

National Stock Exchange of India Circular

Department: Investigation	
Download Ref No: NSE/INVG/58481	Date: September 20, 2023
Circular Ref. No: 206/2023	

To All NSE Members

**Sub: Enquiry Order in the matter of Nishant Chopra (Proprietor of Dezire Research),
Investment Adviser**

This is with reference to NSE Circular No. NSE/INVG/47215 dated February 03, 2021 in respect of SEBI Order No. WTM/MPB/IMD/WRO/173/2021 dated February 03, 2021 wherein SEBI had directed following entity not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever or on behalf of any of its clients through their accounts until further orders: -

Sr. No.	Name of the Entity	PAN
1	Mr. Nishant Chopra, Proprietor Dezire Research	AGXPC3196L

SEBI now, vide its Order no. QJA/GR/WRO/WRO/29294/2023-24 dated September 20, 2023 has hereby directed while disposing of/suspending the directions issued vide interim order dated February 03, 2021 and confirmed vide order dated August 20, 2021, hereby censure Mr. Nishant Chopra (Proprietor of Desire Research) PAN (AGXPC3196L) having SEBI registration number-INA000004104 and direct him to refrain from indulging in such unfair trade practices in future or in any other similar act whatsoever, so as to violate the sanctity of the SEBI Act, 1992 and the Rules and Regulations made thereunder including the SEBI(Investment Advisers) Regulations, 2013, both in letter and in spirit, which are detrimental to the interest of the shareholders and prejudicial to the interest of the investors of securities market.

This Order shall come 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 at the below 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 email us at dl-invsg-all@nse.co.in

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

**ANNEXURE: - Enquiry Order in the matter of Nishant Chopra (Proprietor of Dezire Research),
Investment Adviser**

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 23, Regulation 27 and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and Regulation 28 of Securities and Exchange Board of India (Investment Advisers) Regulation, 2013.

IN RESPECT OF:

NOTICEE	SEBI Registration No.	PAN
Nishant Chopra (Proprietor of Dezire Research)	INA000004104	AGXPC3196L

Background:

1. Nishant Chopra (Proprietor of Dezire Research) (hereinafter referred to as the '**Noticee**') is registered as an Investment Adviser ("**IA**") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**") with effect from February 04, 2016 . As per the records, his registered office is at '501, 5th Floor, B Block Metro Tower, Scheme No. 54, Vijay Nagar, Indore – 452010 and website address is <http://www.dezireresearch.com>.
2. Securities and Exchange Board of India ("**SEBI**"), upon receipt of several complaints against the Noticee had initiated inspection to look into the compliance of regulatory requirements stipulated under SEBI Act, 1992, IA Regulations, and other circulars and guidelines framed thereunder. The period of the inspection was from April 01, 2017 till March 11, 2019 (hereinafter referred to as the '**Inspection period/IP**').
3. The findings of the inspection report, which were based on the complaints received against the Noticee, are as under;

- 3.1. Noticee had promised assured profit / target return to his clients.
 - 3.2. Noticee had not communicated risk profile to the respective clients
 - 3.3. Noticee had submitted fabricated risk profile to the inspection team.
 - 3.4. Noticee sold his advisory products and collected fees from the clients, even before it had carried out the risk profile of the clients.
 - 3.5. Noticee had given investment advice without assessing its appropriateness to the risk profile of the client and Noticee has not maintained and provided suitability documents to the clients
 - 3.6. Noticee has been selling same advisory products/ services to the clients before completion of the tenure of the previous service.
 - 3.7. Noticee sold same advisory product/ service more than once with overlapping subscription period and Noticee had raised invoices where in Noticee did not include the duration of service. Therefore, the clients had no means to find out whether they had received proper services for the fees they paid to the Noticee.
 - 3.8. The Noticee had reported/ updated false performance report to show better performance track record
 - 3.9. Noticee forced the complainants to close/ withdraw the complaints at Scores Portal.
 - 3.10. Noticee has not maintained the records of communication with clients during risk profiling and suitability assessment of advice/ selection of advisory product/services did not maintain the true records of performance / track records.
 - 3.11. Noticee representatives, who have dealt with clients in key functions of IA such as risk profiling, offering investment advice, etc. did not have requisite qualifications and certification.
 - 3.12. Noticee has not made disclosure to his clients about his financial position or holding which were subject matter of advice and Noticee had not made disclosure that Noticee was employed with a broking firm and was also holding shares. No disclosure about such other activities
4. The above mentioned complaints led to the initiation of enquiry proceedings against the Noticee in terms of the SEBI (Intermediaries) Regulations, 2008

(hereinafter referred to as “**Intermediaries Regulations**”) and a Designated Authority (hereinafter referred to as “**DA**”) was appointed under Regulation 24 of the Intermediaries Regulations to enquire into the following violations alleged against the Noticee:

- 4.1. Regulation 3 (a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act read with Regulation 15(1) and Clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) as specified under Third Schedule of Code of Conduct for Investment Adviser read with Regulation 15(9) of IA Regulations.
- 4.2. Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read Section 12A(a), (b) and (c) of SEBI Act and Regulation 16 of IA Regulations.
- 4.3. Regulation 17 of the IA Regulations read with Clause 1, 2 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.
- 4.4. Regulation 3(a), (b), (c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act read with clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.
- 4.5. Regulation 3(a), (b), (c), and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.
- 4.6. Regulation 15 (1) and 21(2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations.
- 4.7. Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulation.
- 4.8. Regulation 7 r/w Regulation 15(13) of IA Regulations. Clause 1, 2, 3 and 8 of Code of Conduct for Investment Adviser given in Third schedule read with Regulation 15(9) of IA Regulations.
- 4.9. Regulation 15 (3), (4) and (5) read with Regulation 18 (2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations.

Enquiry by the Designated Authority:

5. The DA had issued a Show Cause Notice dated March 27, 2023 (hereinafter referred to as “**SCN**”) under Regulation 25 of the Intermediaries Regulations, calling upon the Noticee to show cause as to why appropriate recommendations for the alleged violations should not be made against him. The delivery of the SCN to the Noticee was attempted on the addresses available on record. The said SCN was served vide SPAD/e-mail and was duly delivered. The Noticee, vide email dated June 19, 2023, submitted his reply to the SCN. Thereafter, an opportunity of a personal hearing was granted to the Noticee on June 19, 2023, vide Hearing Notice dated May 16, 2023. The Authorised Representative (AR), appeared on behalf of the Noticee on June 19, 2023 and made submissions relying upon the response dated June 19, 2023. The said personal hearing was continued and completed on June 21, 2023.
6. Accordingly, the DA proceeded on the basis of material available on record and the reply submitted by the Noticee and submitted an Enquiry Report dated July 26, 2023 (hereinafter referred to as “**Enquiry Report**”) recommending regulatory censure may be issued to the Noticee as an IA.

Post Enquiry Proceedings:

7. A post-enquiry Show Cause Notice dated August 14, 2023 (hereinafter referred to as “**Post Enquiry SCN**”) was issued to the Noticee enclosing a copy of the Enquiry Report dated July 26, 2023, submitted by the DA and calling upon him to show cause in terms of Regulation 27 of the Intermediaries Regulations as to why actions as recommended by the DA should not be taken against the Noticee in terms of the said Regulations.
8. I note that the Post Enquiry SCN was issued to the Noticee through SPAD and e-mail dated August 14, 2023. It is observed that while SPAD had returned

undelivered, the SCN issued vide e-mail at email ids - support@dezireresearch.com and maneesh041@gmail.com was duly delivered. Thereafter, in terms of Regulation 27(4) of the Intermediaries Regulations, an opportunity of personal hearing to the Noticee was granted on September 11, 2023, vide e-mail dated September 04, 2023 at the above mentioned e-mail ids. The said notice was duly delivered on September 04, 2023. Thereafter, the Noticee submitted his reply dated September 08, 2023, in the matter, received vide e-mail dated September 11, 2023. On the day of the scheduled hearing, the AR, appeared on behalf of the Noticee and reiterated the submissions made vide the reply dated September 08, 2023 and the reply dated June 17, 2023 (submitted to the DA) by the Noticee. Since the details of reply dated June 17, 2023 have already been dealt with in the DA's report dated July 27, 2023, the summary of the reply dated September 08, 2023 are as under;

- As regards the allegation of assured returned, the Noticee stated that they were based on certain unverified Whatsapp chats that cannot be relied upon and the DA has also accepted that the Whatsapp chats cannot be relied upon. However, while doing so, the DA also erroneously relied upon the photo copy of the letter which was attached to the said Whatsapp chats, which also cannot be relied upon.
- As regards the allegation of not communicating risk profile to the respective clients, the Noticee stated that certain questions carrying maximum 20 marks is completely unsubstantiated and it also does not prejudice client's answers in anyway, also SEBI does not suggest a proforma of Risk profile to be followed and then there are 9 questions carrying 20 marks, the total of which is 180 and thus singling out 3 questions merely is de hors of fair Judicial approach.
- As regards the allegation of fabricated RPFs, the Noticee contended that the said charges have been dropped by the DA after accepting that when a file is compressed the date of creation changes and thus the Noticee has not fabricated any files, however the DA has not relied upon the original e-mails submitted as its contents cannot be verified, which totally arbitrary.
- As regards the allegation of giving investment advice without assessing the risk profile, not maintaining and giving suitable documents, the Noticee

contended that the averments made in this regard are arbitrary as the statements made by the Noticee i.e. *“All our recommendations are generated in NSE”* are taken out of context and twisted to give them a different meaning by SEBI. Thus there was no malice in such statement even if made by the Noticee. Further not even a single client till date has made a complaint that he has been deceived by such a line and has believed that the tips were given by NSE or whatever meaning the DA has derived.

- As regards the allegation of selling advisory products before completion of tenure and has admitted that there was a mistake on the part of the Noticee which is visible from the perusal of “Track records” where file name of all track sheets is different in options but as soon as they are opened the title of all option track sheets is “Standard option”, here the Noticee realised that at the time of filing of these documents before SEBI the notice by human/technical error updated Standard option in all categories and prays that the same may be pardoned.
- As regards the allegation of selling same advisory products before completion of the tenure of the previous service the Noticee contended that the same is unsubstantiated as there is no occasion for the Noticee to sell same service with different name because it was not some universal name where the name has any value it is the tip that is important for the client. Thus the Noticee stated that the said charge may be dropped.
- As regards the allegation that the Noticee had forced the complainants to close or withdraw their complaints, the Noticee stated that there were no instances where any clients were forced or intimidated, all the more because the clients were living in different cities. There were also 5 instances where complainants have not attached any proof to show that they were forced, which cannot be relied upon by the DA.
- With regard to the allegation of non-disclosure of his financial position/holding to the clients, not disclosing the fact that the Noticee was employed with a broking firm and was also holding shares, the Noticee stated that he was only holding 1 or 2 shares of each company and salary was received from Indira Securities for training in fundamentals and

technical analysis, therefore there is no conflict of interest with the clients of Dezire Research.

- Finally, the Noticee also stated that all the SCORES complaints in the said SCN are already resolved by him.

9. As noted in preceding parts of this order, the Noticee has been alleged to have violated various provisions of SEBI Act, IA Regulations and PFUTP Regulations which are as under;

- 9.1. Regulation 3 (a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act read with Regulation 15(1) and Clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) as specified under Third Schedule of Code of Conduct for Investment Adviser read with Regulation 15(9) of IA Regulations, for the violation of promised assured profit / target return to his clients.
- 9.2. Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read Section 12A(a), (b) and (c) of SEBI Act and Regulation 16 of IA Regulations, for the violation of not communicating risk profile to the respective clients and submitting fabricated risk profile to the inspection team.
- 9.3. Regulation 17 of the IA Regulations read with Clause 1, 2 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations for selling his advisory products and collecting fees from the clients, even before he had carried out the risk profile of the clients along with giving investment advice without assessing its appropriateness to the risk profile of the client and not maintaining and providing suitability documents to the clients.
- 9.4. Regulation 3(a), (b), (c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act read with clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations for selling same advisory products/ services to the clients before completion of the tenure of the previous service, selling same advisory product/ service more than once with overlapping subscription period and Noticee had raised invoices where in Noticee did not include the duration of service, because of which, his clients had no means to find out

whether they had received proper services for the fees they paid to the Noticee.

- 9.5. Regulation 3(a), (b), (c), and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, for the violation of reporting/ updating false performance report to show better performance track record.
- 9.6. Regulation 15 (1) and 21(2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations for the violation of forcing the complainants to close/ withdraw the complaints at Scores Portal.
- 9.7. Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulation, for the violation of not maintaining the records of communication with clients during risk profiling and suitability assessment of advice/ selection of advisory product/services including not maintaining the true records of performance / track records.
- 9.8. Regulation 7 r/w Regulation 15(13) of IA Regulations. Clause 1, 2, 3 and 8 of Code of Conduct for Investment Adviser given in Third schedule read with Regulation 15(9) of IA Regulations for the violation of representatives of the Noticee, who have dealt with clients in key functions of IA such as risk profiling, offering investment advice, etc. not having requisite qualifications and certification.
- 9.9. Regulation 15 (3), (4) and (5) read with Regulation 18 (2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations, for the violation of not making disclosure to his clients about his financial position or holding which were subject matter of advice, not making disclosure that Noticee was employed with a broking firm and was also holding shares and in general not disclosing about other such activities.

Consideration of Issues and Findings:

10. I have carefully examined the allegations against the Noticee on the basis of his reply to the post enquiry SCN and the documents / material available on record.

After considering the allegation levelled against the Noticee in the instant matter, the following issues arise for consideration;

Issue No. I: *Whether the Noticee promised assured profit/ target returns to his clients and has violated provisions of Regulation 3 (a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act read with Regulation 15(1) and Clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) as specified under Third Schedule of Code of Conduct for Investment Adviser read with Regulation 15(9) of IA Regulations?*

Issue No. II: *Whether the Noticee had not communicated risk profile to the respective clients and had submitted fabricated risk profile to the inspection team and has violated provisions of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read Section 12A(a), (b) and (c) of SEBI Act and Regulation 16 of IA Regulations?*

Issue No. III: *Whether the Noticee sold his advisory products and collected fees from the clients even before he had carried out the risk profile of the clients, gave investment advice without assessing its appropriateness to the risk profile of the client and did not maintain and provide suitability documents to the clients and has violated provisions of Regulation 17 of the IA Regulations read with Clause 1, 2 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations?*

Issue No. IV: *Whether the Noticee sold same advisory products/services to the clients before completion of the tenure of the previous service, sold same advisory product/ service more than once with overlapping subscription period, raised invoices where in Noticee did not include the duration of service and has violated provisions of Regulation 3(a), (b), (c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act read with clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations?*

Issue No.V: *Whether the Noticee reported/ updated false performance report to show better performance track record and has violated provisions of Regulation 3(a), (b), (c), and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act?*

Issue No. VI: *Whether the Noticee forced the complainants to close/ withdraw the complaints at Scores Portal and has violated provisions of Regulation 15 (1) and 21(2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations?*

Issue no. VII: Whether the Noticee did not maintain records of communication with clients during risk profiling as well as suitability assessment of advice/ selection of advisory product/services and did not maintain the true records of performance / track records and has violated provisions of Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulation?

Issue No. VIII: Whether the representatives of the Noticee, who dealt with clients in key functions of IA such as risk profiling, offering investment advice, etc. did not have requisite qualifications and certification and has violated provisions of violated Regulation 7 r/w Regulation 15(13) of IA Regulations, Clause 1, 2, 3 and 8 of Code of Conduct for Investment Adviser given in Third schedule read with Regulation 15(9) of IA Regulations?

Issue No. IX: Whether the Noticee did not make disclosure to clients about his other activities such as financial position or holding which were subject matter of advice, his employment with broking firm and holding shares and has violated provisions of Regulation 15 (3), (4) and (5) read with Regulation 18 (2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations?

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, IA Regulations and PFUTP Regulations alleged to have been violated by the Noticee. The same are reproduced herein below:

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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;

(d).....

Provisions of PFUTP, Regulations.

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

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

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

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a [manipulative,] fraudulent or an unfair trade practice in securities [markets].

[Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

(2) *Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [any of the following]: —*

.....

(k) *disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;](s)mis-selling of securities or services relating to securities market;*

Explanation-For the purpose of this clause, “mis-selling” means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i)*knowingly making a false or misleading statement, or*

(ii)*knowingly concealing or omitting material facts, or*

(iii)*knowingly concealing the associated risk, or*

(iv)*not taking reasonable care to ensure suitability of the securities or service to the buyer;*

Provisions of Investment Advisers, Regulations,

Regulation 7 of IA Regulations

Qualification and certification requirement.

Qualification and certification requirement.

7(1) An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering investment advice shall have the following minimum qualifications, at all times:

(a) *A professional qualification or post-graduate degree or post graduate diploma 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*

(b) *A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.*

((2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have,

at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or

(b) from any other organization or institution including Financial Planning Standards Board India or any recognized stock exchange in India provided that such certification is accredited by NISM.:

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations:

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements.”

Regulation 15 of 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.

(2) An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.

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

(4) An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed hereunder.

(5) An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client.

(6) An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.

(7) An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice. Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a transaction on its own account after giving

such revised assessment to the client at least 24 hours in advance of entering into such transaction.

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

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

(10) An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.

(11) In case of change in control of the investment adviser, prior approval from the Board shall be taken

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

(13) It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.

Regulation 15 of IA Regulations

Fees.

15A. Investment Adviser shall be entitled to charge fees for providing investment advice from a client, including an accredited investor] in the manner as specified by the Board.

Regulation 16 of IA Regulations

Risk profiling.

16. Investment adviser shall ensure that,-

(a) it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-

(i) age;

(ii) investment objectives including time for which they wish to stay invested, the purposes of the investment;

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

(b) it has a process for assessing the risk a client is willing and able to take, including:

(i) assessing a client's capacity for absorbing loss;

- (ii)identifying whether client is unwilling or unable to accept the risk of loss of capital;*
- (iii)appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.*
- (c)where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;*
- (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)questionnaire is not vague or use double negatives or in a complex language that the client may not understand;*
 - (ii)questionnaire is not structured in a way that it contains leading questions.*
- (e)risk profile of the client is communicated to the client after risk assessment is done;*
- (f)information provided by clients and their risk assessment is updated periodically.*

Regulation 17 of IA Regulations

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 upona reasonable assessment that the structure and risk reward profile of financial product is consistent with client's experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.*

Disclosures to clients.

18.(1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

(5) An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

Regulation 19 of IA Regulations**Maintenance of records.**

19.(1) An investment adviser shall maintain the following records, -

(a) Know Your Client records of the client;

(b) Risk profiling and risk assessment of the client;

(c) Suitability assessment of the advice being provided;

(d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;

(e) Investment advice provided, whether written or oral;

(f) Rationale for arriving at investment advice, duly signed and dated;

(g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.

(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:

Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and submit a report of the same as may be specified by the Board.

Regulation 21 of IA Regulations

Redressal of client grievances.

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

(2) An investment adviser shall have adequate procedure for expeditious grievance redressal.

(3) Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.

(4) Any dispute between the investment adviser and his client may be resolved through arbitration or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1.Honesty and fairness

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

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.

3.Capabilities

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

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.

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 84[***]. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

7.Conflicts of interest

An investment adviser shall try to avoid conflicts of interest as far as possible and when they cannot be avoided, it shall ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.

8.Compliance

An investment adviser including its 85[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.

Intermediaries Regulations

Cancellation or suspension of registration and other actions.

23. Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –

(a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;

(b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,—

- (i) disposing of the proceedings without any adverse action;*
- (ii) cancellation of the certificate of registration;*
- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the noticee:*

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

12. I note that multiple allegations have been alleged against the Noticee and for the sake of convenience and clarity, I shall deal with each of the allegations independently in the following paragraphs.

Issue No. 1: Whether the Noticee promised assured profit/ target returns to his clients and has violated provisions of Regulation 3 (a), (b), (c) and (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act read with Regulation 15(1) and Clauses 1 (honesty and fairness), 2 (diligence) and 8 (compliance) as specified under Third Schedule of Code of Conduct for Investment Adviser read with Regulation 15(9) of IA Regulations?

13. It is noted from the DA report that the Noticee had been promising assured profit/ returns on the investment made by the clients and luring them to avail his services. Based on the observations made by the inspection team from documents, Whatsapp chat details, call records submitted by the complainants the following content has been displayed in the nature of promising assured profit:

Table No. 1

Nikhil Bharatbhai Bhuvad
Nikhil Bharatbhai Bhuvad had provided a WhatsApp chat dated June 19, 2019, wherein complainant had sent the copy of the PayU payment proof of INR 20,000 to the Noticee.

Table No. 2

Ajeet Verma
In the trail of the said WhatsApp chat dated June 17, 2019, the employee of Noticee had sent a JPG. File/ photo of letter (i.e. the letterhead of Dezire Research) to its client Ajeet Verma, wherein the Noticee provided an acknowledgement for payment made by the client. The service name being HNI Cash and Option, amount being INR 1,44,000/-, return through market being INR 6.5 lakhs and that the service would cover the stock cash and option market.
Extract from letter <i>"Service Name – Hni Cash And Option, Amount And Costing – Inr 1,44,000/-, Return Through The Market – 6.5 Lakhs",</i> Extract from WhatApp <i>"Company ka head letter hye, Profit likhna hi guarantee hai head letter par"</i>

Table No. 3

Roop Singh
Issue raised in complaint: Assurance of INR 2000/- to 3000/- on a daily basis by investing INR 50000/-. Noticee assisted in opening demat account and asked the complainant to make payment of Rs. 5,750 for risk profile. Complainant made payment of Rs. 5,750. Further, service of INR 91,200 assuring profit of 2.5 times in 28 days in respect of the said service intimated to complainant. Complainant asked to make payment of INR 23,434. Complainant was asked to pay additional INR. 47,988 to buy report to complete his profile. Profit assurance of INR 8,18,875 in 55 days was given
Transcript of call records <i>i. Call recording (Rec_2019-02-13_12-18-30.amr) –</i> <i>a) Time: 00:20- 00:30</i> <u>Complainant:</u> <i>"mere pass koi demat nahi hain"</i> <i>b) Time: 5:00</i> <u>Employees of Noticee:</u> <i>"Rs. 50000 lga ke kaam karte hain toh daily ka profit 2000 se 3000 rahega"</i> <i>c) Time: 10:00</i> <u>Complainant:</u> <i>"Me appko ese kaise paisa de du"</i> <u>Employees of Noticee:</u> <i>"Humari company SEBI se registered hain, App search kariye www.Dezireresearch.com, mene company ka website watsapp pe send kiya hain "</i> <i>ii. Call recording (Rec_2019-02-13_15-18-21.amr) –</i> <i>a) Time: 00:01- 3:30</i>

Employees of Noticee: "company me doh tarike process hota hain Investment plan and services, service me ye nahi pta hoga kitta profit hoga kitta loss hota hain, Investment plan me company bta degi kitta cost hain, kitaa profit hoga and kitte din me hoga, kaise aaega kaha se aaega ye appka headache nahi hain ye company ka look out hain."

b) Time: 11:00- 13:30

Employees of Noticee: "Intitaly company aapse 32% ki requirement hain, baki ka 68% aapko 3,19,000 ka profit ke baad lete hain. Aapka proona payment is me adjust hoega"

c) Time: 20:00- 3:30

Complainant: "pehle toh btaya tah 5,750 kewa payment karna hain aur 10,000 lagana hain aur 10,000 se kaam suru hojaega"

Employees of Noticee: "hume profit v toh dena hain, par kaam to market ke hisab se karna hain, toh itna rahe ki hum har scrip pe kaam kare and aapka paisa badhega hi badhega. Aapki aadhar card ki copy lagegi, PAN card ki copy lagegi and passbook ki copy lagegi, aapka pooraa opening karwaongi"

iii. **Call recording (Rec_2019-02-13_16-05-49.amr) -Time: 00:01- 3:30**

Employees of Noticee: "Isme aapko 3.5 guna return nikal ke aaega, total aapko profit hogs 3,20,000 in 28-30 days me"

iv. **Call recording (Rec_2019-02-14_09-37-35) -**

a) Time: 1:50 to 4:30

Employees of Noticee: "Aapka profile 60% complete hain and 40% baki hain, aapko market ka kitta knowledge hain"

Complainant: "Market ka koi knowledge nahi, mutual fund ke bare me thoda bahut janta hu"

Employees of Noticee: "yaha hum fund manager ko hata ke direct investment karte hainaur din ka Rs. 6,000 aaram se nikalte hain."

b) Time: 12:00 to 25:30

Employees of Noticee: "Aapka It and Pharma sector ka report nahi purchase hua hain, aapka technical and economical report missing hain, ye reports chahiye to complete profile, 12 ese report chahiye, ek report ka cost hain 3,999, 12 report ka hain 47,988, is pe minimum profit aaega 4,38,970, 28 days me, iska 50% aaj 3:30 se pehle pay kar dijiye"

Complainant: "Pehle raj ne bola aapko sirf, 5,750 dena hain, fir senior adviser ne bola 23,434 aur dijiye, koi sahi nahi batata hain, abb aap keh rahe aur dijiye uske baad kaam suru hoha"

Table No. 4

Ankul Kumar	
Transcript of call records	
i.	Call recording (Rupanki Dzir 2019-11-20 10-14-58.amr) -
a)	Time: 1:30 to 3:30
	<u>Employees of Noticee:</u> "Sunie meri baat 5000 ke investment pe me 250-300 hi nikal sakta bu, agar chahiye aapko 10000 ka saily profit toh mene aapko service uss level ki bta di"
	<u>Complainant:</u> (aaap mujh se 70000 lagwa ke 200 de rahe ho)
	<u>Employees of Noticee:</u> "Aapki profile complete nahi hain"
ii.	Call recording (Rupanki Dzir 2019-11-20 10-21-44.amr) -
a)	Time: 6:00 to 7:04
	<u>Employees of Noticee:</u> "sir Monday se aapka kaam sahi rahega, jo commitment kia gya hain vo milega, monday se aapka 2000 se 3000 nikalungi and fir 5000"
iii.	Call recording (Rupanki Dzir 2019-11-13 12-38-27.amr) -
a)	Time: 0:00 to :30
	<u>Employees of Noticee:</u> "Sir, dekhigea aapke pass ek message aayi ho gi GMGS02 karke ye aapki demat ki Id hain and aadhe ghante baad password aaegi, usko apne hisab se badal lijiye ga"
iv.	Call recording (Rupanki Dzir 2019-11-13 17-05-15.amr) -
a)	Time: 0:00 to :30
	<u>Employees of Noticee:</u> "aapke pass jo broker se message aaya hain vo whatsapp kar dena, ID and Password jo bheja hain uska screenshot lo aur mujhe bhej do"
	<u>Complainant:</u> "broker ne send toh kar diya hain vo aap ko du abb me?"

Email communication with clients of the Noticee

Table No. 5

Details of email communication with clients of the Noticee
<i>"You are definitely going to make profits if you make investments on the basis of stock cash tips given by our team who solely work for researching the news and stocks and our services at reasonable package and then get up to intraday basis calls every day, weekly and monthly reports, chat sessions and dedicated customer service support for becoming a successful trader and make profits with small investments on a regular basis."</i>

14. Further, it is observed that the Noticee lured clients who did not have any demat account or knowledge of the securities market. Pursuant to opening the demat account, the id and password of the account was taken from the clients. Thereafter, the Noticee lured clients by initially requesting small amounts and subsequently demanding more money on a regular basis. After every payment clients were informed that their profiles were incomplete and more money was required to complete the profile and access better services.
15. With regards to the Whatsapp chats and call recordings, the DA accepted the submission of the Noticee that they cannot be relied upon. However, since the Noticee had promised assured profits and high returns on investment made by the clients thereby making false and misleading representations to his clients, the DA observed the Noticee has violated 3(a),(b),(c) and (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act. Further, Noticee failed to act in a fiduciary capacity towards his clients, the DA had observed him to have violated the provisions of Regulations 15(1) and Clause 1, 2 and 8 as specified under the Third Schedule of Code of Conduct for IA read with Regulations 15(9) of IA Regulations.
16. As regards the allegation of assured returned the Noticee stated that they were based on certain unverified Whatsapp chats that cannot be relied upon and the DA has also accepted that the Whatsapp chats cannot be relied upon. However, while doing so, the DA also erroneously relied upon the photo copy of the letter which was attached to the said Whatsapp chats, which also cannot be relied upon. Further the Noticee also relied upon certain paragraphs of SAT order dated

06.02.2023 in the matter of Bulls Reasearch Investment Advisors Pvt. Ltd., SEBI order in the matter of Mr. Nilesh Vispute (Proprietor of the GRS Solution) dated 08.02.2022 and Star World Research dated 31.01.2023, with regard to call recordings and Whatsapp screenshot.

17. In this regard, I agree with the DA that the neither call records nor the Whatsapp chats can be relied upon as they are not verifiable. However, as regards the letter, I do not accept the submission of the Noticee that no letter was sent by him to Ajeet Verma, as the said letter, was on the letter head of Noticee, had a stamp of the Noticee and was also signed. Next, I also note that the said letter specifies the return through the market as Rs. 6.5 lakhs on the amount of Rs. 1.44 lakhs, while also carrying the service tenure of 3 months. Further, since the Noticee has not submitted any FIR filed with the police with regard to his claim of the letter being fake in the instant matter, I am of the considered view that the Noticee was involved in issuance of the said letter which points towards the genuineness of the letter.
18. Further, as regards the allegation of assured returns, I would like to reply upon the decision of the Hon'ble Supreme Court in **Kanaiyalal Baldevbhai Patel v. SEBI** (2017) 15 SCC has observed as under:

“A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.”

19. Further, I note from the material available on record, that the Noticee has assured profit/ target return to his clients and being a SEBI registered intermediary, the Noticee is very well aware that any investment by clients based on the advice given by him is subject to market risk and by assuring any kind of return to the client from investment in the securities market. This implies that he has adopted unethical business practices to deceive the clients into buying/ subscribing multiple packages. By acting in the above manner with an objective to maximize his fees and with an objective of keeping his own interest ahead of his client's interest, the Noticee has completely disregarded the responsibility entrusted on him under the provision of the IA Regulations to act in fiduciary capacity and in the best interest of his clients. Therefore, the Noticee has not acted in the best interest of his clients. Such misrepresentation and concealment regarding services provided, fees charged and risk profiling by the Noticee amounts to 'fraud' as defined in Regulation 2(1)(c) of PFUTP Regulations.
20. I also note that as per Regulation 3 of the PFUTP Regulations, no person (including an IA) shall directly or indirectly use or employ any scheme or device to defraud in connection with dealing in securities; engage in any act, practice, course of business which operates as a fraud or deceit upon any person (clients) in connection with any dealing in securities in contravention of the provisions of the Act or the rules or regulations made thereunder. The business practice/ modus operandi followed by the Noticee is in the nature of a scheme to lure investors by assuring them guaranteed returns and the same is manipulative and deceptive in nature. Further, as determined above, the sole objective of the Noticee is, to extract service fee from his clients, based purely on assurance of delivering profit and regardless of their risk profile or by failing to assess the risk of the client appropriately after verifying the documents in a true and correct manner. These acts of the Noticee are manipulative and fraudulent, indicating that unfair trade practices were adopted for carrying out the business of an Investment Advisor. The commissions and omissions by the Noticee in conducting the exercise of risk profiling establishes a fraudulent manner adopted by him to carry out the investment advisory business.

21. Further, I note that Regulation 4(2)(k) of the PFUTP Regulations states that disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of the investors dealing in securities market is a fraudulent practice. I note that the act of assuring profit/ target returns from securities market by the Noticee through his website is fraudulent in nature and done with an intention to bring in more customers thereby increasing the income of the IA. Furthermore, the aforesaid phrases are misleading and are designed to influence the decision of investors who visits the website for dealing in securities. Also, I note that Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Moreover, mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer. Therefore, I note that the Noticee was indeed involved in mis-selling of services to his clients by selling high risk services to clients with medium risk profile.
22. In view of the above, I find that the Noticee has promised assured profit/ target returns was providing misleading information to clients thereby luring and inducing them to get advice and buy the products offered by the Noticee, mis-selling of services to his clients by selling high risk services to clients with medium risk profile, along with the facts discussed in the preceding paragraphs, has resulted in the violation of Regulation 15(1) of IA Regulations, clauses 1 , 2, 5 and 8 of code of conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations and Regulation 3 (a), (b), (c), (d), Regulation 4(2)(k) and (s) of PFUTP Regulations read with Section 12A(a), (b) & (c) of SEBI Act.

Issue No. II: Whether the Noticee had not communicated risk profile to the respective clients and had submitted fabricated risk profile to the inspection team and has violated provisions of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read Section 12A(a), (b) and (c) of SEBI Act and Regulation 16 of IA Regulations?

23. Noticee had not communicated risk profile to the respective clients

23.1. I note that the Noticee provided information to the inspection team wherein it was observed from the said information that out of 47 clients, only in 10 cases, Noticee was able to submit proofs of communication of risk profile to the clients. It was also observed that no confirmation of risk profile was taken from the client. Thus, in most of the cases risk profiles were not communicated to the clients. Thus, clients had no understanding of the risk profile done by Noticee for them.

23.2. It was also observed that the RPF contained 22 questions to measure risk appetite/ tolerance of the clients. Each answer has been assigned a particular weight-age. Depending on the response of the client, the total score of the client is calculated. The maximum total score was 240. It was observed that Noticee had classified the clients into Risk Categories depending on the scores. Further products were offered to clients based on the risk categories as follows:

Table 6

Risk profiling questionnaire score	Risk category of client	Product Offered
0 – 50	Low	-
51 – 150	Medium	Stock cash/cash premium
150 – 240	High	All services

23.3. On perusal of the Risk Profiling Questionnaire of the Noticee, the following observations are made:

- Risk Profile of Noticee includes following 03 questions to ascertain risk appetite of the clients:
 - i. *Would you invest where a small return is earned associated with small risk instead of a high return associated with high risk?*
 - ii. *When market is not performing well would you like to invest in more risky investment instead of less risky investment to earn high return?*

iii. High risk is associated with high return, Medium risk is associated with medium returns and low risk is associated with low returns? What risks can you bear (not prefer)?

23.4. The total weights assigned to the aforesaid 3 such questions (out of a total of 22 questions) were 60 out of 240 i.e., 25% of total. I further note that Regulation 16(b)(iii) of the IA Regulations provides that the process of assessing risk should not attribute inappropriate weight to certain answers.

23.5. It is observed that it was inferred that the expression “*High Risk is associated with high returns...*” that formed part of the Risk Profiling questions, were phrased as leading questions and would inevitably lead the client to respond that he can bear high risk as it is associated with high return.

23.6. I also observe, that the Question of Investment Goal in the risk profile, features 03 answer options, 1) Capital Appreciation, 2) Regular Income and; 3) Capital Appreciation and Regular Income. The weights assigned to such answers were 0, 20 and 10 respectively. No weights or 0 weights were assigned if a client was interested in capital appreciation. I further assert that regular income is generally associated with debt products. Any risk averse investor would choose regular income, as it is generally associated with debt products. However, as per the risk profiling methodology of the Noticee, if a particular investor opts for ‘regular income’, he would be assigned 20 points. Assigning higher points to an investor would enable the Noticee to categorize his client in ‘High Risk’ category.

23.7. With regard to the above charge the DA observed that the Noticee has failed to comply with Regulation 16 of the IA Regulations, but however as regards violation of Regulation 3(a), (b), (c), and (d) of the PFUTP Regulations r/w Section 12A(a), (b), and (c) of SEBI Act is concerned, the DA observed that there is no proof to show that Noticee has committed fraud while “dealing in security” as contemplated under the PFUTP and wrong categorisation of clients

would not bring the Noticee's acts within the prohibition under the PFUTP Regulations.

23.8. As regards the allegation of not communicating risk profile to the respective clients, the Noticee stated that certain questions carrying maximum 20 marks is completely unsubstantiated and it also does not prejudice client's answers in anyway, also SEBI does not suggest a proforma of Risk profile to be followed and then there are 9 questions carrying 20 marks, the total of which is 180 and thus singling out 3 questions merely is de hors of fair Judicial approach.

23.9. In this regard, I note that as per Regulation 16 of IA Regulations, IAs are required to collect all the relevant information necessary for risk profiling from its clients in order to give investment advice and ensure that risk profile of the client is communicated to the client after the risk assessment is done. Further, I note that any questions or any descriptions in any questionnaires which is used with an intention to establish the level of risk a client is willing or able to take, should be fair in a way that it should not contain leading questions so as to elicit pre-conceived and expected answers from the clients to suit the convenience of the IA. Additionally, I note that considering the way the abovementioned 3 questions have been framed and the inappropriate weight assigned to them, means that answering them would inevitably result in the clients falling within the high risk category. Thus, I find that the said 3 questions in the risk profiling questionnaire are misleading and should not have been covered in the risk profiling form. Furthermore, the act of not submitting proof of communication of risk profile to 37 clients by the Noticee depicts a clear violation of Regulation 16 of IA Regulations.

23.10. Further, as regards the violation of PFUTP Regulations, I find that by assigning inappropriate weights to certain answers and by assigning wrong risk category to his clients, the Noticee was able to incorrectly categorize his clients under the 'High Risk' category to sell products/ services inappropriate to their risk profile which in turn allows him to earn more fees. This is an indication of scheme devised by him for the purpose of defrauding the clients and earn

maximum fees for himself. In my considered view, the deceptive devices employed by the Noticees are covered within the definition of 'fraud' under Regulation 2(1)(c) of the PFUTP Regulations, 2003 and therefore, amounted to a violation of the provisions of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003.

24. Noticee had submitted fabricated risk profile to the inspection team

24.1. I note that the Noticee provided RPFs for the 47 clients which were undated out of which PDF files of RPFs of the ten clients, were communicated through email by the Noticee. It is also noted that the creation date of the RPF files indicated that the said files were created only after the information was sought by SEBI, details of which are indicated from the table below:

Sr. No.	Client Name	Date of email when RPF was purportedly sent to client	Creation date of RPF file as per 'Document Properties'
1	Gajendra Singh	May 08, 2018	October 09, 2019
2	Jitendra Singh	July 17, 2018	October 05, 2019
3	Mahesh Waman	December 07, 2017	October 05, 2019
4	Mukesh Singh	November 14, 2017	October 05, 2019
5	Prabhakar Maheshwaram	July 17, 2018	October 05, 2019
6	Subrat Sahoo	July 19, 2018	October 05, 2019
7	Umed Chand Gidiya	July 29, 2018	October 05, 2019
8	Vikas Kumar Singh	June 20, 2018	October 05, 2019

24.2. I further note that the Noticee had thereafter submitted screenshots of the welcome emails, (attaching the Suitability assessment of the client and Risk Profiling Form of the client), sent to 30 more clients out of the 47 clients. Noticee further submitted to have lost all the actual emails due to employee negligence and malware. The email attachments were therefore not available and their contents could not be examined, therefore the DA has observed that the Noticee has failed to comply with Regulation 16 of IA Regulations.

24.3. In so far as violation of Regulation 3(a), (b), (c), and (d) of the PFUTP Regulations r/w Section 12A(a), (b), and (c) of SEBI Act is concerned, the DA is of the view that for violation of PFUTP Regulation there has to be an element of “fraud” which is missing in this instance. There has to be “dealing in securities” as defined under regulation 2(1)(c) of PFUTP Regulations. There is no proof to show that Noticee has committed fraud while “dealing in security” as contemplated under the PFUTP Regulations. In view of this, the DA observed that the allegation of creation of RPF after the information was sought by SEBI would not bring the Noticee’s acts within the prohibition under the PFUTP Regulations.

24.4. As regards the allegation of fabricated RPFs, the Noticee contended that the said charges have been dropped by the DA after accepting that when a file is compressed the date of creation changes and thus the Noticee has not fabricated any files, however the DA has not relied upon the original e-mails submitted as its contents cannot be verified, which totally arbitrary.

24.5. In this regard I note that Regulation 16 of IA Regulations requires IAs to ensure obtaining all the relevant information necessary from its clients in order to give investment advice when it comes to risk profiling and also specifies the list of information required for the same including having a process to assess risk a client is willing and able to take based on certain information it specifies. Therefore, the act of creating/ fabricating risk profile by the Noticee is in clear violation of Regulation 16 of the IA Regulations. As regards the PFUTP violation, I agree with the DA’s findings that creation of RPF after the information was sought by SEBI does not contain the elements of fraud and therefore, will not fall within the ambit of prohibition under the PFUTP Regulations.

Issue No. III: Whether the Noticee sold his advisory products and collected fees from the clients even before he had carried out the risk profile of the clients, gave investment advice without assessing its appropriateness to the risk profile of the client and did not maintain and provide suitability documents to

the clients and has violated provisions of Regulation 17 of the IA Regulations read with Clause 1, 2 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations?

25. Noticee sold its advisory products and collected fees from the clients even before it had carried out the risk profile of the clients

25.1. I note that prior to communicating the risk profile, the investment advisory services had already started and the IA charged huge amount as fees from certain clients.

25.2. The detail timelines for 10 sample cases are given below:

S.No	Client name	Date on which risk profile is forwarded to the client	Date of commencement of service	Amount charged before the communication of risk profile to the client (INR)
1	Vikash kumar Singh	June 20, 2018	June 07, 2018	71,613
2	Kali Charan	March 09, 2018	Nov 21, 2017	4,73,000
3	Savita Meena / Hajarilal Meena	March 28, 2018	March 21, 2018	48,000
4	Gajendra Kumar Singh	May 08, 2018	May 05, 2019	5,000
5	Subrat Sahoo	July 19, 2018	July 16, 2019	14,025
6	Jatinder Singh	July 17, 2018	July 13, 2018	50,000
7	Mahesh Waman	December 07, 2017	October 18, 2017	1,66,805
8	Umed chand	July 29, 2018	July 24, 2018	13,000
9	Mukesh singh	November 14, 2017	October 28, 2017	54,209
10	Prabhakar Sidhayya Maheshwaram	July 17, 2018	July 13, 2018	41,760

25.3. It is also observed that no dates were mentioned on the risk profile and that the risk profiles submitted by the Noticee includes image format of digital signature of the Noticee i.e. "Nishant Chopra". Such form of digital signature was suspicious and the authenticity of the risk profile is doubtful as the same was not dated.

25.4. It was further observed that, as the risk profile was not communicated to the clients, it was not possible for the client to assess whether client had the appetite to take high risk. Further, the client does not get any opportunity to raise any objection to the risk assessment carried out by the Noticee.

25.5. Since the products sold by the Noticee to his clients could be completely inappropriate to the clients' need, as the risk profiling has not been communicated to the client before selling the product and the Noticee has not acted with due skill, care, diligence, honesty and in the best interest of his clients while providing investment advice appropriate to the clients' risk profile, the DA observed that the Noticee has violated Regulation 17 and Clause 1, 2 and 6 of Code of Conduct for IA as given in third schedule r/w Regulation 15(9) of IA Regulations.

25.6. In this regard, first, I would like to rely on the SAT order dated 06.09.2023, in the matter of **Pinnacle Market Investment Advisory Pvt.. Ltd. Vs. SEBI**, wherein the Hon'ble SAT had stated that, *"we find that there were lacunae in the risk profiling mechanism of the appellants. We also find that in few cases fees from clients was received before completion of risk profiling process. We thus find that the appellants violated the above stated IA Regulations."*

25.7. Next, in addition to the findings of the DA, I note that Regulation 17 of IA Regulations requires an IA to ensure that it understands the nature and risks of products or assets selected for clients, has a reasonable basis for believing that a recommendation or transaction entering by its clients and such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with client's experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss, etc. In this case, the act of communicating the risk profile, the investment advisory services had already started and the IA charged huge amount as fees from certain clients, the risk profile was not communicated to the clients, it was not possible for the client to assess whether client had the appetite to take high risk, etc., by the Noticee is in complete disregard to the abovementioned provisions of law. Therefore, I find that the Noticee has violated the provisions of Regulation 17 and Clause 1, 2 and 6 of Code of Conduct for IA as given in third schedule r/w Regulation 15(9) of IA Regulations.

26. **Noticee gave investment advice without assessing its appropriateness to the risk profile of the client and did not maintain and provide suitability documents to the clients**

26.1. I note that the suitability of the investment advice of the Noticee was analysed by considering the products/services sold by the Noticee to the clients on a sample basis. A sample of 64 clients, on the basis of top advisory fees paid by the clients and complainants were taken from the Noticee and the invoices, risk profiling, product/services sold, messages/tips sent etc., with respect to these 64 clients were examined.

26.2. Further, I note from replies of the sample of 64 clients / complainants that the Noticee did not provide any risk profile and suitability documents to the complainants. Only in case of one complainant viz. Roop Singh, it was noted that risk profile and suitability documents were provided to the complainant. However, in the case of the same Roop Singh, Noticee had provided the communication of risk profile and suitability after taking the fees of Rs. 23,434. I note that there were instances when the package/service (suitability) was decided and sold upfront and advisory fee collected before the risk profiling or KYC was done.

26.3. In this regard, I note the findings regarding the Risk Assessment/Suitability Assessment for few of the sample clients as under:

Sl No.	Client Name	Finding	Inference	Source
1	Roop Singh	Noticee provided communication of Risk Profile, and suitability after taking fees of INR 23434/-		Examination of Reply; Payment Proof; Copy of Risk Profile and Suitability
2	Thimmegowd PR (TPR)	Services began from Aug 24, 2019 before Risk Assessment. After registering a complaint, TPR was guided to undertake an online Risk Assessment by the Compliance Officer. The same was undertaken on Sept 19, 2019. Risk category was assessed as medium growth, but Noticee demanded that TPR buy a HNI cash plan		Reply of TPR
3	Subrat Sahoo	Risk profile provides for a proposed investment amount of INR one Lakh by the client. However, INR 1.4 Lakhs was charged by the Noticee as Advisory Fees between the		Copy of Risk Profile; perusal of Invoices; Document submitted by the Noticee;

Sl No.	Client Name	Finding	Inference	Source
		five month period of July 16, 2018 to November 23, 2018.		Invoices and SMS Logs for Advice sent for the Client
		Payment of services had been taken from the client in November 2018. However, Advisory Services were to start 2 years from the receipt of the payment		
		KYC documents fetched by the Noticee were dated July 26, 2018. Service from the Noticee commenced on July 16, 2018; Date of communication of risk profile was July 19	The client had no knowledge of his risk profile at the time of commencement of service.	
		Noticee initiated KYC procedure for opening demat/trading account with Angel Broking on July 26, 2018. It was observed that Noticee had already charged around Rs. 39,000 from the client towards service fee prior to opening of the Demat account.	In the absence of Demat account, such advisory services provided by the Noticee was of no use to the client as the client could not have traded on the basis of such advices. Tips for undertaking trades in Futures have also been sent to the client. Though the client had medium risk appetite, yet high risk services/ tips have also been sent to the clients	
4	Anoop Alex Abraham	Risk Profile provides that the the proposed investment amount by the client was Rs 1 to 2 Lakhs, and the annual income of the client was Rs 5 to 10 Lakhs Advisory fees charged by the Noticee was more than Rs 32 Lakhs		Copy of Risk Profile; Invoices
		Some Invoices for services do not mention the duration of service		
5	Xavier Nadar	Proposed investment was only Rs. 1 to 2 lakhs. However, more than Rs. 18 Lakhs have been charged as service fees Services of MCX viz., Standard MCX and Crystal MCX have been sold to the client in June, 2017. The period for rendering such service was for the period of August 31, 2017 to October 13, 2017. The amount of service fee was Rs 2 Lakh However, no advisory services Standard MCX or Crystal MCX was provided to the client.		Analysis of invoices and SMS logs; Copy of RPF

26.4. I also note that Research Analyst Team of the Noticee is not involved in assessing the suitability of advisory product/ service allotted to client.

Rather, the Sales team, who are neither qualified nor NISM certified (as required under Regulation 7(1) and 7(2) of IA Regulations) are involved in risk profiling of client and selecting and allocating advisory products/services to the clients.

26.5. I further note that amount of advisory Service fees charged to the clients was manifold compared to the proposed investment by the clients, i.e., 4 to 5 times of the proposed investment of the client. Further, in the case of client Shiva Kumar Chougule, 27 times of the proposed investment has been taken as advisory fees.

26.6. Based on the Risk Assessment/Suitability Assessment for few of the sample clients, the following was observed:

- 26.6.1. The products/services sold to the clients were not commensurate with their risk profile and that the products/services have been sold to the client with the sole purpose of generating maximum income to the Noticee while showing scant regard to the suitability of such services to the client.
- 26.6.2. Advisory services in cash segment have been sold to such clients who did not have any Demat account. Such advices did not serve any purpose to the client as the client could not undertake any trades based on such advice.
- 26.6.3. Though, advisory fees were obtained from the clients, yet no services were provided to the client.
- 26.6.4. Payments were taken for such services which were supposed to commence after 2 or 3 years from the date of payments.
- 26.6.5. Some of the moderate risk appetite clients were sent tips/messages for products suitable for high risk appetite clients.
- 26.6.6. Clients aged 20 years with an annual income of Rs.1 lakh (MOHAMMAD ZAID SHAIKH) and clients aged above 80 years (DESH CHAND SHARMA) were provided with services pertaining to products suitable for high risk category.

26.6.7. Huge amount of payments were taken from the clients in very short span of time without rendering any commensurate services.

26.7. In this regard, since the services offered by the Noticee were not satisfactory, as per the provisions of IA Regulations, the DA has observed that the Noticee has violated Regulation 17 and Clause 1, 2 and 6 of Code of Conduct for IA as given in third schedule r/w Regulation 15(9) of IA Regulations.

26.8. As regards the allegation of giving investment advice without assessing the risk profile, not maintaining and giving suitable documents, the Noticee contended that the averments made in this regard are arbitrary as the statements made by the Noticee i.e. "*All our recommendations are generated in NSE*" are taken out of context and twisted to give them a different meaning by SEBI. Thus there was no malice in such statement even if made by the Noticee. Further not even a single client till date has made a complaint that he has been deceived by such a line and has believed that the tips were given by NSE or whatever meaning the DA has derived.

26.9. With regard to the same, I note that the role of an investment adviser is to assess 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, the statement "All our recommendations are generated in NSE", appeared to be unclear and did not convey the intent of the Noticee. The only reason one can derive from the aforesaid irrational and inconsistent conduct of the Noticee is that he was more interested in generating income for himself by unduly influencing and giving inappropriate investment advice rather than acting honestly, fairly and in the best interest of his clients.

26.10. Furthermore, I note that Regulation 17(a) of IA Regulations requires that all investments on which investment advice is provided are appropriate to the risk profile of the client. It should be, inter-alia, based on the client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear any risks related/ associated with such investment consistent with its investment objectives and risk tolerance. In this regard, I also note that the complainants submitted to SEBI stating that Risk profile assessment forms were not received from Noticee even though services from the Noticee had started. From the above mentioned details, I also note that the services offered by the Noticee were not satisfactory, as per the provisions of IA Regulations and ultimately the Noticee had to settle with all such aggrieved clients. I note that the inspection can be carried out only of the sample but the sample gives fair assessment of the treatment meted out to all his clients.

26.11. Therefore, I find that the Noticee has violated the provisions of Regulation 17 and Clause 1, 2 and 6 of Code of Conduct for IA as given in third schedule r/w Regulation 15(9) of IA Regulations.

Issue No. IV: Whether the Noticee sold same advisory products/services to the clients before completion of the tenure of the previous service, sold same advisory product/ service more than once with overlapping subscription period, raised invoices where in Noticee did not include the duration of service and has violated provisions of Regulation 3(a), (b), (c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act read with clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations?

27. Noticee sold same advisory products/services to the clients before completion of the tenure of the previous service

27.1. I note that during the inspection details regarding different products/services provided by Noticee were sought and from the details of the products/services, it was noted that:

27.1.1. 23 different types of products/services were offered by Noticee in Equity, futures and options and commodity segments. 9 out of 23 products/services are such where monthly advisory charges are more than Rs 50,000. Further service charges for some products are as high as Rs 2,50,000 per month. All the products/ services provide tips for intraday trading. Some of the products provide features of telephonic support by the Noticee. However, when telephonic records for such advices were asked, Noticee had submitted that he did not maintain the telephone records for such advices.

27.1.2. Noticee had made false claims in the details of products to clients as “All our recommendations were generated in NSE”. To gain the confidence of the client, he also stated that “We have achieved a high level of accuracy in this plan on consistent basis”.

27.2. Further on analysis of track record of the advices/ updated by the Noticee at its website for 4 days (May 02, 2017, August 04, 2017, October 11, 2017 and December 11, 2018) on sample basis, the following was observed:

27.2.1. Noticee had 06 different products in option segment with different monthly charges viz. Standard Option-7000/- Monthly, Option Premium Service-16500/- Monthly, HNI Option-50000/- Monthly, Crystal Option Pack-80000/- Monthly, Index Option-6000/- Monthly and MPOS Service-250000/- Monthly. On analysis of the performance track record updated by the Noticee under the option products, it was observed that same tips/ message containing same strike price, lot size, target and profit amount were provided to clients under all the products defined by the Noticee under option segment. It has been noted that Noticee was providing same service with different name and different charges. It has also been observed that, client has been allotted different option services and charged multiple and different advisory fees from the same clients for providing the same advisory services/message/tips under the garb of different name of services in option segment. Some of the clients which have been charged for different option services are tabulated as under:

DATE	CLIENTNAME	SERVIEC NAME	PAID AMOUNT
09-Jun-2018	ANAND SURESH GUPTA	STANDARD OPTION	3000
13-Jun-2018	ANAND SURESH GUPTA	OPTION PREMIUM SERVICE	7000
18-Jun-2018	ANAND SURESH GUPTA	HNI OPTION	25000
20-Jun-2018	ANAND SURESH GUPTA	HNI OPTION	25000
15-Jun-2018	ANIL KUMAR VERMA	HNI OPTION	10000
15-Jun-2018	ANIL KUMAR VERMA	STANDARD OPTION	2757
16-Jun-2018	ANIL KUMAR VERMA	OPTION PREMIUM SERVICE	11022
21-Jun-2018	ANIL KUMAR VERMA	HNI OPTION	12918
30-Jun-2018	ANIL KUMAR VERMA	STANDARD OPTION	200
30-Jun-2018	ANIL KUMAR VERMA	STANDARD OPTION	9000
02-Jul-2018	ANIL KUMAR VERMA	STANDARD OPTION	200
08-Oct-2018	BABU LAL JAIN	STANDARD OPTION	2000
08-Oct-2018	BABU LAL JAIN	OPTION PREMIUM SERVICE	3000
09-Oct-2018	BABU LAL JAIN	CRYSTAL OPTION	4000
11-Oct-2018	BABU LAL JAIN	CRYSTAL OPTION	2250
16-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	3750
17-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	15250
20-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	32738
20-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	15250
22-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	17187
22-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	11575
24-Aug-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	70840
03-Sep-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	12751
22-Nov-2018	MANOJ SUBIR MANDAL	HNI OPTION	44784
22-Nov-2018	MANOJ SUBIR MANDAL	CRYSTAL OPTION	43203
24-Nov-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	15838
07-Dec-2018	MANOJ SUBIR MANDAL	OPTION PREMIUM SERVICE	36725
12-Dec-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	6610
29-Dec-2018	MANOJ SUBIR MANDAL	STANDARD OPTION	8732
08-Jan-2019	MANOJ SUBIR MANDAL	CRYSTAL OPTION	24159
08-Jan-2019	MANOJ SUBIR MANDAL	CRYSTAL OPTION	51211
06-Feb-2019	MANOJ SUBIR MANDAL	STANDARD OPTION	10837

27.3. It was observed from the tips provided by the Noticee under different products of cash segment, i.e., PREMIUM CASH and HNI CASH were same with same price, lot size, target and assured amount. However, it has been noted that Service charges for monthly subscription of PREMIUM CASH and HNI CASH were Rs 16,500 and Rs 50,000 respectively.

27.4. Since the Noticee had not been transparent and fair to his client regarding the advisory fees and had charged unreasonable fees from them and also had not acted diligently while providing tips/messages to his clients, the DA observed that the Noticee has violated Regulation 3(a), (b), (c) & (d) of PFUTP Regulations 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with Clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.

27.5. As regards the allegation of selling same advisory products before completion of the tenure of the previous service the Noticee has admitted that there was a mistake on the part of the Noticee which is visible from the perusal of "Track records" where file name of all track sheets is different in options but as soon as they are opened the title of all option track sheets is "Standard option", here the Noticee realised that at the time of filing of these documents before SEBI the notice by human/ technical error updated Standard option in all categories. Further, as regards the charge of providing same service under different name, the Noticee contended that the same is unsubstantiated as there is no occasion for the Noticee to sell same service with different name because it was not some universal name where the name has any value it is the tip that is important for the client. Thus the Noticee stated that the said charge may be dropped.

27.6. In this regard, I note from the details regarding track record and fees structure that the Noticee was selling the same advisory products/ services to the clients before completion of the tenure of the previous service and further, I also note, that the Noticee had simply changed the name of the product while selling the same services/ tips without making adequate disclosure of relevant material information to his clients and also charged different fee under the garb of different products for the same service. All of the above, indicates that the Noticee had knowingly disseminated false and misleading information to his clients which is reckless and unbecoming of an IA. Moreover, as a registered IA, it is the responsibility of the Noticee to abide by the Code of Conduct and act with due skill, care and diligence in the best

interests of his clients since he has not been transparent and fair to his client regarding the advisory fees and had charged unreasonable fees from his clients. Accordingly, I do not find merit in the arguments raised by the Noticee in this regard. Thus it is established that the Noticee has violated Regulation 3(a), (b), (c) & (d) of PFUTP Regulations 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 read with Clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.

28. Noticee sold same advisory product/ service more than once with overlapping subscription period and raised invoices wherein he did not include the duration of service

28.1. It is observed that the Noticee has been selling same advisory products/ services to the clients before completion of the tenure of the previous service. In this regard it was observed that, in case of the few clients, during the initial months Noticee took money and sold services/ products to clients, which would commence after 2/3 years from the date of payment done by the client. Further, it was observed that the Noticee also sold his products on daily basis, i.e. investment advisory services were offered to clients for a period of 1 day or 2 days. In one month itself more than 10 invoices was raised by Noticee and huge payments were taken from the clients. Some of such instances are summarized on a sample basis below:

Sl. No.	Client Name	Date of Payment / Invoice Date	Service Period	Service Name	No. of invoices raised	Total Amount Charged (INR)
1	Satish Udhav Patel	18/04/2018 to 07/12/2018	N.A.	Customized Service	48	35,47,383
2	Xavier Nadar/ Xavier Nirmal Kumar	N.A.	13/05/2017 to 24/04/2018	Customized Service	36	1,35,101
3	Gajendra Singh	05/05/2018 to 01/06/2018	06/05/2018 to 11/03/2021	Standard Cash	5	1,64,900
4	Abdul Khan	10/11/2017 to 26/12/2017	19/12/2017 to 01/03/2018	Customized Service	5	6,81,250
5	Amar Uttam Patil	13/08/2018 to 24/10/2018	25/10/2018 to 23/11/2018	Crystal Cash Pack	4	95,645
6	Deba Prasad Das	N.A.	N.A.	Customized Service	32	26,09,240
7	Kali Charan	21/11/2017 to 15/06/2018	25/11/2017 to 10/10/2018	HNI Standard	10	4,73,000

Sl. No.	Client Name	Date of Payment / Invoice Date	Service Period	Service Name	No. of invoices raised	Total Amount Charged (INR)
				MCX,HNI Option		
8	Jayant Sahoo	25/11/2017 to 08/01/2018		HNI Standard MCX	13	3,69,500

28.2. In view of the above, the DA observed that the modus operandi employed by the Noticee shows that a scheme is knowingly employed by him to defraud his clients in connection with his dealings in securities and maximize his revenue generation at the clients' expense. Thus, by acting in a non-genuine, deceptive and fraudulent manner the Noticee is observed to have violated the provisions of Regulation 3(a),(b),(c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act and failed to abide by Clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.

28.3. In this regard I note that as per Clauses 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations, an investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market, 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, shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of his business activities and shall ensure that fees charged to the clients is fair and reasonable. However, the Noticee, by selling same advisory product/ service more than once with overlapping subscription period, so his clients would pay higher amount without receiving any commensurate benefits and also the advisory services were provided in a product different from the product for which fees have been charged from the client, which also his clients were unaware of, are indication of schemes devised by him for the purpose of defrauding the clients and earn maximum fees for himself. Therefore, I find that the Noticee is in violation of the provisions of Regulation 3(a),(b),(c) & (d) of PFUTP Regulations read with Section 12A(a),(b) and (c) of SEBI Act and failed to

abide by Clause 1, 2, 3 and 6 of Code of Conduct for IA provided in Third Schedule read with Regulation 15 (9) of IA Regulations.

Issue No.V: Whether the Noticee reported/ updated false performance report to show better performance track record and has violated provisions of Regulation 3(a), (b), (c), and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act?

29. I note that message log detailed analysis in sync with record of accomplishment was undertaken for one day, i.e., May 02, 2017, only due to the voluminous nature of message log. Analysis of the message logs in sync with track record of May 02, 2017 and submissions made by the Noticee is as under:

Track Record - Products	Remark	Noticee's Submission
Standard Future-Security : Yes Bank	Message given to clients to exit in YES bank at cost, however Noticee updated the track record that profit has been achieved in the call. Thus, from the above, it is observed that there has been false disclosure by the Noticee regarding its performance on its website.	The employee may have made a mistake while updating as the same employee also made a mistake while updating in the case of Nickle where loss was reported instead of profit. Therefore, this is a human
Standard Future-Security: SAIL	Message given to short SAIL to various clients, and no update of target achieved or stoploss was given to clients. However, in the track record it was updated that the target in said tip has been achieved. Thus, from the above, it was observed that there has been false disclosure regarding its performance on its website.	If the day's highs and lows are perused the call did achieve the target and thus the update was not false.
Standard Future-Security: Godrej Industries	Message of Godrej to buy was given only to 7 clients but message of target achieved was given to 37 clients. Thus, message of target achieved was also given to such clients to whom no advice/tips were provided. Thus, from the above, it was observed that there has been false disclosures by the Noticee regarding its performance on its website.	It must be an SMS delivery fault.
Future HNI-Security: PNB	Message given to clients to exit in PNB at below cost however, in the track record it was updated that profit has been achieved. Thus, from the above, it was observed that there has been false disclosure by the Noticee regarding its performance on its website.	No submission by Noticee
Cash-Security: Bajaj Electronics	Buy call in the Bajaj electronics was given to clients; however no record/update of the call was made in the track record. Thus, from the above, it was observed that there has been false disclosure by the Noticee regarding its performance on its website.	The call given was above/below call and the call did not activated and thus there was no update later.
Premium metal-Security: Copper	Message was given in copper to sell, however, no message was given to clients for achievement of target. In the track record, it was noted that profit was achieved. Thus, from the above, it was observed that there has been false disclosure by the Noticee regarding its performance on its website.	No submission by Noticee
HNI MCX and Bullions-Security: Gold	No message was given to any client in the contract of Gold, however, in track record profit in the account of GOLD was updated. Thus, from the above, it was observed that there has been false disclosure by the Noticee regarding its performance on its website.	No submission by Noticee
Metal-Security: Nickle	No message was given to any client in the contract of Nickle, however in track record profit in the account of Nickle was updated. Thus, from the above, it was observed that there has been false disclosure by the Noticee regarding its performance on its website.	The same executive (Yes Bank) updated loss by mistake and not profit, if a person was to have a malafide intension he will

Track Record - Products	Remark	Noticee's Submission
		not update a loss, specially when there is no loss thus there is no malicious intent.

30. As observed from above, the Noticee has accepted human error in two products viz. Standard Future- Security: Yes Bank and Metal- Security: Nickle. Noticee accepted SMS delivery fault in case of Standard Future- Security: Godrej Industries. In view of the same, the DA had observed that the Noticee has violated Regulation 3(a), (b), (c), and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act.
31. In this regard I note that in so far as violation of Regulation 3(a), (b), (c), and (d) of the PFUTP Regulations r/w Section 12A(a), (b), and (c) of SEBI Act is concerned, I am of the considered view that for violation of PFUTP Regulation there has to be an element of “fraud” which is missing. There has to be “dealing in securities” as defined under regulation 2(1)(c) of PFUTP Regulations. There is no proof to show that Noticee has committed fraud while “dealing in security” as contemplated under the PFUTP Regulations. In view of this, the wrong categorisation of clients would not bring the Noticee`s acts within the prohibition under the PFUTP Regulations.

Issue No. VI: Whether the Noticee forced the complainants to close/ withdraw the complaints at Scores Portal and has violated provisions of Regulation 15 (1) and 21(2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15(9) of IA Regulations?

32. SEBI had received 592 complaints against the Noticee at SCORES portal. SEBI vide circular CIR/OIAE/2014 dated December 18, 2014 had advised all SEBI registered intermediaries to whom complaints are forwarded through SCORES shall take immediate effort on receipt of a complaint for its resolution within thirty days. It was observed that the Noticee had adopted a procedure to force the complainants to close/ withdraw the complaints by making part payment of fees.

Although complainants were not willing to withdraw the complaint in the hope of getting a small amount of their payment, they accept the part payments.

33. The cheque issued with respect to the settlement amount of Rs. 2,50,000/-, issued by the Noticee to the complainant, Roop Singh bounced. Thereafter, in the second settlement, the complainant was forced to accept the settlement amount of Rs. 1,50,000/- and if not accepted no amount will be refunded. But till the expiry of the promised time period only Rs. 60,000/- was paid to the complainant. The Noticee not only forced the client to give withdrawal mail but also forced the client to write the content of the withdrawal mail as per the discretion of Noticee. Pursuant to analysis of the complaints it was alleged that all the complaints have been dealt by Noticee in the dubious manner to get them resolved.
34. In this regard, the DA observed that by forcing the clients to close the complaints and not abiding with the terms and conditions of the closure of the complaints Noticee has violated Regulation 15 (1) and 21 (2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15 (9) of IA Regulations.
35. In this regard, as per SEBI circular CIR/OIAE/2014 dated December 18, 2014 all SEBI registered intermediaries to whom complaints are forwarded through SCOREs shall take immediate effort on receipt of a complaint for its resolution within thirty days. Here, I would like to rely on SAT order dated 06.09.2023, in the matter of **Pinnacle Market Investment Advisory Pvt. Ltd. Vs. SEBI**, wherein the Hon'ble SAT stated that, *"With regard to the failure of the appellants in redressing investor grievances forwarded to them on SCORES platform, admittedly the appellants delayed redressing the complaints for more than 60 days. Some of the complaints remain unaddressed till date. Needless to say this is a serious deficiency on the part of the Appellants and the Appellants have violated Regulation 21 of the IA Regulations."* Similarly, in this case, the Noticee was required to redress the complaints on the SCORES portal within one month

which he failed to do. Further, delayed redressal of the complaints does not vitiate the wrong doing.

36. As regards the allegation that the Noticee had forced the complainants to close or withdraw their complaints, the Noticee stated that there were no instances where any clients were forced or intimidated, all the more because the clients were living in different cities. There were also 5 instances where complainants have not attached any proof to show that they were forced, which cannot be relied upon by the DA.
37. Further, in this regard, I note that as per Regulation 15 (1) of IA Regulations, the Noticee in the capacity of an IA was required to act in a fiduciary capacity towards his clients and shall disclose all conflicts of interests as and when they arise. Then as per, 21 (2) of IA Regulations, the Noticee had to have adequate procedure for expeditious grievance redressal. Thereafter, as per Regulation 15 (9) of IA Regulations it is noted that an investment adviser shall abide by Code of Conduct as specified in Third Schedule which states that and IA shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities. It is observed that by forcing the clients to close the complaints and by using dubious manner to get complaints resolved, irrespective of the physical location of his clients. Therefore, I do not agree with the submission of the Noticee in this regard and find that the Noticee has failed in his fiduciary capacity as IA towards his clients during several instances and accordingly by not abiding with the terms and conditions of the closure of the complaints has violated Regulation 15 (1) and 21 (2) of IA Regulations read with Clause 1 of Code of Conduct as specified in the Third Schedule read with Regulation 15 (9) of IA Regulations.

Issue no. VII: Whether the Noticee did not maintain records of communication with clients during risk profiling as well as suitability assessment of advice/ selection of advisory product/services and did not maintain the true records of performance / track records and has violated provisions of Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA

Regulation?

38. Employees in Sales and Risk Profiling Department, interact with clients telephonically and the Risk Profiling Team completes the risk profile by asking the questions over telephone to the clients. Sales Consulting Team advises clients over telephone about selection of services of the Noticee. Core activity of investment advice was done by sales team as they deal with the clients pertaining to securities market. Thereafter, messages to the client were sent as per the type of service/product selected by the client based on the advice given by the sales consulting team. Further, it was observed that Noticee did not provide any telephonic records of such communication to the inspection team.
39. The provisions of Regulation 19(1)(g) of IA Regulations provides that Noticee shall maintain proper register for the nature of advices rendered and fees collected thereon. Further Regulation 18(6) provides that an investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.
40. To comply with the above, Noticee has adopted the business model whereby all the advices/tips were sent to the client through messages and message logs for each product were maintained on a daily basis and track records of each product of Noticee were uploaded at the website of the Noticee on daily basis.
41. 23 types of services/ products were sold to the clients and fees were collected from the clients during the inspection period of FY 2017-18 and FY 2018-19 (till February 2019). From the track records obtained from the Noticee, it was observed that services messages/ tips sent to the clients under the product, CUSTOMIZED SERVICE, PREMIUM ENERGY, PREMIUM STANDARD MCX AND STANDARD MCX, were not maintained by the Noticee. Therefore, the Noticee has not maintained the proper performance / track record for all of his products.

42. With regard to the above charge, the DA concluded that the Noticee was not maintaining records pertaining to risk profiling and risk assessment of his clients in the manner prescribed in the IA Regulations and therefore observed that the Noticee has violated Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulation.
43. With regard to the above contention, I note that as per Regulation 19 (1) and (2) of IA regulations, records specified in the regulation 19(1) are required to be maintained by the IA and they shall be maintained either in physical or electronic form and preserved for a minimum period of five years. I note from the above, that risk profiling is completed on the basis of telephonic conversations with the clients and risk assessment involves objective assessment of the client's risk capacity which includes the maximum level of risk that a client can take based on their financial situation and would require the Noticee to maintain the records pertaining to the same. Further, I note that the message logs for each product were maintained on a daily basis and track records of each product were uploaded at the website of the Noticee on daily basis.
44. I also note that the data, if available with the Noticee, should have been provided and explained to the team at the time of inspection. In view of the above, I conclude that the Noticee was not maintaining records pertaining to risk profiling and risk assessment of his clients in the manner prescribed in the IA Regulations and therefore I find that the Noticee has violated Regulation 18(6) read with Regulation 19(1) and (2) of IA Regulations and Clause 2 of Code of conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulation.

Issue No. VIII: Whether the representatives of the Noticee, who dealt with clients in key functions of IA such as risk profiling, offering investment advice, etc. did not have requisite qualifications and certification and has violated provisions of violated Regulation 7 r/w Regulation 15(13) of IA Regulations, Clause 1, 2, 3 and 8 of Code of Conduct for Investment Adviser given in Third schedule read with Regulation 15(9) of IA Regulations?

45. The Noticee operated his advisory activities/ business by selling advisory products/ services in the form of 23 packages pertaining to cash and Future & Options segment of equity and commodity derivatives segments. The Noticee would send tips/ messages, which were same for the subscribers of a specific package. The Noticee had adopted a mechanism whereby a set of telesales team forming part of sales department of Noticee was soliciting clients by pitching the products of the Noticee. The employees of the Noticee used to get in touch with the clients to fill Risk Profile Questionnaire over telephone and sell the products offered by the Noticee. These tele-callers were heavily incentivized and awarded to maximize the revenue of the Noticee. To get better incentives, these tele-callers had made random calls and lure the clients by assuring them high return from the market. There were 1034 employees worked for the Noticee during the period April, 2017 to February, 2019.
46. Out of 1034 employees, 980 employees worked for the Sales Team, 49 in Back-office, 4 for Recruitment, 1 for compliance purpose. Out of 1034 employees, 141 were post-graduates, 877 were graduates and 15 were under- graduates. As per Noticee, out of 1034 employees, 730 employees left the organizations without informing the Noticee. The Noticee did not submit certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM or from any other organization, as required under Regulation 7 of IA Regulation, for any of his 1034 employees. None of the employees/ representatives fulfilled the eligibility criteria as applicable to a registered investment adviser.
47. Taking into considering the response of the Noticee and the relevant provisions of law, the DA observed that it shall be the responsibility of the investment adviser to ensure that his representatives comply with the certification requirements as prescribed under Regulation 7 of IA Regulations and held that the Noticee has violated Regulation 7 read with provisions of Regulation 15(13) of IA Regulations and Clauses 1, 2, 3 and 8 of Code of conduct for Investment Adviser provided in third Schedule read with Regulation 15(9) of IA Regulations.

48. I note from above that 1034 representatives of the Noticee who were employed with him used to get in touch with the clients to fill Risk Profile Questionnaire over telephone and sell them products offered by the Noticee. These tele-callers were heavily incentivized and awarded to maximize the revenue of the Noticee. To get better incentives, these tele-callers had made random calls and lure the clients by assuring them high return from the market. In this regard, it is observed that as per Regulation 2(1)(l) of IA Regulations, the definition of 'Investment Advice', includes financial planning and as per Regulation 2(1)(h) of IA Regulations, the definition of 'financial planning', inter alia, includes assessing financial situation, identification of financial goals and developing and recommending financial strategies. It is inferred from the said provision that risk profiling, through which financial situation can be assessed and financial strategies can be recommended, and constitutes a vital part of the investment advice. As per Regulation 7(1) of IA Regulations, the representatives of an IA are required to fulfill the eligibility criteria of a registered investment adviser while rendering investment advice services. Thereafter, I note that as per Regulation 7(2) of IA Regulations a representative of an Investment Advisor who is rendering investment advice needs to have at all times, a certification on financial planning/fund/asset/portfolio management or investment advisory services either from NISM or any other recognized institute. In this regard, I note that the employees of the Noticee were filling the Risk Profile Questionnaire over telephone for the clients and selling the products offered by Noticee. The said activity performed by the employees of the Noticee falls under the meaning of "financial planning" and thereby falls under the definition of "investment advice". Further, I note that the term "persons associated with investment advice", is defined under regulation 2(1)(r) of the IA Regulations as any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser. However, as specified in the aforementioned para, none of the employees/ representatives fulfilled the eligibility criteria as applicable to a registered investment adviser.

49. In view of the above, I note that it is the responsibility of the investment adviser to ensure that his representatives comply with the certification requirements as prescribed under regulation 7 of IA Regulations as per Regulation 15(13) of the IA Regulations, which the Noticee has failed to comply with. Therefore, I find that the Noticee has violated Regulation 7 read with provisions of Regulation 15(13) of IA Regulations and Clauses 1, 2, 3 and 8 of Code of conduct for Investment Adviser provided in third Schedule read with Regulation 15(9) of IA Regulations.

Issue No. IX: Whether the Noticee did not make disclosure to clients about his other activities such as financial position or holding which were subject matter of advice, his employment with broking firm and holding shares and has violated provisions of Regulation 15 (3), (4) and (5) read with Regulation 18 (2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations?

50. I note from the post enquiry SCN that the Noticee has neither disclosed to his clients about his financial position or holding which were subject matter of advice nor has made disclosure that he was employed with a broking firm and was also holding shares. Non-disclosure about such other activities by the Noticee has violated Regulation 15(3) (4) and (5) read with Regulation 18(2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations.
51. On examination of Income Tax Return, Form No. 3 CD and Form 26 AS for FY 2017-18 of the Noticee, it was observed from the Form 26 AS that Indira Securities Pvt. Ltd. (broking firm) had credited salary Rs. 1,47,435/- to Noticee and TDS was deducted under Section 192 of the Income Tax Act, 1961.
52. Further, from the computation of ITR for FY 2017-18, it was observed that a total of Rs. 4,50,343/- was paid by Indira Securities Pvt. Limited to the Noticee as salary. Further, from the Capital Account statement of the Balance sheet of the Noticee, it has been noted that the Noticee had invested in the securities market

and was in receipt of dividend Income of amount Rs. 11194/-. Based on the above it was inferred that the Noticee was employed with Indira Securities Pvt. Limited, had received salary/ remuneration from Indira Securities and was also holding shares. No proof of disclosure was made by Noticee to the clients about such other activities during the inspection.

53. Since, there was no proof of disclosure made to the clients about such other activities was provided by Noticee during the inspection and his reply to the SCN does not give any convincing reply to any of the charges mentioned above, the DA observed that the Noticee has violated Regulation 15 (3), 15 (4) and 15 (5) read with Regulation 18 (2) and 18 (4) of IA Regulations read with Clause 1, 5 and 7 of Code of Conduct for IA as stated in the Third Schedule of IA Regulations.
54. With regard to the allegation of non-disclosure of his financial position/holding to the clients, not disclosing the fact that the Noticee was employed with a broking firm and was also holding shares, the Noticee stated that he was only holding 1 or 2 shares of each company and salary was received from Indira Securities for training in fundamentals and technical analysis, therefore there is no conflict of interest with Noticee's clients.
55. In this regard, I note from Form 26 AS of Income tax return for the FY 2017-18 of the Noticee, that the amount of Rs. 1,47,435/- to his account as salary from Indira Securities Pvt. Ltd. (broking firm) along with TDS being deducted under Section 192 of the Income Tax Act, 1961, which is a tax deducted on the estimated income of the assessee under the head salaries, clearly indicates that that the Noticee was employed with Indira Securities Pvt. Ltd. and was receiving salary from it. Similarly, as observed from the computation of ITR for FY 2017-18, a total salary of Rs. 4,50,343/- was paid by Indira Securities Pvt. Limited to the Noticee, who had invested in the securities market and also received dividend Income of amount RS 11194/-, which further confirms the fact that the Noticee was employed with Indira Securities Pvt. Limited. Since, this falls within the ambit of "activities other than IA" and as per Regulations 15 (3) (4) and (5) read with Regulation 18 (2) and (4) of IA Regulations read with Clause 1, 5 and 7 of Code

of Conduct for IA as stated in the Third Schedule of IA Regulations and any IA engaged in any activities other than IA, is required to maintain arms-length distance, irrespective of the conflict of interest with clients of other companies, which the Noticee failed to do, therefore, he is in violation of the said law. Further, there is no clear proof of disclosure made to the clients about such other activities having been provided by Noticee, therefore his reply in the matter cannot be accepted as it is without any merit.

56. Thus, it is established above that the Noticee has, contravened the provisions of the SEBI Act, 1992 read with IA Regulations, 2013 and the PFUTP Regulations, 2003 and the various Circulars issued thereunder.

57. In view of the facts and circumstances of the case, material placed before me as discussed above and the violations as brought out above, I find that the violations by the Noticee are grave in nature and the acts of Noticee are detrimental to the interest of the investors in the securities market.

58. With regards to the same, I note that, vide interim order dated February 03, 2021, as mentioned in para 5 above, certain directions were imposed on the Noticee. However, the Noticee was specifically, prohibited from accessing the securities market and/or carrying out activity of investment advisor for a period of more than two years by way of the following directions;

“21.1. Desire research and its proprietor Nishant Chopra are directed to: not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, directly or indirectly, in any manner whatsoever or on behalf of any of its clients through their accounts; cease and desist from acting as an investment advisor including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, and cease to solicit or undertake such activity or any other activities in the securities market, directly or indirectly, in any matter whatsoever.

.....”

59. In this regard the Noticee filed his reply on merits raising objections to the directions contained in the Interim order and after providing an opportunity of personal hearing and upon consideration of the submissions of the Noticee, vide a confirmatory order dated August 20, 2021, all the directions issued vide the aforesaid interim order were confirmed by SEBI, qua the Noticee. I also note that, thereafter, adjudication proceedings under Chapter VIA of the SEBI Act, 1992 and Enquiry Proceedings under Section 12(3) of the SEBI Act, 1992, were initiated by SEBI. Vide an order dated July, 26, 2023, the Adjudicating Officer, SEBI, imposed a penalty of Rs. 10,00,000/- upon the Noticee for the violation of the provisions of Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(k) and 4(2)(s) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act, Regulation 7, 15(1), 15(3), 15(4), 15(5), 15(13), 6, 17, 18(2), 18(4), 18(6), 19(1), 19(2), 21(2) and clauses 1, 2, 3, 5, 6, 7 and 8 as specified under III Schedule of Code of Conduct for Investment Advisers read with Regulation 15(9) of IA Regulations. Thus, I note that the Noticee has already undergone a debarment from the securities market and/or carrying out activity of investment advisor for a period of more than two years and considering that a penalty of Rs. 10,00,000/- has also been imposed upon the Noticee by the AO, I am of the opinion that the said debarment period of more than two years and the penalty imposed, may meet the ends of justice.
60. Therefore, I agree with the recommendations given by DA vide report dated July 26, 2023 that Regulatory censure may be issued to the Noticee (having SEBI registration number – INA000004104).

Directions:

61. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12(3) of SEBI Act, 1992 and Section 19 of SEBI Act, 1992 read with Regulation 23, Regulation 27 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008 and Regulation 28 of SEBI (Investment Advisers) Regulations, 2013, while disposing of/suspending the directions issued vide interim order dated February 03, 2021 and confirmed vide order dated August 20, 2021, hereby

censure Mr. Nishant Chopra (Proprietor of Desire Research) having SEBI registration number – INA000004104 and direct him to refrain from indulging in such unfair trade practices in future or in any other similar act whatsoever, so as to violate the sanctity of the SEBI Act, 1992 and the Rules and Regulations made thereunder including the SEBI (Investment Advisers) Regulations, 2013, both in letter and in spirit, which are detrimental to the interest of the shareholders and prejudicial to the interest of the investors of securities market.

62. This order comes into force with immediate effect.

63. A copy of this order shall be forwarded to the Noticee.

DATE: SEPTEMBER 20, 2023
PLACE: MUMBAI

G. RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA