National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56729	**Date: May 16, 2023**
Circular Ref. No: 123/2023	

To All NSE Members,

Sub: SEBI Order in the matter of Uday Intellicall Pvt Ltd and Others

SEBI vide its Order No. WTM/AB/WRO/WRO/26445/2023-24 dated May 16, 2023, has debarred following entities 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 17(a) and 17(e) of SEBI order , whichever is later.

Sr No	Name of Entity	PAN
1	M/s. Uday Intellicall Pvt. Ltd.	AACCU2196G
2	Mr. Rajat Sarraf	IUKPS1044F
3	Ms. Kalpana Jain	ASAPJ7659J

The order comes 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 at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

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

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

National Stock Exchange of India

Mr. Mihir Nisar (Extension: 22372), Mr. Sandesh Sawant (Extension: 23335)
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 in the matter of Uday Intellicall Pvt Ltd and Others

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. Uday Intellicall Pvt. Ltd.	AACCU2196G
2.	Mr. Rajat Sarraf	IUKPS1044F
3.	Ms. Kalpana Jain	ASAPJ7659J

(The aforesaid entities are hereinafter referred to by their respective names/ serial numbers or collectively as "the Noticees".)

In the matter of Unregistered Investment Advisory by M/s. Uday Intellicall Pvt. Ltd.

1. On the basis of certain complaints 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. Uday Intellicall Pvt. Ltd. Upon examination, a show cause notice dated August 19, 2021 (hereinafter referred to as "**SCN**"), came to be issued to M/s. Uday Intellicall Pvt. Ltd. and its directors Mr. Rajat Sarraf and Ms. Kalpana Jain, (hereinafter collectively referred to as "**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 him 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 (hereinafter referred to as "**IA Regulations, 2013**").

2. I note that the Noticees have filed their combined reply dated May 26, 2022 through their authorized representatives. On March 9, 2022, the matter was placed before me for granting a suitable date for personal hearing. An opportunity of personal hearing was granted to Noticees on May 27, 2022. On the scheduled date of hearing, the Advocate appearing on behalf of the Noticees was heard. Subsequently, vide an email dated December 8, 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. SEBI had received three complaints from: 1) Mr. Vikas Sharma dated December 8, 2019; 2) Mr. Pankaj Pandey dated February 28, 2020, and 3) Mr. Siddharth Gajera dated June 20, 2020 against Noticee no. 1. In the complaints, it was, *inter alia*, alleged that the Complainants received calls from Noticee no. 1, to receive stock advisory services and tips from Noticee no. 1 and made payments for the services. The Complainants had also, *inter alia*, alleged that Noticee no. 1 promised assured returns to them, however, the Complainants incurred losses because of the advices received from Noticee no. 1 and Noticee no. 1 stopped taking calls from the Complainants.

4. The SCN alleges that the Noticees were carrying out unregistered investment advisory activities. The SCN observes that Noticee no. 1 maintained the websites 'www.udayintellicall.com' & 'www.udayaashiyana.com', which are not active. I note that Noticee no. 2 and 3 are the only directors of Noticee no. 1. The complainants, Mr. Siddharth Gajera and Mr. Vikas Sharma, have provided invoices received by them with respect to payments made by the complainants to the Noticee no. 1. From the said invoices, I find that the signed invoices were issued by Noticee no. 1 against the payments made by the complainants. I also find that the invoices mention phrases such as *"This includes services of Cash/ Futures/ Options (Intraday Cash)"; "Service plan (Intraday Cash/ MCX)"* & *"Stock Cash Premium (Intraday Cash) etc."*

5. I note that, SEBI's examination has revealed the following bank accounts were maintained and run by the Noticee no. 1 –

Name: Uday Intellicall Pvt. Ltd. Bank: IndusInd Bank Account Number: 201002380811	Name: Uday Intellicall Pvt. Ltd. Bank: Kotak Mahindra Bank Account Number: 0812220870

6. From reading of the aforesaid contents of the invoices and copy of the complaints, it is clear that Noticee no. 1 was engaged in the business of providing investment advisory services to clients for consideration.

7. I note that the Noticees have contended that they were engaged in the business of providing and dissemination of publicly available information in relation to various securities and the securities market to its customers. It is their case that in lieu of providing such information, Noticee no. 1 charged a fixed fee as may be agreed by such customers. I note that while such a claim has been made by the Noticees, but no supporting evidence has been adduced by them. In fact, I am skeptical of the claims of Noticee no. 1. Why would the clients pay for 'information regarding securities or securities market' that is already publicly available? Further, if Noticee no. 1 was indeed offering only 'information' in lieu for fees, then why would the invoice generated by it mention name of schemes like ' PSP (Profit Sharing Plan), intraday Plan, etc.". I find that the contents of the invoice do not support the claims of the Noticees. Further, I also note that in the absence of any credible document such as a brochure, report, memo, advertisement or copy of any correspondence with client, or any like material, to demonstrate the nature of its purported business operation, the claims of Noticee no. 1 remain mere assertions. Rather, on the basis of the copies of invoices and on the basis of copy of the complaints, it is clear that the Noticees were engaged in offering investment advisory services to clients for consideration.

8. From the bank statements of aforementioned Indusind Bank Account, it is observed that Rs. 89,07,722/- was credited to the said account of which Rs.

47,610/- has been credited through PayU Money payment gateway. From the bank statement of the aforementioned Kotak Bank Account, it is observed that Rs.17,05,254/- was credited to the said bank A/c. of Noticee no. 1. I note that the Noticees have acknowledged in their reply that the credit in the aforesaid two Bank A/c's are from various customers of Noticee no. 1, including the Complainants. In view of the above, I am inclined to hold that the credit entries in the impugned bank accounts aggregating to an amount of Rs.1,06,12,976/- were funds received by Noticee no. 1 from clients/ investors in lieu of unregistered investment advisory services.

9. 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.1,06,12,976/- were received in the aforesaid bank accounts whose beneficiary was Noticee no. 1. As noted in the previous paragraph, the payments received in the bank accounts of the Noticee no. 1, were in lieu of the investment advisory services provided by it. Hence, I find that Noticee no. 1, was engaged in the business of providing investment advice to its clients, for consideration, and thus, acting as investment advisers, as defined under Regulation 2(1)(m) of the IA Regulations, 2013.

10. 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:"

Further, Regulation 3(1) of IA Regulations, 2013 provides as under:

> ***Application for grant of certificate.***
> *3.(1) On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations:*

11. 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.

12. 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.

13. The activities engaged in by the Noticee no. 1, as brought out from the various materials described above, when seen in the backdrop of the aforesaid regulatory provisions show that the Noticee no. 1 was acting as Investment Advisers, although it was not registered with SEBI in the capacity of Investment Adviser. Hence, I find that these activities/ representations as were being made by Noticee no. 1 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.

14. I note that Noticee no. 1 is a private limited company wherein Noticee no. 2 and 3 are the only shareholders holding 50% shares each. I note that Noticee no. 2 and 3 were the only director of Noticee no. 1 since the incorporation of Noticee no. 1 on March 14, 2018 and continue so till date. Thus, I find that Noticee no. 2 and 3 were in charge of and were responsible to Noticee no. 1 for the conduct of the business of Noticee no. 1. I find that Noticee no. 2 and 3 are responsible for the violations committed by Noticee no. 1 as well as they are also the beneficiaries of the unregistered investment advisory services offered in the name of Noticee no. 1. Therefore, I find that Noticee no. 2 and 3 are liable for regulatory directions including direction for refund of fees collected, jointly and severally with Noticee no. 1.

15. 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.

16. From the material available on record, I note that the examination in the matter was initiated on the basis of certain complaints. I also note that an aggregate amount of Rs.1,06,12,976/-, has been collected by the Noticee no. 1 in the bank accounts, by providing unregistered investment advisory services, which needs to be refunded to the investors/ clients. Regarding the source of these funds, the Noticees have contended that it was a fees for providing publicly available information in respect of securities market which has been found to be untenable. However, if the Noticees wish to prove that the funds in the said Bank A/c's, did not originate from client/ investors, then the same may be considered/ confirmed by the Chartered Accountant on production of reliable proof by the Noticees while certifying the refunds of investment advisory fees made by the Noticees, as is being directed in para 17.

DIRECTIONS:

17. 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, jointly and severally, 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 17 (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, if any, 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 Noticees. Thereafter, remaining amount, if any, will be deposited in the Investors Protection and Education Fund maintained by SEBI;

f) The Noticees are 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 are debarred from accessing the securities market, directly or indirectly and are 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 17(a) and 17(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 17(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 17(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.

18. The direction for refund and depositing the balance amount, if any, with SEBI, as given in para 17(a) and 17(e) above, does not preclude the clients/investors of the Noticees 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.

19. This order comes into force with immediate effect.

20. 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.

Sd/-

Date: May 16, 2023
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA