleged violation as captioned above. It has been alleged that *Noticees* have violated regulations 15 (1), 15(3) and 22(b) of IA Regulations and clause 1 of Code of Conduct read with regulation 15(9) of IA Regulations. Text of regulations 15(3) and 22(b) of IA Regulations is reproduced here under, while the rest of the provisions have already been reproduced in preceding paragraphs:

IA Regulations

15 (3) An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.

22 Investment advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:

Provided that such distribution or execution services can only be offered subject to the following:

(a)...

(b)The investment adviser shall maintain arms length relationship between its activities as investment adviser and distribution or execution services;

32. It was observed from the complaint of Mr. A.V.S.R. Sastry that “*Afterwards Mr. Rohit has directly traded on online on my behalf in commodities and options (As I am not aware of the same) upto 25/7/2018 and made a total loss of 4.00 L in demat a/c.*” In this regard, Pinnacle has submitted that it does not provide execution services and if the trades were executed from Indore, it could not have been done without the consent of the client. It is noted from the trade details, including IP addresses from which trades have been executed in the client’s account that based on IP address location most of the trades have been executed from Indore, Madhya Pradesh where Pinnacle’s office is located, whereas the complainant Mr. A.V.S.R. Sastry’s location as registered by him in SCORES, is Hyderabad. Given the circumstances, where the investment adviser of Mr. A.V.S.R. Sastry is located in Indore whereas the client is located far away in Hyderabad, based on the nature and proximity of relationship that existed between them coupled with the location of IP address, the preponderance of probability of Pinnacle executing the trades in the trading account of Mr. A.V.S.R. Sastry is much higher. Moreover, Pinnacle has not refuted that it has not executed the trades in the account of Mr. A.V.S.R. Sastry. Rather, it has stated that if the trades were executed, it was done with the consent of the client. The aforesaid argument is not a legally sustainable argument as an IA under the IA Regulations is obligated to maintain an arms-length relationship between its activities as an investment adviser and other activities viz., distribution or execution services, if any. So for argument sake, even if the client has given his trading credentials to the IA, IA cannot use it to execute the trades on behalf of its client since that is against the provisions of IA Regulations. The IA has to restrict its operation to only giving investment advice to the clients. Thus, it becomes quite evident that Pinnacle, apart from providing investment advisory services to Mr. A.V.S.R. Sastry, was also providing execution services and has not maintained an arms-length relationship between its investment advisory services and other activities. Therefore, I find that the Pinnacle has violated regulations 15 (3) and 22 (b) of the IA Regulations. Further, as the aforesaid

conduct of Pinnacle was in complete disregard to the regulatory framework, it proves that Pinnacle has failed to act in a fiduciary capacity towards its clients and was also not acting honestly towards its client's interests. Thus, Pinnacle has also violated regulation 15 (1) of IA Regulations and clause 1 of Code of Conduct read with regulation 15(9) of IA Regulations.

Assurance of Profit by Pinnacle

33. It has been alleged in the SCN that Pinnacle has assured profit / unrealistic returns on the investment to the prospective or existing clients, luring them to avail its services. Therefore, it has been alleged that *Noticees* have violated regulations 3(a), (b), (c), (d) of the PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act and regulation 15 (1) of IA Regulations and clauses 1 and 2 of Code of Conduct read with regulation 15 (9) of IA Regulations.

34. I observe from the material on record that a Whatsapp message has been provided by one client along with his complaint which was sent to him by an employee of Pinnacle in respect of the services offered by Pinnacle. The said Whatsapp message from the employee of Pinnacle, Ms. Pushpa, wherein it was informed to Mr. Pallav Shah, the complainant, as follows: *"Dear Sir, this is to update you that as you had a conversation with our executive for the services of the company. And you are having some trust issue and according to the conversation if we fail to give you the profits in the services we will repay your service amount as well will provide you 1 month services free of cost. Regards, Service Team."* It is noted from the aforesaid message that Pinnacle is assuring profits to its clients by dealing / investments in stock market which not only is a misleading act but is an active concealment of the material fact that every investment in the securities market is subject to market risks and any investment made by the client can run into losses and even become zero. Thus, by not disclosing this material aspect and about the risks that are intrinsically associated with the investments in securities market and instead by assuring definite returns to its clients, Pinnacle has acted in a deceitful manner and has misled its clients with an intent to sell its advisory services to the client by way of giving misleading assurances of returns to the clients.

35. Further, it will be relevant here to reproduce the transcripts of call recordings submitted by one of the client of Pinnacle, Mr. Vikas Divekar wherein it is noted that

Pinnacle has promised daily returns by trading in the account held by the client with Goodwill Wealth Management. The transcript of two such calls between Mr. Vikas Divekar and the employee of Pinnacle is reproduced below:

35.1. **AUD 20200518-WA0016**

"13:51 Pinnacle: aap jis package mein kar raha hoon, usmein chaaleez se kam ka profit minimum hoti hi nahi. Minimum chaleez hazaar par mein appko teen din mein 1 lakh nikalke doonga.

"14:06 Pinnacle: ...kyunki chaleez se kum main profit nahi deta hoon Sir, aur mein koshish karunga Sir ki mein aapko saath se sathar tak ka bhi profit doon.

35.2. **AUD-20200518-WA0016**

18:41 Client: account mein hai hi nahi na, kali 8000/- hain.

18:43 Pinnacle: account mein aapko kal theez hazaar rupaya rakhana hain.keval theez hazaar rupaya, aur kuch nahi rakhna. Theez hazaar account main rakhlo aur kuch bhi mat rakhna, mere upar chodhdo bhaki.

Client: nahi hoga hai tho.

19:03 Pinnacle: ..., yeh joh teen lakh aap kisise lenge to, mein aapko bata raha hoon sir, 4 din ke time maang rahe hoon 1 lakh ke liye, 4 din ke time maanga na, aur 4 din ka time maanga na. chaar chaar din ke time nein, mein aapko ek ek lakh nikalke poora dedoonga, aur aap us person kode dena yeh meri responsibility hain.

From the above conversations, it is noted that Pinnacle is assuring a profit of INR 60,000/- on an investment of INR 40,000/- within 3 days which comes to a return of 18250%. Committing 18250% return p.a., on the face of it is not only extremely unrealistic and misleading but also appears to have been made with an intent to mis-sell its advisory services. Similarly, to assure a return of INR 1 lakh on an investment of INR 4 lakh within 4 days, is nothing but promising the client of exorbitant returns, with an intent to mislead the client and influence him to subscribe to advisory service of Pinnacle.

36. Pinnacle in its replies has not specifically made any submissions with respect to the aforesaid allegation of assurance of profit and has chosen not to address the same.

Be that as it may, I note from the aforementioned Whatsapp message and transcripts of call recordings that Pinnacle has been assuring definite profits to its clients which are unrealistic and exorbitant. Being a registered IA, who has qualified and has obtained NISM certification, Pinnacle knew fully well that all the investments in securities market are subject to market risk and that such returns cannot be assured to anyone no matter how much and for how long the investment is made but it still went ahead and assured astronomical returns to its clients. Pinnacle was under an obligation to take due care in its communication with its clients and should have refrained from such communications which are false and misleading and were apparently done only to influence the decision of its clients. Thus, from, the above instances, it is clear that Pinnacle has been, in its communications with its clients, is assuring huge profits and unrealistic returns to them. Such promises, apart from being false and misleading, appear to have been made only to influence the decision of the investors to deal in securities and to take the advisory services of Pinnacle.

37. Assuring profits, in any manner or form or description from investmemnts in the securities market, is nothing but ab act of misrepresentation of the truth. Neither there exist any grounds for belief of such unrealistic returns nor can such astronomical profits can be assured by anyone given the inherent risks of the securities market. Therefore, indulgence in such acts of giving false and misleading assurances to its clients on the part of Pinnacle, has certainly led to the violation of provisions of Section12A(a), (b), (c) of the SEBI Act and regulations 3(a), (b), (c), (d) of the PFUTP Regulations read with regulations 2(1)(c)(1), (2) and (8) of PFUTP Regulations. Moreover, it is also observed that by promising its clients of assured profits and not informing them about the material aspect that their investment in the securities market is subject to market risk where their capital can even get completely eroded, Pinnacle has not been honest and taken due care in its dealings in the best interest of its clients. Thus, Pinnacle has failed to act in a fiduciary capacity towards its clients, which also amounts to the violations of regulation 15(1) of IA Regulations, clauses 1 and 2 of code of conduct for Investment Adviser read with regulation 15(9) of IA Regulations.

Non redressal of SCORES complaints

38. The SCN has also alleged that Pinnacle has failed to redress client grievances promptly. It is therefore alleged that *Noticees* have violated regulations 21(1) read with 28(f) of IA Regulations and SEBI circular no. CIR/OIAE/2014 dated December 18, 2014. The texts of the said provisions are reproduced below:

IA Regulations

21. Redressal of Client Grievances.

(1) An investment adviser shall redress client grievances promptly.

Liability for action in case of default.

28. An investment adviser who –

(a)...

(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

SEBI circular no. CIR/OIAE/2014 dated December 18, 2014

9. All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

10. The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company / SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company / SEBI registered intermediary, for future reference.

11. Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

13. Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

39. It is observed that as on September 15, 2020, 8 unique complaints were pending against Pinnacle in SCORES portal for more than 60 days thereby showing that Pinnacle had not complied with the timelines to resolve the complaints as prescribed under SEBI circular no. CIR/OIAE/2014 dated December 18, 2014. Details of those pending complaints are tabulated as under –

Table No. 10

Sl. No.	SCORES Complaint No.	Name of Complainant	Date of receipt of complaint	Date of forwarding complaint to IA (X)	Date of Reminders	Date of Final ATR (Y)	Excessive time above 30 days
1.	SEBIP/MP20/0000072/1	Mamta Meshram	Feb 10, 2020	Feb 14, 2020	Jul 24, 2020 Sep 15, 2020	Jul 08, 2020	188
2.	SEBIE/MP20/0000503/1	Alok Sharma	Feb 19, 2020	Mar 09, 2020	Aug 26, 2020	Sep 10, 2020	160
3.	SEBIE/MP20/0001045/1	Kapil Gupta	April 17, 2020	Jun 23, 2020	Jul 28, 2020 Aug 14, 2020 Aug 26, 2020	Jul 24, 2020	54
4.	SEBIP/MP20/0000100/1	Sunita Singh	Mar 12, 2020	Jun 24, 2020	Aug 03, 2020 Aug 17, 2020	-	53
5.	SEBIE/MP20/0000994/1	Lalit Chadha	May 07, 2020	Jun 24, 2020	Sep 02, 2020	Sep 02, 2020	53
6.	SEBIE/MP20/0001150/1	D K Rahul	June 17, 2020	Jun 24, 2020	Jul 30, 2020 Aug 17, 2020	Jul 06, 2020	53
7.	SEBIE/MP20/0000679/1	Delhirasa V	March 09, 2020	Jun 24, 2020	Sep 15, 2020	Jul 06, 2020	53
8.	SEBIE/MP20/0001193/1	Vikas Divekar	Jun 26, 2020	Jul 07, 2020	Aug 26, 2020 Sep 15, 2020	Aug 18, 2020	51

40. I note that SEBI registered intermediaries, to whom complaints are forwarded through SCORES, are under statutory obligation to take immediate steps on receipt of a complaint, for its resolution, in a prompt manner. It is noted from the aforesaid table that the 8 investors' complaints were forwarded to Pinnacle on SCORES. Pinnacle in its reply has submitted that out of the aforelisted 8 SCORES complaints, for 3 of its clients, it has filed the ATR on time and for the remaining 5 clients, it has been communicating with them to resolve the complaints. In this regard, I note from the ATR as available on date in SCORES, that the none of the complaints has been resolved till date. Filing of ATR and / or communicating with clients without taking adequate steps to resolve the investor complaint is nothing but paying lip services to the provisions of the SEBI circular dated December 18, 2014. Further, the above claim of having resolved three complaints and further following up with the clients for resolution of remaining five complaints, has not been supported by any independently verifiable evidence or corresponding entries in the form of updation on the SCORES portal. Therefore, I find no reasons to rely on the above claim made by Pinnacle. I may hasten to add that it is the sacrosanct statutory duty of an intermediary to take concerted efforts so as to resolve the complaints of every investor to his / her satisfaction and that too promptly in a time bound manner as prescribed by the aforesaid SEBI circular. In this connection, I note that investor redressal grievance mechanism is an important tool in the hands of SEBI to discharge its duties and obligations imposed on it under SEBI Act. One of the most important objects of SEBI is to protect the interest of investors and the same undoubtedly includes timely redressal of grievances of investors. If investors do not get their complaints redressed promptly, it leads to frustration and they may be discouraged to invest any more in the scrip of the company or even in other instrument of securities market. This may, therefore, adversely affect the growth of capital market. Hence the importance of complaints redressal, cannot be undermined and its sanctity has to be maintained by all the registered intermediaries. In the instant matter, as per available records, the default to redress investors' grievances in question has continued for a considerable period of time, well beyond the time period stipulated under the applicable regulations and circular. This is a blatant violation of law and I find that Pinnacle, by taking no effective steps towards redressal of grievances of its clients, has violated regulation 21 (1) of IA

Regulations and provisions of SEBI circular no. CIR/OIAE/2014 dated December 18, 2014.

Non-compliance of SEBI directions with respect to inspection

41. It has been alleged in the SCN that Pinnacle has failed to comply with SEBI directions with respect to its inspection. Therefore, it has been alleged that Pinnacle and its Directors have violated regulations 13(a), 15(12), 25(1) and 25(2) read with 24(3), clauses 8 and 9 of code of conduct for IA as specified under the third schedule read with regulation 15(9) of IA Regulations. The text of the aforesaid provisions are reproduced below:

IA Regulations

Conditions of certificate.

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

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

General responsibility.

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

Notice before inspection.

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

Obligation of investment adviser on inspection.

25. (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of the investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

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

CODE OF CONDUCT

8. Compliance

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

9. Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

42. It is noted from the records that a pre-inspection questionnaire dated September 22, 2020 was issued to Pinnacle. Pinnacle vide its letter dated October 5, 2020 sought postponement of inspection and requested for rescheduling the inspection after 6 months on the ground that dispute with the owner of the premises which it had taken on lease was going on due to non-payment of rent. Pinnacle was once again advised to at least furnish the information sought in the pre-inspection questionnaire latest by October 16, 2020. Pinnacle vide its letter dated October 14, 2020 re-iterated that the inspection be postponed and be rescheduled after 6 months on account of extreme financial difficulties faced by it due to Covid- 19.

43. From the above responses of Pinnacle, it is noted that inspite of SEBI's best efforts, SEBI could neither carry out the physical inspection of books of accounts, records and documents maintained by Pinnacle nor could it even elicit a response to the pre-inspection questionnaire, to ascertain as to whether the activities of Pinnacle were being carried out in the interest of investors. It is pertinent to note that the purpose of carrying out inspection is not punitive in nature as the object of such inspection exercises is to

ensure compliance by a registered intermediary with the provisions of the Act, Rules, regulations, by-laws and circulars issued from time to time, which are applicable to the said intermediary. Here it will be relevant to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *ACML Capital Markets Ltd. vs. SEBI* decided on June 29, 2022 wherein it was held as follows:

*"... we find that the object of inspection of books of accounts and records of any Intermediary is to monitor and identify any non-compliance with respect to process procedures and systems prescribed through various provisions of the SEBI Act, Rules, Regulations and Circulars issued from time to time. The broker is required to take corrective steps in the event any irregularity as pointed out during the course of inspection. In this regard this Tribunal in the matter of **Religare Securities Limited v Securities and Exchange Board of India (Appeal No. 23 of 2011 decided on June 16, 2011)** held that the purpose of carrying out inspection was not punitive and that the object was to make the intermediary comply with the procedural requirements with regard to the maintenance of records etc..."*

44. At the time when the inspection of Pinnacle was ordered in September 2020, it was already a four years old registered intermediary and was running its investment advisory services for almost four years. If due to Covid- 19 pandemic which had started only six months ago when the inspection was ordered, Pinnacle had lost control over its business activities including its premises, then that's a serious lapse on the part of an intermediary like an IA which cannot be taken lightly. Further, Pinnacle has not demonstrated with any supporting evidence as to how it has made genuine efforts, if any, to get back its office premises or control over its data / information about its clients and business activity. Under the circumstances, I find that Pinnacle by not making its office premises available for inspection and consequently, by not furnishing the data and information sought from it by SEBI, has committed a serious breach of regulatory instructions which can have severe repercussions in the market. The aforesaid action of Pinnacle and its Directors cannot be taken lightly as they have continuously prevented SEBI from performing its statutory duties enjoined upon it under SEBI Act. Therefore, it is held that by not extending cooperation to SEBI and rather by preventing SEBI from carrying out its inspection in the office of the IA and by not even responding to the pre-

inspection questionnaire, Pinnacle has violated regulations 13(a), 15(12), 25(1) and 25(2) read with 24(3), clauses 8 and 9 of code of conduct for IA as specified under third schedule read with regulation 15(9) of IA Regulations.

45. In the light of the aforesaid findings, I must emphasise here that an entity which is granted registration as an investment adviser, has to mandatorily comply with IA Regulations of SEBI including relevant provisions of other securities laws. An IA should never put itself in a position where its interests are in conflict with the interests of its clients. An IA has to comply with all the provisions of IA Regulations which enable the IA to effectively discharge its functions to serve the best interests of its clients after taking into account and giving due weightage to the clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing losses etc. Moreover, the IA should exercise due skill, care and diligence while giving advice to its clients so as to ensure that adequate material information is disclosed to the clients at all times and any kind of misrepresentations or half-baked information should be avoided at any cost so as to not induce the client in dealing in securities. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which, he / she / it operates. The intermediary should not abuse the certificate of registration granted to it, in any manner. In the instant matter, as noted in the preceding paragraphs, Pinnacle has violated various provisions of IA Regulations and PFUTP Regulations with the sole aim of generating more income for itself at the cost of its clients. Not only the clients were misled and their grievance were not resolved within the prescribed timelines, even their risk profiling was done in a reckless manner without following any objective standards and investment advice in the form of various packages was given to the clients without paying any heed to the principles of suitability as envisaged under IA Regulations. Further, by promising unrealistic and definite amounts of assured returns to the clients without disclosing them the material truth about the risks involved in investments in the securities market, Pinnacle has indulged in mis-selling its advisory services only to increase its revenue putting the interest of its clients at great risk. Such detrimental acts of Pinnacle not only cast a shadow of doubt over its operations but also jeopardises the integrity of the market and the confidence of the investors to deal in the securities market. Furthermore, the blatant act of Pinnacle in not cooperating with SEBI to conduct an inspection of its affairs, leads to an inference that

Pinnacle was not transparent in its dealings with the Regulator. The IA Regulations have been drafted not only to protect the interest of investors but also to bring transparency and accountability in the functioning of an IA. In the present matter, Pinnacle has failed to live upto the standards and objectives of IA Regulations and PFUTP Regulations, hence appropriate directions need to be passed against it.

46. Before closing my deliberations, I must also evaluate the roles and liabilities of the other *Noticees*, viz., *Noticees No. 2 to 4*. I note that *Noticees No. 2 to 4* have been attributed to be liable for the deeds of Pinnacle by virtue of their directorship. Insofar as the functioning of an artificial person, i.e., a company is concerned, it is observed that all the acts which are executed in the name of an incorporated entity, are actually done by the natural persons who by their own minds and wisdom, are controlling the affairs and management of such artificial juristic person (company) in the capacity of its Directors. The company, being an artificial entity, cannot function on its own volition and will move only in such direction, as may be desired and dictated by the Directors who are controlling the overall functioning of the company. I note that the position of a 'Director' in a company comes along with various onerous responsibilities and compliances under law that are associated with such position, which have to be adhered to by such Director and in case of default, he / she has to face the consequences thereof. The Directors of a company are persons appointed to manage and direct the affairs of the company. They are expected to diligently perform their duties with honesty, fairness, skill and care in administering the affairs of the company. Such a duty requires the Directors to devote adequate time and attention to the affairs of the company so as to be able to take decisions that do not expose the company to unnecessary risks / actions by enforcement agencies. This implies a high degree of accountability and knowledge of the overall functioning of the company. Therefore, the Director cannot wriggle out from his / her liability arising out of any wrongdoing by the company.

47. I find it apt to refer to the judgment of Hon'ble Supreme Court of India in *N. Narayanan vs. Adjudicating Officer, SEBI* (2013) 12 SCC 152, where Hon'ble Court, while dealing with the role of a Director held as follows:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with

utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

48. In the instant matter, there is nothing on record to show that Pinnacle had a designated Managing Director or any other officer who is designated as key managerial personnel viz., CEO, CFO etc. Further, none of the *Noticees* has been designated as Independent Director or a Non-Executive Director. Thus, on a preponderance of probability basis, all the *Noticees* who have been appointed to the Board of Pinnacle as Directors, are in effect, in charge and are responsible for managing the affairs / business of Pinnacle. Further, none of the Directors of Pinnacle has submitted any response to the SCN or has availed the opportunity of hearing granted to them inspite of due service of notices. Thus, the Directors of Pinnacle have failed to explained their act / omission and have not cooperated in the instant proceedings. Moreover, there is also no material available on record to show that the *Noticees No. 2 to 4* were not involved in the affairs of Pinnacle during the relevant period. Hence, I am inclined to hold that *Noticees No. 2 to 4* were at the helm of the day to day affairs of Pinnacle during the commission of the violations as held above against Pinnacle and are equally liable for those violative acts on part of Pinnacle.

49. The SCN being adjudicated in the instant proceedings not only calls upon the *Noticees* to explain as to why appropriate directions should not be imposed upon them but also calls upon them to explain as to why appropriate penalty be not imposed upon them. The SCN in the matter has called upon the *Noticees*:

49.1. to explain as to why appropriate penalty be not imposed upon them under Section 15HB of the SEBI Act, for the failure of the *Noticees* to provide material information to SEBI;

- 49.2. to explain as to why appropriate penalty be not imposed upon them under Section 15HB of the SEBI Act, for the failure of the *Notices* to have done improper risk profiling and to not have an appropriate process of risk profile;
- 49.3. to explain as to why appropriate penalty be not imposed upon them under Section 15HA of the SEBI Act, for knowingly misrepresented the risk profile of the clients;
- 49.4. to explain as to why appropriate penalty be not imposed upon them under Sections 15EB and 15HB of the SEBI Act, for not following the requirement of suitability of advice to its clients;
- 49.5. to explain as to why appropriate penalty be not imposed upon them under Section 15HA of the SEBI Act, for selling multiple products to clients, selling products which do not match the risk profile of the client and charging exorbitant fees;
- 49.6. to explain as to why appropriate penalty be not imposed upon them under Sections 15HA and 15EB of the SEBI Act, for selling services which would commence in distant future and charging exorbitant fees;
- 49.7. to explain as to why appropriate penalty be not imposed upon them under Section 15EB of the SEBI Act, for providing execution services for the client;
- 49.8. to explain as to why appropriate penalty be not imposed upon them under Sections 15EB and 15HA of the SEBI Act, for promising assured returns;
- 49.9. to explain as to why appropriate penalty be not imposed upon them under Sections 15C and 15 EB of the SEBI Act, for not redressing investor grievances;
- 49.10. to explain as to why appropriate penalty be not imposed upon them under Section 15 EB of the SEBI Act, for not complying with SEBI directions with respect to its inspection.
50. In this regard before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for ready reference:

SEBI Act

Penalty for failure to redress investors' grievances.

15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing including by any means of electronic communication, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for default in case of investment adviser and research analyst.

15EB. Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for fraudulent and unfair trade practices.

15HA. Penalty for fraudulent and unfair trade practices. 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

51. Upon a consideration of the afore cited penalty provisions and keeping in view, the discussions held in the preceding paragraphs, I find as follows:

- 51.1. It has been held that Pinnacle and its Directors have failed to inform SEBI about the appointment of Ms. Parul Shah on its Board of Directors which is a material information. Hence, they are liable for monetary penalty under Section 15HB of the SEBI Act for the violation of provisions of IA Regulations.
- 51.2. It has been held that Pinnacle and its Directors have done improper risk profiling and Pinnacle does not have an appropriate process of risk profiling which has led to the violation of provisions of IA Regulations. I therefore, find that monetary penalty under Section 15EB of SEBI Act is clearly attracted.
- 51.3. It has been held that Pinnacle and its Directors have knowingly misrepresented the risk profile of the clients which has led to the violation of the provisions of PFUTP Regulations and thereby making them liable for monetary penalty under Section 15HA of the SEBI Act.
- 51.4. It has been held that Pinnacle and its Directors have not followed the requirement of suitability of advice to be given to its clients which makes them liable for monetary penalty under Section 15EB of the SEBI Act as they have failed to comply with the provisions of IA Regulations.
- 51.5. It has been held that Pinnacle and its Directors have sold multiple products to their clients, sold products which do not match the risk profile of the client and have charged exorbitant fees to their clients resulting in the violation of provisions of PFUTP Regulations. I therefore, find that penalty under Section 15HA of SEBI Act is clearly attracted.
- 51.6. As noted in the preceding paragraphs Pinnacle and its Directors have sold services to their clients whose tenure begins in the distant future, which is in violation of the provisions of IA Regulations. The said act of the *Noticees* makes them liable under Section 15EB of SEBI Act.
- 51.7. It has been held that Pinnacle and its Directors have provided execution services to their client which makes them liable under Section 15EB of the SEBI Act for the violation of the provisions of IA Regulations.
- 51.8. It has been held that Pinnacle and its Directors have promised assured returns to its clients which is not only a failure of compliance under IA

Regulations but is also a separate and distinct violation under PFUTP Regulations. The same clearly attracts monetary penalty under Sections 15 EB and 15HA of the SEBI Act.

51.9. It has been held that Pinnacle and its Directors have not redressed the investors' grievances within the timeline prescribed by SEBI resulting in violation of the provisions of SEBI circular dated December 18, 2014 and provisions of IA Regulations. The same attracts monetary penalty under Sections 15C and 15EB of the SEBI Act.

51.10. It has been held that Pinnacle and its Directors have not complied with SEBI directions with respect to its inspection which is in violation of provisions of IA Regulations. Thus, monetary penalty under Section 15EB of the SEBI Act is clearly attracted.

52. It is relevant to mention here that for the purpose of imposition of penalty under the provisions of the SEBI Act, guidance is provided by Section 15J of the SEBI Act. The said provision reads as under

"Factors to be taken into account while adjudging quantum of penalty. 15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

53. I note that the SCN has not brought out the quantum of profit / gain made by the Noticees in promising assured returns and by charging fees arbitrarily or by collecting unreasonable amount of fees from their clients. Further, the profit / gain made by the

Noticees by selling multiple products and products which were not as per the risk profile of the clients or as per the suitability of those products befitting the risk appetite of the clients and by providing execution services, have also not been quantified. However, I note from the complaints received from the clients that certain investors have suffered losses due to the actions of the *Noticees*. Accordingly, these facts deserve to be taken into cognisance while issuing directions with respect to the levy of penalty on the *Noticees*.

Directions and Monetary Penalties

54. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 (1), 11 (4), 11B (1) and 11B (2) read with Section 19 of the SEBI Act along with regulation 35 of the Intermediaries Regulations read with regulation 28 of IA Regulations, pass the following directions:

54.1. The *Noticees* are directed to resolve the complaints pending against Pinnacle in SCORES or otherwise within seven days from this order and any refunds that may be required to be made pursuant to the resolution of the said pending complaints, the same shall be paid within a period of thirty (30) days from the date of this Order.

54.2. The *Noticees* are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above or for the payment of penalty as imposed in this Order. Further, banks are directed to allow debit from the bank accounts of the *Noticees*, only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the *Noticees* or for the payment of penalty as imposed in this Order.

54.3. After completing the aforesaid resolution of complaints and repayment to the aggrieved clients, the *Noticees* shall file a completion report of such completion with SEBI 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", within a period of fifteen (15) days,

from the end of thirty (30) days from the date of this order, duly certified by an independent Chartered Accountant.

54.4. *Noticees* are hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement or soliciting money from the public in any manner for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/repayment of refunds to complainants as directed at paragraph 54.1, whichever is later.

54.5. *Noticees* are hereby restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever manner, for a period of three (3) years from the date of this Order or till the expiry of three (3) years from the date of resolution of complaints/complete repayment of refunds to complainants as directed at paragraph 54.1, whichever is later.

54.6. The *Noticees* are hereby individually imposed with the monetary penalties, as indicated hereunder:

Table No. 11

Name of the <i>Noticee</i>	Provisions under which penalty imposed	Amount of Penalty (INR)
Pinnacle Market Investment Advisory Pvt. Ltd.	Section 15 C of SEBI Act	One (1) lakh
	Section 15 EB of SEBI Act	Six (6) lakh
	Section 15 HA of SEBI Act	Five (5) lakh
	Section 15 HB of SEBI Act	One (1) lakh
Total Penalty on Pinnacle Market Investment Advisory Pvt. Ltd.		Thirteen (13) lakh
Abhishek Patel		Five (5) lakh
Shekhar Mishra		Five (5) lakh

Parul Sahu	Five (5) lakh
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54.7. The *Notices* shall remit / pay the aforementioned amounts of penalties within forty-five (45) days from the date of receipt of this Order. The *Notices* shall remit / pay the said amount of penalties either by way of Demand Draft in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said *Notices* may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to “The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051” and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Table No. 12

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

- 54.8. Obligation of the debarred *Notices*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order in respect of pending transactions, if any. Further, all open positions, if any, of the aforesaid debarred *Notices* in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
- 54.9. It is further clarified that during the period of the aforesaid restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze.
- 54.10. The direction at paragraph 54.2 shall cease to operate upon filing of a completion report to SEBI as directed at paragraph no. 54.3 above, on resolution of complaints/ repayment of refunds to complainants and upon the payment of penalty to SEBI as imposed in this Order.
55. The Order shall come into force with the immediate effect.
56. A copy of this Order shall be forwarded to the *Notices*, all the recognized stock exchanges, banks, depositories and registrar and transfer agents for ensuring compliance with the above directions.

Date: January 25, 2023
Place: Mumbai

-Sd-
S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA