National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/61641	Date: April 18, 2024
Circular Ref. No: 310/2024	

To All NSE Members,

Sub: SEBI Order in respect of Mr. Krishnamoorthy - Trade Sharks

This is with reference to SEBI Order no. QJA/AA/SRO/SRO/30278/2024-25 dated April 18, 2024, wherein SEBI has restrained below Noticee from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six months from the date of said order or till the expiry of six months from the date of completion of refunds to complainants/ investors as directed in paragraph 40 (a) above, whichever is later

Name of the Noticee	PAN
Mr. Vivek Krishnamoorthy	ATWPV1245M

Further, SEBI has directed that, if the Noticee has any open position in any exchange traded derivative contracts, as on the date of said order, he can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier.

The order comes into force with immediate effect.

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

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

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

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

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

ANNEXURE: SEBI Order in respect of Mr. Krishnamoorthy - Trade Sharks

QJA/AA/SRO/SRO/30278/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTIONS 11(1), 11(4), 11(4A), 11B (1) and 11B (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 3(1) OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013 AND UNDER SECTION 15-I OF THE SEBI ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Name of Noticee	**PAN**
Mr. Vivek Krishnamoorthy	**ATWPV1245M**

In the matter of Unregistered Investment Advisory Services

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "SEBI"), received a complaint in respect of services offered by Vivek Krishnamoorthy (*hereinafter referred to as "**Noticee**"*) through a Telegram Channel i.e. https://t.me/tradesharks01 under the name of Trade Sharks. SEBI conducted an examination into activities of the Noticee in order to ascertain the veracity of the complaint and to determine whether there has been any violation of the provisions of Securities and Exchange Board of India,1992 ("SEBI Act,1992"), the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 ("IA Regulations") and any other Rules or Regulations made thereunder, by the Noticee.

2. Based on the examination of the aforesaid complaint, messages posted in the telegram channel *https://t.me/tradesharks01* and the analysis of the bank account of the noticee, it was, *prima facie*, found that the Noticee has been providing investment advisory services without obtaining a certificate of registration from

SEBI, thereby violating Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated 26.02.2024 (hereinafter referred to as "**SCN**") was issued to the Noticee calling upon it to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B (1) of the SEBI Act, 1992 including direction of refund of fees / monies collected from the investors should not be issued against the Noticee for the alleged violations. The Noticee was also called upon to show cause as to why inquiry should not be held against it in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and penalty be not imposed upon Noticee under Section 11(4A), 11B(2) read with Section 15EB and Section 15HA of the SEBI Act, 1992 for the alleged violations. The following documents were enclosed as annexures to the SCN:

Table A

Annexures to SCN	
Annex. No.	**Particulars**
A	E-mail received from the complainant on 21.03.2023
B	E-mail received from the complainant on 25.03.2023
C	Screenshots from the Telegram channel
D	Copy of SEBI's letter and email dated 30.03.2023 sent to the Noticee
E	Email received from Noticee on 03.04.2023
F	Copy of AoF, KYC documents, bank statement received from HDFC Bank
G	Details of credits received in the HDFC Bank account of the Noticee in respect of investment advisory services
H	Email received from Noticee on 14.08.2023

4. The SCN has *inter alia* alleged the following which is summarized hereinbelow:-

4.1 SEBI received a complaint *inter-alia* alleging that the services were offered by the noticee through the Telegram Channel under the name of Trade Sharks i.e. https://t.me/tradesharks01. The complainant had submitted, *inter alia*, the screenshot of investment advisory packages mentioned in the Telegram Channel “Trade Sharks” and partial phonepe payment screenshot of Rs. 2,200 made to mobile no. 78xxxxx522 of Noticee and two screenshots of purchased subscription of Rs.2,999 on 20.09.2022 named ‘Trade Sharks Premium’. Vide email dated 25.03.2023 the complainant had shared the details of HDFC bank account no. 501xxxxxxxx051 of the Noticee which was stated to be used for collecting fees.

4.2 The messages posted in the telegram channel *https://t.me/tradesharks01* mentioned in the complaint ascertained that investment advice for consideration was being offered.

4.3 From the telegram chats and the screenshots from telegram channel shared by the complainant, it was observed that various packages for investment advisory services were being offered by the noticee.

4.4 SEBI vide letter and email dated 30.03.2023 forwarded the complaint to the Noticee and he was advised to submit the information relating to the services offered by him through a Telegram Channel under the name of Trade Sharks. He was also advised to refrain from all unregistered investment advisory / research analysis / portfolio management or any other unregistered activity in the securities market with immediate effect.

4.5 Noticee replied vide email dated 03.04.2023 and stated that he started the Telegram Channel in the name of “Trade Sharks” and was providing calls on F&O and commodities based on the market analysis, updates and routine indicators used for predicting the market solely for educational purpose. He had disclosed that he is not a SEBI registered advisor and that he had never forced or cheated anyone saying that he is a SEBI registered financial advisor. People were interested in asking for updates and it was clearly mentioned that they should consult a financial advisor before any further steps or before moving forward with the calls.

4.6 From the HDFC account No. 501xxxxxxxx051 of noticee it was observed that multiple credit entries were matching with the fee amount specified for the investment advisory services / packages marketed on the Telegram Channel. The narration / description of multiple credit transactions in the said account had the terms with respect to investment advisory services viz., trading, trade, calls, premium.

4.7 From the analysis of the credits received in the HDFC Bank account of the noticee since the date of creation of the Telegram Channel i.e 19.05.2022 and taking into consideration the submissions of the noticee, atleast Rs.99,800/- are considered as fees collected by the noticee during the period. Noticee vide email dated 14.08.2023 has admitted that he has provided investment advice and has collected this amount in his HDFC Bank account.

4.8 The noticee in his reply dated 03.04.2023 has stated that he had disclosed on the telegram channel that he is not a SEBI registered financial advisor. Hence, the noticee although being aware that it is mandatory to be registered with SEBI in order to provide investment advisory services has offered various packages for investment advisory services in his Telegram Channel and held himself out as an investment adviser. Hence it is further alleged that Noticee has engaged in fraudulent practices in securities market with an intention to deceive the gullible investors. The said non genuine and deceptive activities were fraudulent.

4.9 On the basis of evidence gathered from the complaint, messages posted in telegram channel, transaction statement of HDFC Bank of the noticee and information and self-admission of the Noticee it was *prima facie* observed that the Noticee held out as an investment adviser without obtaining certificate of registration from SEBI. Such acts of the noticee were also considered fraudulent.

5. The SCN dated 26.02.2024 was sent by Speed Post with Acknowledgment Due and vide email to the available addresses of the Noticee. The SCN was delivered to the noticee and he replied to the SCN vide email dated 03.03.2024.

6. The noticee's reply dated 03.03.2024 has been summarized hereinbelow:-

6.1 He had started a telegram channel named Trade Sharks where he was providing calls on future and options based on market analysis. He had 32 subscribers under his paid channel out of which repeated subscribers were 8 people.

6.2 He had clearly mentioned that he is not a SEBI registered advisor and also he had asked his subscribers to consult their financial advisor before taking up his calls.

6.3 He has not manipulated or cheated anyone saying that he is a SEBI registered advisor and he never forced anyone on taking up his calls. He had also given a disclaimer that there is 100% market risks and that the stock market investments are very risky and being part of the group, the subscribers agree to the risks involved. This message was posted by him everyday. He mentioned that the channel is for learning and educational purpose and there was no intention to cheat or fraud any person in any manner.

6.4 The noticee was unaware of the SEBI laws and consequences. He had immediately stopped all the advisory services after the first mail received and deleted the telegram channel, also informing all the subscribers about the closing of the services. He had also refunded two subscribers who were remaining for the months' subscription calls.

7. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on 02.04.2024. The hearing notice was delivered to the noticee which was acknowledged by him vide email dated 23.03.2024.

8. On the scheduled date i.e 02.04.2024, the noticee personally appeared for the online webex hearing and reiterated the submissions made vide his email dated 03.03.2024.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have considered the allegations made in the SCN, submissions of the noticee and the documents available on record. I note that the issue for consideration is whether the Noticee has been providing investment advisory services without

obtaining a certificate of registration from SEBI in violation of Section 12 (1) of the SEBI Act, 1992 read with Regulation 3 (1) of the IA Regulations, 2013.

10. I note that the complainant in his email had alleged that the Noticee vide a Telegram Channel named Trade Shark *https://t.me/tradesharks01* was offering paid services. The complainant had submitted screenshots regarding the investment advisory packages mentioned in the Telegram Channel and payment screenshots of Phonepe of Rs.2200/- made to the mobile number 78xxxxx522 of the noticee and two screenshots of purchased subscription of Rs.2,999/- on 20.09.2022 named 'Trade Sharks Premium'. The complainant vide email dated 25.03.2023 had also shared the details of the HDFC Bank Account No. 501xxxxxxxx051 of the noticee which was used for collecting fees.

11. During the examination, the following have been noted w.r.t. the Telegram Channel which was created by the noticee on 19.05.2022.

11.1 The description of the channel read as "*Beeshark Trading Company* | *Prime Stock Market/ Investment/ Crypto/ MCX/ Options Trading, Profit Call generator, 2000+happy clients; 250+ happy students (not SEBI Reg. consult financial adv.)".*

11.2 Some of the messages in the Telegram Channel read as *"We give high quality stock market index option calls that makes you earn money in few minutes." "We trade mostly on Bank Nifty 50 options call".*

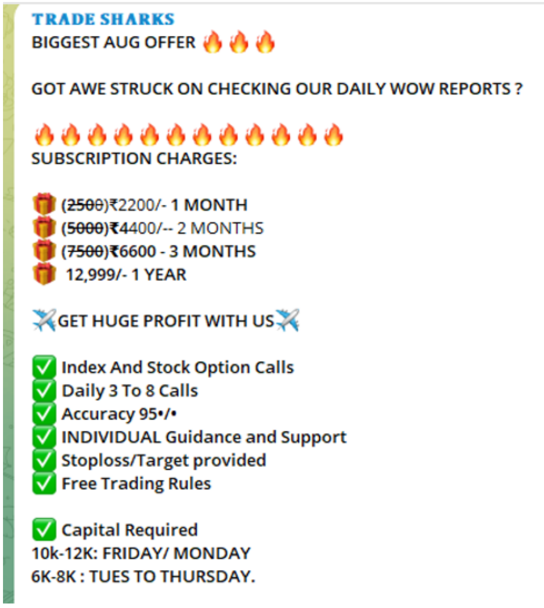
11.3 From the telegram chats and the screenshots from telegram channel shared by the complainant, it was observed that various packages for investment advisory services were offered and the details are reproduced in the table below:

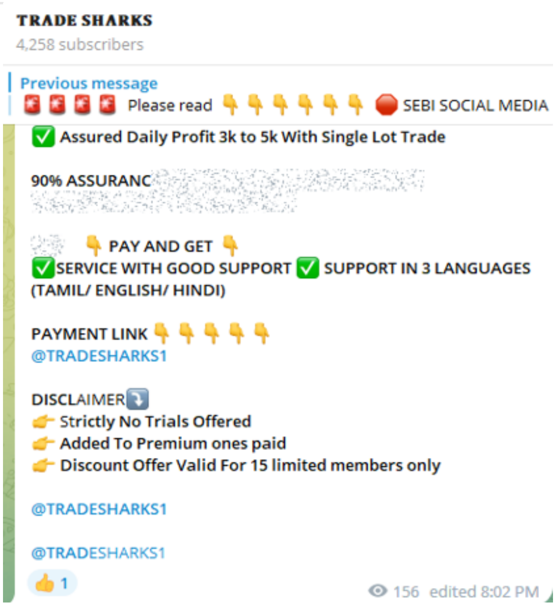
Table-1: Services

Services	***Duration***	***Price (in Rs.)***
✓ *Index and stock option calls* ✓ *Daily 3 to 8 calls* ✓ *Accuracy 95%*	*15 Days*	*1,450*
	1 months	*2,000*
	1 months	~~*2500*~~ *(2,200)*

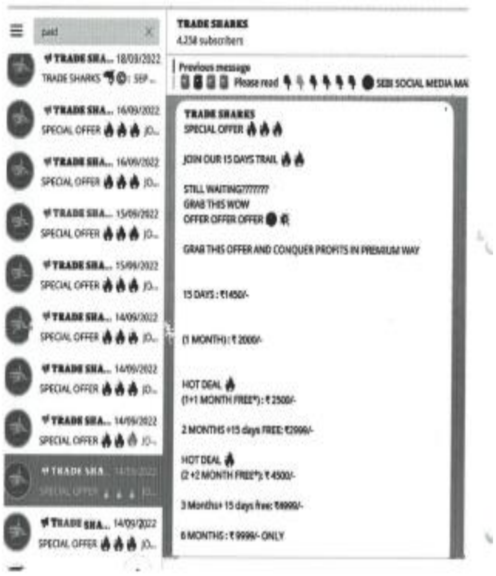
✓ Individual Guidance and support ✓ Stoploss /Target provided ✓ Free trading rules ✓ Capital required 10k-12k: Friday /Monday 6k-8k: Tues to Thursday. ✓ Assured daily profit 3k to 5k with single lot trade 90% assurance on recovering your monthly subscription in a single trade ✓ Service with good support X Support in 3 languages (Tamil/English/Hindi)	1 months	2500
	1 month + 1 month FREE	2,500
	1 month + 2 MONTH FREE	2999
	2 months	3500
	2 months	~~5000 (~~4,400)
	2 months+15days	2,999
	2 months +1 month FREE	4,500
	2+2 month FREE	4,500
	3 months	5000
	3 months	~~7500 (6~~,600)
	3 months + 15 days FREE	4999
	3 months +1 month FREE	7,500
	6 months	9999
	1 YEAR	12,999
	1 YEAR 50% OFFER	16,999
Advantages of Prime premium: Guaranteed profits of 2000/- to 8000/- per day. Low premium calls with 30%+RoI/day Advance watchlist, Trading Plans Personal Support. Live admin trades, Accurate Sl/TGT, 3-4 perfect calls, Cap Req: 10k/ 15K	1 month	2500
	2 months	3500
	3 months	5000

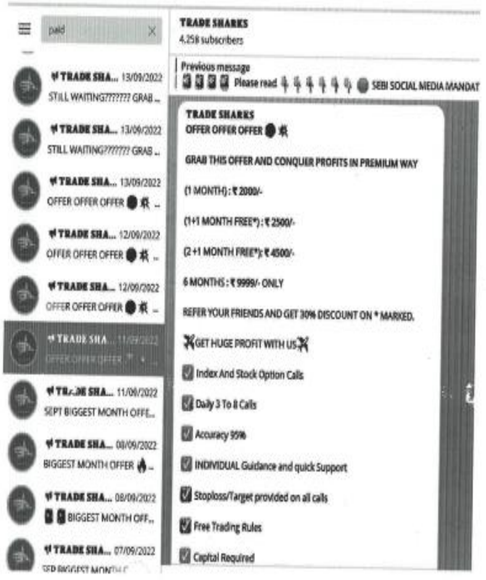
11.4 Screenshot of few messages posted in the Telegram Channel which were gathered during the examination and those shared by the complainant are reproduced below:

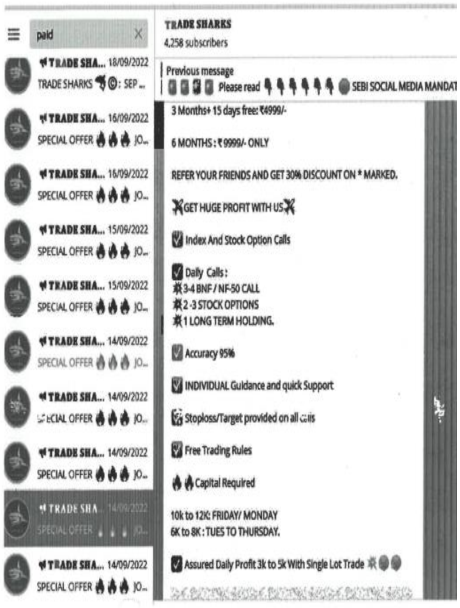

TRADE SHARKS
BIGGEST AUG OFFER
GOT AWE STRUCK ON CHECKING OUR DAILY WOW REPORTS ?
SUBSCRIPTION CHARGES:
(~~2500~~)₹2200/- 1 MONTH
(~~5000~~)₹4400/-- 2 MONTHS
(~~7500~~)₹6600 - 3 MONTHS
12,999/- 1 YEAR
GET HUGE PROFIT WITH US
Index And Stock Option Calls
Daily 3 To 8 Calls
Accuracy 95•/•
INDIVIDUAL Guidance and Support
Stoploss/Target provided
Free Trading Rules
Capital Required
10k-12K: FRIDAY/ MONDAY
6K-8K : TUES TO THURSDAY.

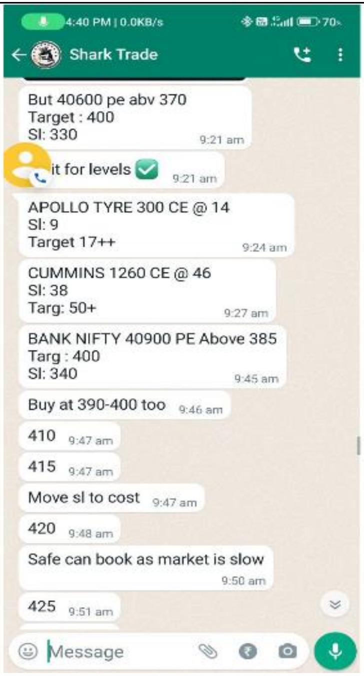

TRADE SHARKS
4,258 subscribers
Previous message
Please read
SEBI SOCIAL MEDIA
Assured Daily Profit 3k to 5k With Single Lot Trade
90% ASSURANC
PAY AND GET
SERVICE WITH GOOD SUPPORT
SUPPORT IN 3 LANGUAGES
(TAMIL/ ENGLISH/ HINDI)
PAYMENT LINK
@TRADESHARKS1
DISCLAIMER
Strictly No Trials Offered
Added To Premium ones paid
Discount Offer Valid For 15 limited members only
@TRADESHARKS1
@TRADESHARKS1
156 edited 8:02 PM

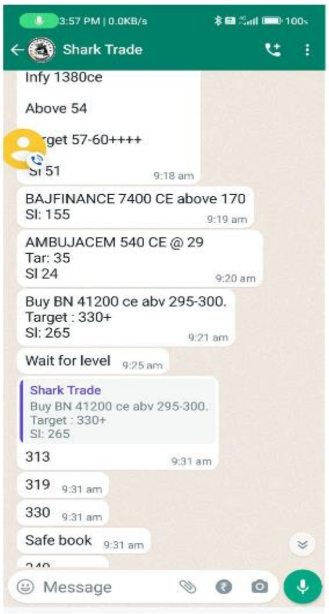

11:08
88%
TRADE SHARKS TM
7,221 subscribers
Pinned Message
STILL WAITING?????? GRAB THIS WOW OFF...
63.3 KB
We are OFCOURSE GOD
ROCKET UDALAMA IPO
CRUDEOIL 7000 PE ROCKED FROM 85 TO 240


TRADE SHARKS
4,258 subscribers
Previous message
Please read
SEBI SOCIAL MEDIA MA
TRADE SHARKS
SPECIAL OFFER
JOIN OUR 15 DAYS TRAIL
STILL WAITING???????
GRAB THIS WOW
OFFER OFFER OFFER
GRAB THIS OFFER AND CONQUER PROFITS IN PREMIUM WAY
15 DAYS : ₹1450/-
(1 MONTH) : ₹ 2000/-
HOT DEAL
(1+1 MONTH FREE*) : ₹ 2500/-
2 MONTHS +15 days FREE: ₹2999/-
HOT DEAL
(2 +2 MONTH FREE*): ₹ 4500/-
3 Months+ 15 days free: ₹4999/-
6 MONTHS : ₹ 9999/- ONLY









From the contents posted in the aforesaid telegram channel, it is evident that subscription plans offering investment advisory services were being marketed and advice w.r.t to trading in the stock markets was being offered by the noticee.

12. During examination, the emails received from the complainant were forwarded by SEBI to the noticee vide letter and email dated 30.03.2023. He was advised to

submit information relating to the services offered by him through the Telegram Channel i.e. https://t.me/tradesharks01 and he was also advised to refrain from all unregistered investment advisory / research analysis / portfolio management or any other unregistered activity in the securities market with immediate effect.

13. The noticee in his reply vide email dated 03.04.2023 has acknowledged that he has started a Telegram Channel in the name of ‘Trade Sharks’ and was providing calls on F&O and commodities. He has also stated that he was doing so based on the market analysis, updates and routine indicators used for predicting the market solely for educational purpose. He has further stated that he had disclosed that he is not a SEBI registered advisor and that he had never forced or cheated anyone saying that he is a SEBI registered financial advisor. People were interested in asking for updates and it was clearly mentioned to them to consult a financial advisor before any further steps or before moving forward with the calls.

14. The noticee has further stated that the complainant has provided a fake mail id as the transaction screenshot of the respective bank is from a different user account. The screenshots of payment of Rs.2999/- has been edited by the complainant as noticee has never demanded such amount from his subscribers / clients.

15. However, from the screenshots of the Telegram Channel as well as admission of the noticee, it is evident that the noticee was providing investment advice through his channel.

16. The complainant had also provided the details of the bank account of the noticee which was used to collect payments. Accordingly, it was noted that the noticee had Account No. 501xxxxxxxx051 with HDFC Bank. It is further observed that there were multiple credit entries in this account of the noticee which were matching with the fee amounts specified for the investment advisory services / packages marketed on the Telegram Channel, as given in Table 1 above. Further, it was also observed that the narration / description of multiple credit transactions had the terms “trading”, “trade”, “calls” and “premium” which further corroborates

that the money collected by the noticee was towards the investment advisory services.

17. I note that during the examination, the analysis of the credits received in the HDFC Bank account of the Noticee was done for the period starting from the date of creation of telegram channel i.e. 19.05.2022. Based on the independent analysis during examination and admissions of the noticee it was noted that a sum of atleast Rs.99,800/- have been identified as fees collected by Noticee during the period 02.08.2022 to 24.03.2023 in his HDFC bank towards unregistered investment advisory services. The details of fees collected are summarised below:-

Table 2 : Fees collected

Transaction Period#	**Particulars**	**No. of identified credit transactions**	**Identified Amount (in ₹)**
02.08.2022 to 24.03.2023	Credits received in HDFC Bank a/c no. 50100250874051 of Noticee	40	99,800
	Total	**40**	**99,800**

18. I further note that the Noticee vide email dated 14.08.2023 has also admitted that he had collected a total amount of Rs.99,800/- from 32 unique subscribers during the period he was providing advisory service and that he has also refunded 2 subscribers .

19. Further, the noticee has stated that he was unaware of the law. However, ignorance of law cannot be an excuse and the same cannot be taken as defense in any proceedings to avoid liability in case of violation.

20. W.r.t the issue whether the Noticee has acted as an unregistered investment adviser in violation of the provisions of the SEBI Act, 1992 and the IA Regulations,

the definition of “Investment Adviser” as given under Regulation 2(1)(m) of the IA Regulations is relevant:-

“investment adviser” means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;”

21. Further, Regulation 2(1)(l) of the IA Regulations defines “investment advice” as under:

“investment advice means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning:….”

22. For ease of reference, the provisions of the SEBI Act, 1992 and IA Regulations alleged to have been violated by the Noticee are also reproduced hereunder :-

SEBI Act, 1992

“Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the [53][regulations] made under this Act:”

SEBI (Investment Adviser) Regulations, 2013

“Application for grant of certificate.

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

23. From a collective reading of the complaint, the details appearing on the archived Telegram Channel, bank credits matching with the fee amount specified for the investment advisory services / packages and admissions made by the noticee himself, I find that the Noticee was providing investment advice and also received consideration in lieu of the same and hence Noticee is covered under the definition

of “investment adviser” and the money received from individuals was in the nature of fees in lieu of investment advice provided by it. The definition of “investment adviser” under Regulation 2(1)(m) of the IA Regulations states that if an entity is engaged in providing advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client in lieu of consideration, including those entities which are holding themselves out as investment advisers, such entity will be covered by the definition of “Investment Adviser” as given in Regulation 2(1)(m) of the IA Regulations. Therefore, I find that the Noticee i.e., Mr. Vivek Krishnamoorthy, was engaged in the business of providing investment advice to its clients, for consideration, and thus, is acting as an investment adviser, as defined under Regulation 2(1) (m) of the IA Regulations.

24. I note that in terms of Section 12 (1) of the SEBI Act and Regulation 3 (1) of the IA Regulations, no investment adviser shall act as an investment adviser or hold itself out as an investment adviser unless it has obtained a certificate of registration from SEBI.

25. I note that for seeking a certificate of registration for acting as an investment adviser, an entity is required to satisfy, *inter alia*, the following requirements, as provided under IA Regulations:
    (i) An application for seeking certificate of registration to be made to Local Office, Regional Office or Head Office, of SEBI, as the case may be, in Form A as specified in the First Schedule to IA Regulations, 2013 along with requisite non-refundable application fee;
    (ii) The applicant, in case of an individual investment adviser or its principal officer in case of a non-individual investment adviser shall be appropriately qualified and certified as under:
        (a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or

an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;

(c) Applicant in case of individual investment adviser or its principal officer in case of a non-individual investment adviser, and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services, from (a) NISM; or (b) any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM.

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

26. I note that the safeguards provided under IA Regulations, 2013 requires continued minimum professional qualification and net-worth requirement for investment adviser, including disclosure of all conflict of interest, prohibition on entering into transactions which are contrary to advice given for 15 days, risk profiling of investors, maintaining documented process for selecting investment for client based on client's objective and risk profile, understanding the nature and risks of products or assets selected for clients, etc. These requirements are aimed at protection of investor interest.

27. I note that the activities of the Noticee i.e. Mr. Vivek Krishnamoorthy, as described in the preceding paragraphs, was that of an investment adviser. However, the noticee is not registered with SEBI in the capacity of Investment Adviser. I find that

these activities were being carried out by the Noticee without obtaining the necessary certificate of registration as an investment adviser and therefore, the Noticee has violated Section 12(1) of the SEBI Act along with Regulation 3 of the IA Regulations. Further, the noticee has also acknowledged in his reply dated 03.03.2024 that he was not a SEBI registered advisor and that he did not have the necessary certificate of registration to carry out the investment advisory activities.

28. The SCN has also alleged that the noticee vide his reply dated 03.04.2023 had stated that he had disclosed on the Telegram Channel that he is not a SEBI registered financial advisor. Hence, the noticee although being aware that it is mandatory to be registered with SEBI in order to provide investment advisory services has offered various packages for investment advisory services in his channel and held himself out as an investment adviser without obtaining a certificate of registration. The activities of the noticee were alleged as 'fraud' under regulation 2(1)(c) and hence the allegation that noticee has violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d), 4(1) and 4(2)(k) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

29. Before proceeding further, I find it pertinent to reproduce the relevant provisions:

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;

PFUTP Regulations

2. (1) In these regulations, unless the context otherwise requires,—

(c)“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—
(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9)the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
And “fraudulent” shall be construed accordingly.

*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, 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;

30. The noticee in his reply dated 03.03.2024 while replying to the SCN has acknowledged that he had provided calls on future and options based on market analysis to 32 subscribers under his paid channel. He has also mentioned that he is not a SEBI registered intermediary and has stated that the subscribers should consult their financial advisor before taking his calls. He has also put a disclaimer that the investments in the stock market have 100% risks. He has stated that he had posted these messages everyday on his channel and had mentioned that the channel was for learning an educational purpose. He has further stated that he had immediately stopped all the advisory services after the first email was received by him from SEBI. He also deleted the telegram channel and also informed all the subscribers about the closing of the services. The noticee has carried out unregistered investment advisory services for nearly seven months and has collected about Rs.99,800/- during this period.

31. I have perused the documents before me. The evidence available on record before me are not sufficient to establish the charge of fraud alleged against the noticee. Besides, the noticee has not shown himself to be a SEBI registered intermediary.

32. At this juncture, it will be relevant to quote the Order of Hon’ble Securities Appellate Tribunal in *Ms. Suhanika Chourey v SEBI (Appeal No. 765 of 2021)* decided on 04.01.2022 wherein it was observed that apart from the fact that the appellant therein had started an advisory business without obtaining a certificate of registration, there was no evidence which indicated that the business carried out

by the appellant was a fraudulent activity or that they played fraud upon their clients. The relevant extract is reproduced as under :

"We have gone through the entire order and we do not find any iota of any evidence which would show that the business carried out by the appellant and its firm was a fraudulent activity or that they played a fraud upon its clients. The mere fact that they started an advisory business without obtaining a registration does not mean that a fraudulent activity was being carried out. We also find that upon getting to know that a registration was required the appellants stopped their business immediately and dissolved the partnership deed. Thus, we are of the firm opinion that in the absence of any evidence the charge of fraudulent activity cannot be imposed under Regulation 3 of the PFUPT read with Section 12A of the SEBI Act. Consequently, no penalty under Section 15HA could be imposed. Section 15HA provides that penalty could be imposed were a person indulges in fraudulent and unfair trade practices relating to securities. In the instant case, there is no fraudulent or unfair trade practice committed by the appellant. Consequently, no penalty under Section 15HA could be imposed."

33. I have perused the information made available before me and note that the Noticee has not held himself out to be registered with SEBI. In fact he has clearly stated that he is not registered with SEBI. Further, I also note the following disclaimers mentioned on the channel of the noticee - *"equity and F&O investments are subject to 100% market risks. Refer to your financial consultant advice before investing", "Stock market investments are VERY RISKY and being part of this group, you agree that you understand the Market risks involved", "Do consult your financial advisor before taking trades or investment decisions".*

34. In the absence of any cogent evidence to prove a grave allegation such as fraud, it seems only appropriate for me to drop the charge of fraud levied against the noticee. However, it is established in the preceding paragraphs that the Noticee was engaged in unregistered investment activities. Further, I note from the SCN that an amount of Rs. 99,800/- has been collected by the noticee as fees during the period 02.08.2022 to 24.03.2023. The noticee has also admitted in his reply vide emails dated 03.04.2023 and 14.08.2023 that he has provided

investment advice to 32 distinct subscribers and has collected fee of Rs.99,800/- in his HDFC Bank Account. Therefore, I note that this amount of 99,800/- is liable to be refunded by the noticee to the respective clients / subscribers of his telegram channel. The noticee has also stated in his reply dated 14.08.2023 that he has refunded two subscribers who were remaining for the months' subscription calls and has submitted screenshots of the same. The noticee has not submitted a chartered accountant's certificate to corroborate the refund of fees. Hence the noticee shall provide necessary proof in support of his claim regarding the refund of fees to the clients to the independent chartered accountant while certifying the refunds made by the noticee.

35. The SCN also called upon the Noticee to explain as to why appropriate penalty should not be imposed upon him under Section 15EB of the SEBI Act, 1992 for acting as an Investment Advisor and carrying out such activities without obtaining a certificate of registration from SEBI in violation of the SEBI Act, 1992 and SEBI (IA) Regulations, 2013. In this regard, before going ahead with the determination of monetary penalty, it would be relevant to place hereunder the extracts of the appropriate penalty provisions for necessary reference. The relevant extract of Section 15HB of the SEBI Act, 1992, is reproduced, hereunder:

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

36. I note that the allegation that the Noticee has acted as an investment adviser without obtaining a certificate of registration from SEBI has been clearly established in the preceding paragraphs and therefore, the Noticee has violated Regulation 3(1) of the IA Regulations read with Section 12 of the SEBI Act. In view of the same, I find that the penalty under Section15EB of the SEBI Act, 1992 is clearly attracted.

37. For imposition of penalties under the provisions of the SEBI Act, 1992, Section 15J of the SEBI Act, 1992 provides as follows:

> ***"Factors to be taken into account while adjudging quantum of penalty.***
> ***15J****. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*
>
> *Explanation. —For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

38. I note that the SCN has not brought out the quantum of profits / gains made by the noticees by collecting such unauthorized fees nor does it quantify the loss the clients have suffered. However, as brought out in the above paras, the noticee has offered these services to gullible investors/ clients in violation of the IA Regulations.

39. As discussed in the paragraphs above, I note that a total of ₹ 99,800/- has been received by the Noticee in the HDFC Bank account for the investment advisory services provided by him. Thus, in the light of the findings in the preceding paragraphs, I am of the considered view that the Noticee is liable to refund the aforementioned amount collected as an unregistered investment adviser in addition to monetary penalty which is attracted for the said violations under Section 15EB of the SEBI Act.

DIRECTIONS

40. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Sections 11(1), 11(4) and 11B (1), 11B (2) read with of Section 19 of the SEBI Act, and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, do hereby pass the following directions:

(a) The Noticee, Mr. Vivek Krishnamoorthy shall, within a period of three (3) months from the date of coming into force of this direction, refund the money received from any complainant/ investor/ client, as fees or consideration or in any other form, in respect of its unregistered investment advisory activities;

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

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

(d) The Noticee, Mr. Vivek Krishnamoorthy, is prevented from selling his assets, properties and holding of mutual funds/shares/ securities held by him in demat and physical form except for the sole purpose of making the refunds as directed above. Further, the banks are directed to allow debit only for the purpose of making refunds to the clients/ investors/ complainants who were availing the investment advisory services from the Noticee, as directed in this order, from the bank accounts of the Noticee;

(e) After completing the aforesaid repayments, the Noticee, Mr. Vivek Krishnamoorthy, shall file a report of such completion with SEBI addressed to the "Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department (MIRSD), SEBI Bhavan II, Plot No. C7, G Block, Bandra Kurla Complex, Bandra (East) Mumbai –400051", within a period of 15 days, after completion of three months from the coming into force of the directions at Para 40 (a) and (b) above, duly certified by an independent Chartered Accountant and the direction at Para 40 (d) above shall cease to operate upon filing of such report on completion of refunds to complainants/ investors;

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

(g) In case of failure of the Noticee, Mr. Vivek Krishnamoorthy, to comply with the aforesaid directions in sub-paragraphs 40 (a) and (f), SEBI, on the expiry of the stipulated time period therein from the date of coming into force of this order, may recover such amounts, from the Noticee, in accordance with Section 28A of the SEBI Act, 1992 including such other provisions contained in securities laws;

(h) The Noticee, Mr. Vivek Krishnamoorthy, is restrained from accessing the securities market, directly or indirectly and is prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six months from the date of this order or till the expiry of six months from the date of completion of refunds to complainants/ investors as directed in paragraph 40 (a) above, whichever is later;

(i) The Noticee, Mr. Vivek Krishnamoorthy, is hereby imposed with a penalty of Rs. 1,00,000/- (Rupees One lakh only) under Section 15EB of the SEBI Act, 1992 and further directed to pay the penalty within a period of forty-five (45) days, from the date of receipt of this order;

(j) The Noticee, Mr. Vivek Krishnamoorthy, shall remit / pay the said amounts of penalty through online payment facility available on the website of SEBI, i.e.

www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in The details/ confirmation of e-payment should be sent to "The Division Chief, Market Intermediaries Regulation and Supervision Department (MIRSD), Division of Registration-2, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

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

(k) The Noticee, Mr. Vivek Krishnamoorthy, shall not undertake, either during or after the expiry of the period of debarment/restraint as mentioned in paragraph 40 (h) above, either directly or indirectly, investment advisory services or any activity in the securities market without obtaining a certificate of registration from SEBI as required under the securities laws.

41. It is hereby clarified that if the Noticee has any open position in any exchange traded derivative contracts, as on the date of this order, he can close out/ square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticee is permitted to settle the pay in and pay out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.

42. The direction for refund, as given in paragraph 40(a) above, does not preclude the clients / investors to pursue the other legal remedies available to them under any

other law, against the Noticee for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

43. This order shall come into force with immediate effect.

44. A copy of this order shall be sent to the Noticee i.e Mr. Vivek Krishnamoorthy, recognized Stock Exchanges, the relevant bank, Depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with.

DR. ANITHA ANOOP

Date : April 18, 2024 **CHIEF GENERAL MANAGER**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**