National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/56281	Date: April 05, 2023
Circular Ref. No: 95/2023	

To All NSE Members

Sub: SEBI Order in respect of M/s Capital Research (Prop. Gopal Gupta) and M/s Capres (Prop. Mr. Rahul Patel)

SEBI vide its Order no. WTM/AB/WRO/WRO/25246/2022-23 dated April 05, 2023, has debarred the below mentioned entities from accessing the securities market, directly or indirectly and are prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever, for a period of 6 (six) months from the date of this Order or till the expiry of 6 (six) months from the date of completion of refund to complainants/ investors along with depositing of balance amount, if any, with SEBI, as directed in paragraph 20(a) and 20(e) of above SEBI order, whichever is later.

Sr. No.	Name of the Entity	PAN
1	M/s. Capital Research	AMSPG6056C
2	Mr. Rahul Patel	BPHPP7579A
3	Mr. Gopal Gupta	AMSPG6056C

This Order shall come into force with immediate effect.

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

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

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

National Stock Exchange of India

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

Mr. Neerav Dharod (Extension: 25187), Mr. Sandesh Sawant (Extension: 22383)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: - SEBI Order - M/s Capital Research (Prop. Gopal Gupta) and M/s Capres (Prop. Mr. Rahul Patel)

WTM/AB/WRO/WRO/25246/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

In respect of:

Noticee no.	Noticee Name	PAN
1.	M/s. Capital Research	AMSPG6056C
2.	Mr. Rahul Patel	BPHPP7579A
3.	Mr. Gopal Gupta	AMSPG6056C

(Aforesaid entities are hereinafter individually referred to by their respective name or noticee number and collectively as "the Noticees".)

In the matter of Unregistered Investment Advisory by M/s. Cpaital Research and M/s. Capres.

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1. On the basis of complaint received, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination in relation to the alleged activities of unregistered investment advisory being carried out by M/s. Capital Research and M/s. Capres. Upon examination, a show cause notice dated August 23, 2021 (hereinafter referred to as "**SCN**"), came to be issued to the Noticees, whereby the Noticees were called upon to show cause as to why appropriate directions under Sections 11(1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**"), should not be issued against them for the alleged violation of the provisions of Section 12(1) of the SEBI Act. 1992 and Regulation 3(1) of SEBI (Investment Advisors) Regulations, 2013 ('**IA Regulations, 2013**').

2. The SCN alongwith the Annexures was served upon the Noticees through Speed Post. I note that Noticee no. 2 and 3 have filed combined replies dated August 23, 2021 and October 11, 2021. Subsequently, on December 31, 2021, the matter was placed before undersigned for granting a suitable date for personal hearing. An opportunity of personal hearing was granted to Noticees on April 5, 2022. However, the Noticees had sought an adjournment of the scheduled hearing on the ground of non-availability of arguing counsel on the scheduled date. Accordingly, the hearing was adjourned to May 11, 2022. On the re-scheduled date of hearing, the Advocate appearing on behalf of both the Noticees was heard. Subsequently, vide an email dated December 16, 2022, the Noticees were provided with an opportunity to file additional submissions, if any. I note that the Noticees have not availed this opportunity.

3. The SCN alleges that the Noticees were carrying out unregistered investment advisory activities through the website 'www.capresearch.in'. I note that the website is inactive as on date, but from the copy of the archived webpages as downloaded from 'web.archive.org' and available on record, I note that the following was disclosed on the website:

> *"CapResearch - Investment Adviser is a leading financial services provider with presence in Indian and other global Cap markets. With its full fledged research operations, Cap Research - Investment Adviser has proven itself as company that produces and delivers high accuracy tips and recommendations for –*
>
> *Equities – For stocks listed on BSE and NSE*
> *Derivatives – BSE, NSE and Nifty Futures and Options*
> *Commodity - MCX, NCDEX and COMEX"*

4. Services being offered by the Noticee as gathered from the contents of its website are as follows:

Sr. No.	*Name of Service*
1.	*Bullions Pack*
2.	*Agri Pack*

3.	*Bullion Metals Combio*
4.	*Bullion Metals + Agri*
5.	*Bullion Metal Plus*
6.	*Stock Tips*
7.	*Premium Stock Tips*

5. I note that for availing the aforesaid services, payment of fees could be made to the bank accounts, details of which, as mentioned on the website, are as under –

"Account Name: Capital Research
Bank Name: ICICI Bank
Account No. 144105500584
IFSC Code: ICIC0001441
Branch: Near Industry House, Onam Plaza, A.B. Road, Indore (M.P.)"

"Account Name: CAPRES
Bank Name: Axis Bank
Account No. 917020027358390
IFSC Code: UTIB0000043
Branch: Y.N. Road, Indore"

6. From reading of the aforesaid contents of the website, it is abundantly clear that the owner and administrator of the website 'www.capresearch.in' was engaged in the business of providing Investment Advisory services to clients for consideration.

7. During examination by SEBI, the bank statements, KYC and Account Opening Forms of Bank A/c no. 144105500584 were procured from ICICI Bank. On perusal of the Account Opening Form, I find that M/s. Capital Research is a proprietorship firm and Mr. Gopal Gupta is its proprietor. In the Account Opening Form, Capital Research is shown to be engaged in providing Financial Advisory Services. The said proprietorship firm is registered under the Madhya Pradesh Shops and Establishment Act, 1958. The District Labour Officer, Indore had issued a Registration Certificate dated May 20, 2014 under the Madhya Pradesh Shops and Establishment Act, 1958, to 'Capital Research', whose proprietor is mentioned as Mr. Gopal Gupta. Further, from the account statement, I find that almost all credit

entries in the said Bank A/c. were by cash deposit. The cash deposits were made from various locations across India viz. Aligarh, Jaipur, Surat, Amravati, Porbandar, Mumbai- Borivali, Chirawa, Nagpur, Kolkatta, Faridabad, Ludhiana, Vadodra, etc. I also observe that almost all debit entries in the said A/c. were ATM Cash Withdrawal. Total amount credited in the said bank account from August 13, 2015 to May 17, 2017, is Rs. 21,24,461.78. The said account was closed on May 17, 2017. Further, from the Account opening Form of AXIS Bank A/c. no. 917020027358390, which was also mentioned on the website, it is revealed that the said A/c. is held in the name of 'M/s. Capres', which is a proprietorship firm and Mr. Rahul Patel is its proprietor. The said proprietorship firm is holding a Business License under the Madhya Pradesh Municipal Corporation Act, 1956. The Licensing Officer, Municipal Corporation, Indore had issued a Registration Certificate dated March 3, 2017 under Section 366 and 427 of the Madhya Pradesh Municipal Corporation Act, 1956, to 'Capres', whose applicant is mentioned as Mr. Rahul Patel. On perusal of account statement, I find that a sum of Rs.12,11,362/- was credited into the said bank account from various entities during the period from March 21, 2017 to November 27, 2019. The narration in the credit entries bears the word 'Capres' indicating that the payment is in relation to the business of the proprietorship firm.

8. From the details of the funds transferred by the complainant, SEBI's examination revealed that the complainant had made payment to Capital Research through the payment gateway 'PayUmoney'. The Axis Bank A/c. No. 9140200229980 was found to be linked to PayUmoney. I note that the said Axis Bank A/c. is also held in the name of M/s. Capital Research. During June 24, 2014 to April 15, 2017, the said Bank A/c. has received credit of Rs. 27,47,880.04. I find that almost all the credit entries in the said Bank A/c. are from Payu Payments Pvt. Ltd., thereby indicating that the Noticees used to accept payment for the investment services offered by them, from their clients, through this Payment Gateway as well. I also find some IMPS/ NEFT credit entries in this A/c. wherein 'Advisory' has been mentioned in the narration column further giving rise to an inference that credits in

the said bank accounts are towards fees collected for investment advisory services.

9. Therefore, from the contents of the website 'www.capresearch.in', it is clear that 'Capital Research and Capres' were engaged in offering investment advisory services. Further, from the bank statements of aforementioned ICICI Bank A/c. and AXIS Bank A/c's., it is observed that there are large number of credit entries from PayUMoney Payment Gateway, and also by way of cash deposit from locations across India and also through NEFT/IMPS bank transfers from various individuals. In view of the above, I find that the Noticees were engaged in offering investment advisory services to clients/ investors for a consideration, without obtaining registration from SEBI.

10. The Noticees have contended that they were employees of Capital Research. However, from the Account Opening Form and KYC Documents of the relevant Bank A/c's., I find that Noticee no. 2 is mentioned as the proprietor of M/s. Capres and Noticee no. 3 is mentioned as the proprietor of M/s. Capital Research. I note that the Noticees have not denied/ disputed the contents of the Account Opeining Form of the aforesaid Bank A/c's. I also note that while the Noticees have claimed to be employees of M/s. Capital Research, but they have not provided any evidence in the form of Employee ID Card, Salary Slip, Appointment Letter, etc. in support of this claim. Thus, their contention is not tenable.

11. I note that the Noticees have claimed that M/s. Capital Research was engaged in providing technical analysis courses to its clients and subsequently provide help in analyzing the markets. It is their case that M/s. Capital Research has no connection with the website 'www.capreserach.in'. I do not find any merit in this contention. On perusal of the copies of the archived webpages of the website 'www.capreserach.in', I find that in the Payments Tab, two Bank A/c's are mentioned for receiving payments. As discussed in the preceding paragraphs, One Bank A/c. was in the name of M/s. Capres whose proprietor is Noticee no. 2 and the other Bank A/c. was in the name of M/s. Capital Research whose proprietor is Noticee no. 3. The Noticee no. 2 and 3 have failed to explain as to why were the

aforesaid Bank A/cs, belonging to them, were mentioned on the website www.capreserach.in'. Further, the **Noticees have failed to provide any proof with** regard to their claim that M/s. Capital Research was engaged in providing educational courses. Rather, from the contents of the website, I find that M/s. Capital Research and M/s. Capres were engaged in providing investment advisory services. Further, the Noticee no. 2 and 3 have also failed to explain with supporting evidence the source of the credit entries in the aforesaid Bank A/c's. If it is their claim that the funds were received from the subscribers of the educational courses being offered by them, then the same ought to be supported by relevant copies of invoices issued, service tax returns filed, or other supporting documents to establish the source of credit entries in the impugned Bank A/c's. However, no such evidence has been produced by them. Thus, I am inclined to hold that the credit entries in the impugned bank accounts aggregating to an amount of Rs.60,83,703.82, were funds received by the Noticees from clients/ investors while offering the unregistered investment advisory services.

12. I note that if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client *in lieu* of consideration, including entities which are holding themselves out as investment advisers, are covered by the definition of "Investment Adviser" as given in Regulation 2(1)(m) of the IA Regulations, 2013. As noted above, Rs.60,83,703.82 were received in the aforesaid bank accounts whose beneficiary were the Noticees. As noted in the previous paragraph, the payments received in the bank accounts of the Noticees, were in lieu of the investment advisory services provided by M/s. Capital Research and M/s. Capres. Hence, I find that M/s. Capital Research and its proprietor Mr. Gopal Gupta and M/s. Capres and its proprietor Mr. Rahul Patel, were engaged in the business of providing investment advice to their clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

13. I note that the Noticees have contended that the definition of "investment advice" under Regulation 2(1)(l) of IA Regulations, 2013 shows that investment advice shall necessarily include financial planning and the allegation in the SCN is that the Noticees were giving buy/sell recommendations in stock markets and there is no allegation in the SCN that the Noticees were conducting financial planning. The Noticees have also contended that a person who is providing buy/sell recommendations in stock market and is not undertaking any financial planning falls under the category of Research Analyst and not Investment Adviser. I note that the allegation in the SCN is that the Noticees were engaged in the activities of investment adviser without seeking registration from SEBI. I note that the definition of 'investment advice' as provided under Regulation 2(1)(l) of the IA Regulations, 2013, first describes what is meant by investment advice and then uses the phrase "and shall include financial planning'. In "means" and "and shall include" definitions, "means" part gives the meaning of the term which is being defined and "and shall include" part specifies those things which may not otherwise get covered under the "means" part of the definition. In the present case, the definition of 'investment advice' starts with the words, "means advice relating to investing in purchasing, selling or otherwise dealing in securities or investment products.........." and then goes on to state that "and shall also include financial planning". As discussed before, it only shows that financial planning has been specifically brought under the ambit of investment advice by using "and shall include" which otherwise may not get covered in the "means" part of the definition. The presence of "financial planning" in the "and shall include" part of the definition does not make "financial planning" *sine qua non* for investment advice, rather it merely shows that "financial planning" is also investment advice independent of what has been stated in the "means" part of the definition. Therefore, the contention of the Noticees in this regard is untenable. In view of the above, I find that the services and packages offered on the website 'www.capresearch.in' and the credit entries in the Bank A/c.'s held by the Noticees, clearly indicate that the Noticees were offering 'investment advice' as defined under Regulation 2(1)(l) of the IA Regulations, 2013. Regarding, the contention of the Noticees that the giving of buy/sell recommendations without any financial

planning falls under the activities of research analyst and not investment advisory, I note that definition of "research analyst" as given under Regulation 2(1)(u) of SEBI (Research Analysts) Regulations, 2014 (hereinafter referred to as **"RA Regulations, 2014"**), provides as under:

"'research analyst' means a person who is primarily responsible for —

i. preparation or publication of the content of the research report; or

ii. providing research report; or

iii. making 'buy/sell/hold' recommendation; or

iv. giving price target; or

v. an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Explanation.- The term also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above."

The aforesaid definition of "research analyst" enlists certain activities, responsibility for which makes a person "research analyst". A perusal of the aforesaid definition shows that an entity performing all or any of the activities mentioned therein would qualify as "research analyst". When the said definition is read with other definitions and provisions of the RA Regulations, 2014, it is clear that research analyst takes into account the companies/securities/sectors for making recommendation which are not client specific unlike investment advisory activity wherein the advise is rendered after taking into account the investor. Further, for a buy/sell recommendation to fall in the research analyst definition, such recommendation should be made to public/clients at large and may not be personalised investment advice or on one to one basis, as is the case herein. Therefore, the contention of the Noticees is not correct.

14. I also note that, it is imperative that any person carrying out investment advisory activities must necessarily obtain registration from SEBI and conduct its activities in accordance with the provisions of SEBI Act, 1992 and Regulations framed thereunder. Section 12(1) of SEBI Act, 1992 reads as under:

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

15. It is relevant to note that in order to protect the interest of investors and to preserve the integrity of the securities market, IA Regulations, 2013 has been framed by SEBI which provide various safeguards to ensure that the interest of the investors who receive investment advice are protected. One such safeguard provided under the said Regulations is that any person carrying out investment advisory activities has to first obtain a certificate of registration from SEBI as mandated under regulation 3(1) of the IA Regulations, 2013, which, *inter alia*, provides that, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI and it has to conduct its activities in accordance with the provisions of IA Regulations, 2013. Further safeguards provided under IA Regulations, 2013 include continued minimum professional qualification and compliance with net-worth requirement for acting as an investment adviser, prior disclosure of all conflicts of interest, prohibition on entering into transactions which are contrary to advice given to the clients at least for 15 days from the date of giving advice to the clients, mandatory risk profiling of investors, maintaining documented process for selecting investment products for clients based on client's investment objective and risk profile and understanding of the nature and risks of products or assets selected for such client, etc.

16. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy *inter alia* the following requirements, as provided under IA Regulations, 2013:

(i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in

Form A as specified in the First Schedule to IA Regulations, 2013 alongwith requisite non-refundable application fee;

(ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:

a. A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;
b. An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;
c. Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

(iii) Individual applicant must have net worth of not less than 5 lakh rupees and non-individual applicant must have net worth of not less than 50 lakh rupees.

17. The activities engaged in by the Noticees, as brought out from the various materials described above, seen in the backdrop of the aforesaid regulatory provisions show that the Noticees were acting as Investment Advisers, although the Noticees were not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by the Noticees without holding the mandatory certificate of registration as investment adviser, are in violation of Section 12(1) of SEBI Act, 1992 read with Regulation 3(1) of the IA Regulations, 2013.

18. I note that in the case of Shri C. Paranitharan and Others and Trend Market Advisory Services, SEBI had passed orders dated July 05, 2022 and July 07, 2022, respectively, inter alia directing the Noticees therein to refund the fees or consideration received from investors in respect of their unregistered investment advisory activities. In the respective appeals filed against these orders by the respective Noticees, Hon'ble SAT vide common order dated September 21, 2022 inter alia directed the appellants there into deposit the balance amount after making refunds to investors, with SEBI. It was also directed that the balance amount deposited with SEBI shall be kept in escrow account for a period of one year and be distributed to any claimants and thereafter, the remaining amount, if any, will be deposited in the Investor Protection and Education Fund.

19. From the material available on record, I note that the examination in the matter was initiated on the basis of a complaint. I also note that an aggregate amount of Rs.60,83,703.82, has been collected by the Noticees in the bank accounts, by providing unregistered investment advisory services, which needs to be refunded to the investors/ clients.

DIRECTIONS:

20. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections11(1), 11(4) and 11B(1) read with of Section 19 of the SEBI Act, 1992, hereby direct that:

a) The Noticees shall, within a period of three months from the date of this order, refund the money received from any clients/ complainants/ investors, as fees or consideration or in any other form, in respect of their unregistered investment advisory activities;

b) The Noticees shall issue public notice in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this order;

c) The repayments to the clients/ complainants/ investors shall be effected only through banking channels (and no cash transfers), which ensures audit trails to identify the beneficiaries of repayments;

d) After completing the refund as directed in para 20 (a) above, within a period of 15 days, the Noticees shall file a report detailing the amount refunded to SEBI addressed to the Division Chief, Division of Registration-2, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai - 400051. The report should be duly certified by an independent Chartered Accountant and indicate the amount, mode of payment, name of the parties refunded, communication address, mobile numbers and telephone numbers etc.;

e) The remaining balance amount that could not be refunded to the clients/ investors, shall be deposited with SEBI which will be kept in an escrow account for a period of one year for distribution to clients/ complainants/ investors who were availing the investment advisory services from the Noticee. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;

f) The Noticees is restrained from selling their assets, properties and holding of mutual funds/shares/securities held by him in demat and physical form except for the sole purpose of making the refunds/ depositing balance amount with SEBI, as directed above. Further, the banks are directed not to allow any debits, except for the purpose of making refunds to the clients/investors/complainants who were availing the investment advisory services from the Noticees and depositing balance amount with SEBI, as directed in this order, from the bank accounts of the Noticees;

g) The Noticees is debarred from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of this order or till the expiry of six (6) months from the date of completion of refunds to complainants/ investors along with depositing of balance amounts, if any, with SEBI as directed in para 20(a) and 20(e) above, whichever is later;

h) Upon submission of report on completion of refunds to complainants/ investors to SEBI and deposit of the balance money with SEBI, if any, the direction at para 20(f) above shall cease to operate within 15 days thereafter;

i) The Noticees shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in para 20(g) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

21. The direction for refund and depositing the balance amount with SEBI, as given in para 20 (a) and 20(e) above, does not preclude the clients/investors to pursue the other legal remedies available to them under any other law, against the Noticees for refund of money or deficiency in service before any appropriate forum/ authority of competent jurisdiction.

22. This order comes into force with immediate effect.

23. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with.

Date: April 5, 2023
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA