

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11, 11B and 11D of the Securities and Exchange Board of India Act, 1992 and Regulation 35 of the SEBI (Intermediaries) Regulations, 2008.

In respect of:

Noticee	Name	SEBI Registration Number	PAN
Noticee No. 1	Trifid Research	INA000001290	AAGFT6463L
Noticee No. 2	Mr. Vivek Tyagi (Partner)	N.A.	AJYPT1874C
Noticee No. 3	Ms. Lidya Thomas (Partner)	N.A.	AKMPT0294M

In the matter of Trifid Research

Background:

1. SEBI had passed an interim order dated March 30, 2021 (hereinafter referred to as **‘Interim Order’**) against Trifid Research (hereinafter referred to as **“Trifid” / “IA”**), a partnership firm, registered with SEBI as an Investment Adviser, having registration no. INA000001290 dated March 20, 2014. The partners of Trifid are Mr. Vivek Tyagi and Ms. Lidya Thomas (hereinafter, Trifid and its partners are collectively referred to as **“Noticees”**). The facts of the case are as follows.
2. SEBI carried out an inspection of Trifid from October 14 to 17, 2019, at its registered office, for the period from April 01, 2018 to October 17, 2019 (hereinafter referred to as **“Inspection Period”**). The focus of the inspection was to look into the compliance of regulatory requirements stipulated under the SEBI Act, 1992, SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as **“IA Regulations”**), other

circulars and guidelines framed thereunder. During the inspection, documents/information pertaining to KYC, Risk Profiling, Risk Profiling acceptance by client, change in risk profiling, Product List, Client Master, Invoices, emails, audio call recordings, agreements, SMS logs, employees list, Compliance audit report, NISM certification, website of Trifid, etc., were verified on a sample basis. Further, documents/information provided by the complainants in SCORES were also examined. Based on inspection / examination of documents / information provided by Trifid, it was *inter alia* observed that:

- (i) Trifid had not carried out risk profiling as per the provisions of the IA Regulations.
- (ii) Trifid had not provided investment advice in terms of suitability as per the provisions of the IA Regulations, and
- (iii) Trifid had not charged fair and reasonable fee from client as per the provisions of the IA Regulations.

3. It was thus *prima facie* found that Trifid had violated various provisions of the IA Regulations and of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the “**PFUTP Regulations**”). In view of the same, Interim Order was passed against the Noticees. The details of the *prima facie* findings of the Interim Order are mentioned later in this order, while deciding the issues at hand.
4. In view of the above, the Interim Order found that Trifid, *prima facie*, had adopted devices to defraud its clients in connection with their dealings in securities and was running a scheme with an intention to maximize its income through advisory fees by employing the above said devices, without keeping in mind the wellbeing and requirements of its clients and keeping its own interest ahead of its client's interest. Thus, the activities of Trifid were, *prima facie*, fraudulent and were covered under the definition of “fraud” under Regulation 2(1)(c) of the PFUTP Regulations. Accordingly, the Interim Order alleged that Trifid, through its fraudulent act/ scheme as discussed

above, had, *prima facie*, violated the provisions of Section 12A(a), (b) and (c) of the SEBI Act, 1992, and Regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations.

5. The Interim Order had noted that the partners of Trifid, as per available records, were:

Sl. No.	Name of the Partner	Tenure From	Share in profit/loss	Remuneration
1	Mr. Vivek Tyagi	October 18, 2013	95%	50%
2	Ms. Lidya Thomas		5%	50%

6. Further, the Interim Order had referred to the provisions of Sections 25, 26, 27, 45, 48(b)(i) and 49 of the Indian Partnership Act, 1932 (hereinafter referred to as “**IPA**”), Sections 27(1) and 27(2) of SEBI Act, 1992 and the partnership agreement dated October 18, 2013, and had observed that both the partners of Trifid mentioned above, were, *prima facie*, liable for their activities as partners, for contravention of provisions of the SEBI Act, 1992, the IA Regulations and the PFUTP Regulations by Trifid.
7. In view of the above, pending conclusion of enquiry, in order to protect the interests of the investors and the integrity of securities market, SEBI had issued *inter alia* the following interim directions vide the Interim Order under Sections 11(1), 11(4), 11B(1) and 11D of the SEBI Act and Regulation 35 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”).

Trifid Research and its partners, Mr. Vivek Tyagi and Ms. Lidya Thomas, are directed:

(a) not to access the securities market and buy, sell or otherwise deal in securities or associates themselves with securities market, in any manner whatsoever whether directly or indirectly,

- (b) to 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;*
- (c) not to divert any funds collected from investors, kept in bank account(s) and/or in their custody;*
- (d) to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order;*
- (e) not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in the name of Trifid, including money lying in bank accounts except with the prior permission of SEBI;*
- (f) to immediately withdraw and remove all advertisements, representations, literatures, brochures, materials, publications, documents, communications etc., in digital mode or otherwise, in relation to its investment advisory activity or any other activity in the securities market;*
- (g) to remove all contents from website immediately and display only the content in its website that SEBI has passed interim order dated March 30, 2021, reproducing the directions mentioned in paragraph 29 and submit copy of the relevant web page to SEBI within five working days from the date of the receipt of this Order.*

8. Vide the Interim Order, the Noticees were advised to file their reply/objections, if any, to the Interim Order within 21 days from the date of receipt of the Interim Order and were also advised to indicate whether they desired to avail an opportunity of personal hearing.

9. The Noticees vide letter dated May 25, 2021 responded to the Interim Order and made submissions. Further, a request for inspection of documents was also made by the Noticees, which was granted on August 06, 2021. A personal hearing for the Noticees was scheduled on April 20, 2022. However, the Noticees vide email dated April 06, 2022 requested for adjournment of the same *inter alia* on the grounds that they were still in the process of collating and compiling voluminous documents and needed time to file reply and that they wanted inspection of documents. The Noticees were granted another opportunity of inspection of documents on June 01, 2022. Thereafter, a personal hearing for the Noticees was scheduled on October 14, 2022. During the said hearing, only Ms. Lidya Thomas appeared and requested for adjournment of hearing on the ground that Mr. Vivek Tyagi, the other partner in Trifid, was under arrest. The said request was considered and as a last and final opportunity, a hearing was scheduled on October 20, 2022. The Noticees attended the said hearing through their authorized representative, Shri Kushal Shah, Chartered Accountant. Further, the Noticees submitted detailed replies dated October 18, 2022 and October 28, 2022 to the Interim Order.
10. While the specific submissions of the Noticee on the *prima facie* findings have been mentioned later in this order while deciding the issues, the general submissions of the Noticees made vide letters dated May 25, 2021, October 18, 2022 and October 28, 2022 and during the personal hearings are summarized as under:
- (a) Trifid Research is an investment advisory company operating since 2010. It was registered with SEBI on March 20, 2014.
 - (b) Trifid Research has won numerous awards.
 - (c) The relevant provisions of the IA Regulations have not been followed while passing of the Interim Order.
 - (d) As on the date of the Interim Order, only 17 investor grievances were pending against the Noticee.

- (e) As the Noticee is a registered IA, any direction restraining it from acting as an Investment Advisor ought to have been passed as per the provisions of Regulation 28 of the SEBI (Intermediaries) Regulations, 2008.
- (f) All the *prima facie* observations about lapses are broadly technical in nature. The directions issued against the Noticees are really too harsh and therefore the Interim Order is in gross violation of doctrine of proportionality.
- (g) The Noticees are facing a lot of hardships and difficulties due to the directions issued vide the Interim Order.
- (h) The Noticees deny the *prima facie* findings mentioned in the Interim Order.
- (i) The Noticees have stopped registering new clients since March 2020 and their business has come to a standstill. Hence, they desire / want to surrender certificate of registration. Their bank accounts are not operational and from May 2021 onwards, they had *inter alia* displayed on their website that they have stopped business operation since March 2020.
- (j) The Inspection was conducted in October 2019 and the Interim Order was passed on 30.03.2021. Hence, there was a huge time gap of approximately one and half years and no deficiencies/corrective measures were communicated to the Noticees at that relevant point of time. Further, since the Noticee had stopped taking new clients w.e.f March 2020, there was no need let alone any urgency for passing of Ex- Parte Interim Order.
- (k) The total number clients served from 2014-2015 to 2018-2019 is 15,820 whereas of total complaints as per SEBI scores is 143 i.e. 0.90%. Further out of the total 143 complains, only 109 were unique complaints. The number of complaints pending as on October 15, 2022 was 24. In case of one complaint of Mr, Utkarsh Panwar, the Noticees have submitted hard copy of document to SEBI local office, Indore, for closure. In case of the complaint of Mr. Rohit Sharma, Action Taken Report (ATR) has been filed and refund has been processed, but the issue has again been raised by the client. In case of 12 complaints, the Noticees are in the process of resolving their respective complaints. In fact, out of the said 12

complaints, the complaint of Shah Bhavesh Himmatlal is repetitive in nature. In case of 10 complaints, the Action Taken Report has been filed.

11. I have perused the *prima facie* findings made in the Interim Order, the response of the Noticees in respect of said findings and other mater available on record.
12. I note that the Noticees have raised a preliminary objection by contending that SEBI should have proceeded under the provisions of SEBI (Intermediaries) Regulations, 2008 instead of passing Interim Order. In this regard, I note that Sections 11, 11B and 11D of the SEBI Act, 1992, which the Interim Order was passed, provide that SEBI can issue directions against any person, including an intermediary, if certain conditions are satisfied. I note that the Interim Order was passed in view of the conduct of the IA which was *prima facie* fraudulent and not being in the interest of the investors and the securities market. The grounds for passing the Interim Order have already been detailed in paras 20 to 28 of the Interim Order and need not be reiterated. I further note that there is no record of the Noticees having filed an appeal against the Interim Order before the Hon'ble Securities Appellate Tribunal. Considering the above, I do not find merit in the preliminary objections raised by the Noticees.
13. Before moving forward to deal with the issues on merit, I deem it appropriate to refer to the relevant provisions of the SEBI Act, 1992, IA Regulations and PFUTP Regulations, which are quoted below:

SEBI Act, 1992

“Section 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;”*

IA REGULATIONS:

Regulation 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.*

Regulation 15(9) *An investment adviser shall abide by Code of Conduct as specified in Third Schedule:*

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...

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, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

7....

8. **Compliance:** *An investment adviser including its representative(s) 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.*

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

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

...

(e) risk profile of the client is communicated to the client after risk assessment is done;

Regulation 17 Suitability:

Investment adviser shall ensure that-

- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client;*
- (b) It has a documented process for selecting investments based on client's investment objectives and financial situation;*
- (c) It understands the nature and risks of products or assets selected for clients;*
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into: (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance; (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.*
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss*

PFUTP REGULATIONS

Regulation 2(1)(c):

“(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) a 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 ...”

Regulation 3. *No person shall directly or indirectly—*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made 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.”

14. I now proceed to deal with the prima facie findings made in the Interim Order, one by one.

Risk profiling of clients:

15. As per Regulation 16(a) & (b) of the IA Regulations, for the purpose of giving investment advice, an IA is required to obtain information about the client, which includes age, investment objective, income details, existing investments, risk appetite, liabilities, etc., based on which (a) the risk appetite of the client and (b) the quantum of risk the investor would be able to take while subscribing to the services of Trifid can be arrived at. As per Clause 4 of Code of Conduct read with Regulations 15(9) of the IA Regulations, an IA is required to seek information from its clients about their financial situation, investment experience and investment objectives before providing them investment advices/ services. As per Regulation 16(e) of the IA Regulations, the IA is also under obligation to communicate the risk profile of the client, to the latter, after risk assessment is done. One of the rationale behind communicating the risk profile to the client is to provide the client with information about his/ her risk category as well as an opportunity to verify whether his/ her risk category has been correctly arrived at by the IA. The Risk Profiling Forms (RPF) of various clients were analyzed and the following observations were made:

(a) Client Mr. Bharat Bhatt:

(i) The risk profiling data of the client Mr. Bharat Bhatt was as follows.

Sr. No.	Risk profiling (RP) date	RP score	Risk category	Q.1 Age group	Q.5 Gross annual income (Rs.)	Q.8 Investment experience
1	30.05.2017	53	Moderate	26-45	Above 10 lac	<1yr
2	31.07.2017	50	Moderate	26-45	2 to 5 lac	<1yr
3	02.08.2017	50	Moderate	26-45	5 to 10 lac	<1yr
4	21.08.2017	52	Moderate	46-55	Below 1 lac	>5yr
5	26.08.2017	54	Moderate	26-45	5 to 10 lac	<1yr
6	04.10.2017	57	Aggressive	26-45	2 to 5 lac	1 to 2yr
7	24.10.2017	55	Aggressive	> 60	Above 10 lac	1 to 2yr
8	24.10.2017	47	Moderate	26-45	Below 1 lac	<1yr
9	15.11.2017	50	Moderate	26-45	1 to 2 lac	<1yr
10	28.12.2017	59	Aggressive	26-45	2 to 5 lac	>5yr
11	09.01.2018	58	Aggressive	Under 25	2 to 5 lac	>5yr
12	25.01.2018	43	Moderate	Under 25	2 to 5 lac	2 to 4yr
13	07.02.2018	42	Moderate	26-45	2 to 5 lac	None
14	20.03.2018	61	Aggressive	Above 60	Above 10 lac	2 to 4yr

Sr. No.	Risk profiling (RP) date	RP score	Risk category	Q.1 Age group	Q.5 Gross annual income (Rs.)	Q.8 Investment experience
15	27.03.2018	50	Moderate	26-45	1 to 2 lac	<1yr

(ii) From the above Table, it was observed that:

- During the period May 30, 2017, to March 27, 2018, Trifid had done risk profiling of the client 15 times.
- In each of the 15 instances, the answers to parameters for determining risk profile of the client had changed. While the client's age was 60 years, his age group had been mentioned as 'Under 25', '26-45', '46-55' and 'Above 60' in different RPFs. As per KYC, the client's date of birth was 22.10.1957, i.e. his age was 60 in 2017.
- Similarly, the 'Gross Annual Income' of the client was mentioned as 'Below 1 lac', '1 to 2 lacs', '2 to 5 lacs', '5 to 10 lacs' and 'above 10 lacs' in different RPFs. In RPF dated October 24, 2017, the gross annual income was considered as above Rs.10 lac and in another RPF of the same date, it was considered as below Rs.1 lac. Further, on March 20, 2018, gross annual income was considered as above Rs.10 lac and within 7 days i.e., on March 27, 2018, it was considered as Rs.1 to 2 lac.
- On August 02, 2017, client's experience in investment was considered as less than 1 year and within 20 days i.e., on August 21, 2017, it was considered as more than 5 years and again in the following RPF, it was again changed to 'less than 1 year'.
- Further, on October 24, 2017, risk profiling was done twice resulting in two different risk categories, 'Moderate' as well as 'High' risk. Different answers to key questions had been entered on the same date, for e.g.,

gross annual income, source of income, proposed investment amount, etc.

- It was observed that the risk score of the client had changed substantially and in turn, the risk category of the client had also undergone several changes. From the above, especially from the change in answers, including even the age group of the client, it was seen that, *prima facie*, the answers to the questions in the RPFs had not been provided by the client/ could not be relied upon.

(b) Client Mr. Yashwant Hande

(i) The risk profiling data of the client was as follows:

Sr . N o.	RP date	RP score	Risk category	Q.1 Age group in RPF	Q.5 Gross annual income (Rs.)	Q.8 Investment experience
1	12.06.17	48	Moderate	26 to 45	Below 1 lac	Less than 1 yr
2	06.10.2017	59	Aggressive	26 to 45	5 to 10 lac	Less than 1 yr
3	31.10.2017	50	Moderate	Under 25	2 to 5 lac	2 to 4 yrs
4	03.11.2017	67	Aggressive	56 to 60	Above 10 lacs	More than 5 yr
5	03.11.2017	64	Aggressive	Above 60	Above 10 lacs	More than 5 yr
6	24.11.2017	55	Aggressive	26 to 45	2 to 5 lac	Less than 1 yr
7	28.11.2017	42	Moderate	Under 25	Below 1 lac	Less than 1 yr

(ii) The following observations were made from the above table:

- Between June 2017 and November 2017, risk profiling of the client had been carried out 7 times and the risk category had changed by manipulating answers in the RPF. The actual age of the client when first risk profiling was carried out was 63 (DOB of client is 01.06.1954) whereas, while doing risk profiling, three times it had been considered as between 26 to 45 and twice it had been considered as under 25.
- The annual income was considered as below Rs.1 lac on June 12, 2017, above Rs.10 lac on November 03, 2017, and again below Rs.1 lac on November 28, 2017. During the month of November 2017, the annual income range had changed 3 times i.e., from above Rs.10 lacs to between Rs.2 to 5 lacs and then below Rs.1 lac.
- The experience of the client on June 12, 2017, was mentioned as 'less than 1 year', whereas within 5 months i.e., on November 03, 2017, the same was mentioned as 'more than 5 years' and again on November 28, 2017, it was stated as 'less than 1 year'. On account of the above changes, the risk category of the client had changed between 'Moderate' and 'Aggressive' frequently. From the above, especially from the change in the age group of the client, it was seen that, *prima facie*, the answers to the questions of the RPF had not been provided by the client/ could not be relied upon.

(c) Client Mr. Abhay Vishnu Datar: The Client was a senior citizen and it was seen from the table below that Trifid was changing answers to risk profiling within a day. Trifid had not verified the RPF dated July 11, 2018, with the KYC, as the client in the KYC had mentioned that he was retired.

Question in RPF	Answer in RPF dt. July 11, 2018 (risk score)	Answer in RPF dt. July 12, 2018 (risk score)
Q.6 What is your source of income?	Salary (risk score 3)	Pension (risk score 1)
Q.18 Occupation?	Government sector (risk score 4)	Retired (risk score 2)

(d) Client Mr. Mohammad Abdul Imran: As per KYC, signed by the client, the gross annual income was mentioned as below Rs.1 lac. However, in RPF dated July 26, 2019, the answer to Gross Annual Income group was mentioned as Rs 2-5 lacs, while in the RPF dated August 28, 2019, the answer was mentioned as above Rs.10 lac. The proposed investment amount mentioned in RPF dated July 26, 2017 was Rs.50000-Rs.1 lac, while in RPF dated August 28, 2019, it was mentioned as greater than 5 lacs. Thus, there was a clear discrepancy in the information filled in the KYC and in the RPF and also between differently dated RPFs.

16. It was observed that though the IA has claimed to have conducted risk profiling of client telephonically, no records of these telephonic conversations were retained. It was further observed from the above examples that the Noticee carried out multiple risk profiling of clients over a very short period of time and the answers to the questions in the RPF had undergone changes, sometimes even on same day, without any justification. From the manner in which the answers to the age, annual income, experience in the stock market, etc., had been changed in the RPF, it appeared that the IA had not sought responses from its client for carrying out their risk profile and the same could not be relied upon. In some instances, answers to financial capability had undergone a change within a short period of time and there was no evidence on record to show that the IA sought information from the client to justify the change. The same showed that Trifid had not acted with honesty, fairness and in the best interest of its clients, had not carried out risk profiling of clients in accordance with Regulation

16(e) of the IA Regulations and had failed to abide by Clauses 1, 2 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations.

17. In respect of the above observations, the Noticee has submitted the following:

(a) As regards the findings pertaining to risk profiling, the Risk Profiling Questionnaire ("RPQ") consisted of a total of 18 questions. During the process of initial risk profiling, the prospective clients were asked 7 questions by the sales department, based on which the risk assessment score was generated and the clients were made to understand the product that was suitable for them as per their risk tolerance category. A trial service of 2 days was also provided to the clients. Thereafter, if the client wanted to avail the service, the compliance department used to complete the risk profiling comprising the remaining 11 questions out of 18 questions and the support department generated suitability report with respect to the product. Elaborated risk profiling by the executive of support department and two-day free trial of the product selected through the processes used to run in parallel. On confirmation of the client that he wanted to avail the services, support department executive used to send him welcome email which included risk assessment and suitability assessment report amongst other details. Thus, a proper process of conducting risk profiling was in place in the business operations. SEBI's observation that the Risk Profiling cannot be relied upon is untenable as the details of Risk profiling were sent to the clients via email and they were requested to acknowledge the same.

(b) As regards the instances of multiple risk profiling done for Mr. Bharat Bhatt and Mr. Yashwant Hande, as mentioned in the Interim Order, during the inspection conducted by SEBI, while importing Bulk Data of Client Risk Profiling from Client CRM, Client data was merged due to technical error and same was collected by SEBI official. In fact, the risk profiling of Mr. Bharat was done only thrice, i.e. on 24.10.2017, 23.03.2018 and 27.06.2018. Similarly, in case of Mr. Yashwant Hande, the Risk Profiling was sent only 3 times, i.e. once on 03.04.2017 and twice on 03.11.2017. Risk Profile was sent twice on 03.11.2017 due to correction carried

out at the request of the client himself and in both Risk Profiles, the client fell under the category of “Aggressive Trader”. Hence, there was no difference in the services provided to him. The copies of the Risk Profiling of the said clients are enclosed.

(c) As regards the instance of Mr. Abhay Datar, the re-risk profiling of the said client was done only once and that too within 24 Hours of the original Risk Profiling. At the relevant time, while the IA communicated the risk score to Mr. Abhay, he requested the IA to do few minor changes mentioned in Risk Assessment Questionnaires. On his Request, the IA initiated Re-Risk profiling and the same was communicated to client after the correction. The difference in the total score was 4 (52 in RPQ dated 11.07.2018 and 48 in 12.07.2018) which was due to changes in the answer of the questions of Source of Income and Occupation. It is pertinent to mention that in both the RPQ, he has been categorized as a "Moderate Trader". Hence, there was no difference in respect of the service that might have been sold to him.

(d) As regards instance of Mr. Mohammad Imran, the said client had subscribed for service 6 times / products. Since all his services came under high risk product at the relevant time, the IA did Re-Risk profiling every time before he subscribed for new services. Initially, from the first risk profiling questionnaire form, the Mr. Mohammad's risk score was in the category of Aggressive trader. In fact, the category of Aggressive trader had not changed till he availed his last services.

18. I note that in respect of the allegation that Trifid had carried out multiple risk profiling of clients over a very short time without having record of the responses of the clients, the Noticees have claimed that the initial risk profiling was done over phone. Having considered the Noticees' response, I note that carrying out risk profiling exercise over phone without having record of such phone calls cannot be accepted as a prudent practice, since such data cannot be backed by evidence in case of dispute with the client or during inspection by SEBI. The Noticees have also contended that the details of risk profiling were sent to the clients via email and they were requested to acknowledge the same. However, I find that the said contention cannot be accepted

as a valid explanation, as the instances quoted in the Interim Order show that even the answers to basic questions were different in several risk profiling forms for the same client. For instance, I note that in case of client Mr. Bharat Bhatt, the risk profiling was done 15 times during May 30, 2017 to March 27, 2018 and his age group mentioned in different Risk Profiling Forms was varying. It appears very unlikely that the client had provided different answers to the same question at different occasions. Thus, it is evident that Trifid had changed responses in the RPF without seeking response from the clients.

19. The Noticees have also claimed that due to some technical glitch, the clients' data was merged leading to submission of incorrect risk profiling data to the SEBI inspection team in respect of two clients, viz. Bharat Bhatt and Mr. Yashwant Hande. According to the Noticees, the risk profiling for Bharat Bhatt and Mr. Yashwant Hande was done only three times each, as against 15 times and 7 times respectively, mentioned in the Interim Order. I find that the said contention of the Noticees cannot be accepted. I note that while the inspection was conducted during Oct 14 to 17, 2019 during which the said data was submitted to SEBI, the Interim Order was passed only on March 30, 2021 (after more than 5 months of inspection by SEBI). However, the Noticees have not produced any proof to show that they had raised the issue of the data being incorrect any time before the Interim Order was passed. The Noticees, in respect of the client Yashwant Hande, have enclosed as Annexure –C to the reply dated October 28, 2022 a copy of his RPF dated April 03, 2017, which was purportedly one of the correct forms filled by the said client. However, I note that in the said form, only 3 questions out of a total of 18 questions were answered. While the rest of the questions did not have any recorded response, a Risk Profiling Score of 77% showing the client as "Aggressive Trader" was recorded. I thus find that even assuming that that the RPF submitted by the Noticees was the correct one, the same was also not filled properly. Further, the Noticees have submitted that risk profiling of Mr. Yashwant Hande was done twice on November 03, 2017 as some corrections were carried out as per client's request. The Noticees have enclosed copies of two

RPFs both dated November 03, 2017 of the said client as Annexure-C1 & C2 to the reply dated October 28, 2022. However, I note that though the risk profiling scores mentioned on the said forms are different, the time of creation mentioned on both the forms are identical (i.e. both the forms mentioned - *Created on 2017-11-03 12:11:53*), which indicates that the date-time stamp on the RPFs was prone to manipulation. I find that the Noticees have not been able to disprove the inference drawn in the Interim Order that the IA had changed the responses in the RPF without seeking clients' response. I therefore conclude that the IA had not acted with honesty, fairness and diligence and in the best interest of its clients while carrying out risk profiling of the clients and thus has failed to abide by the provisions of Clauses 1, 2 and 8 of the Code of Conduct, mentioned in Schedule III, read with Regulation 15(9) of IA Regulations.

Suitability of advice given to Clients:

20. Regulation 17 of the IA Regulations provides that an IA has to ensure that (i) all investments on which investment advice is provided is appropriate to the risk profile of clients; (ii) the IA has a documented process for selecting investments for its clients based on their investment objective and financial situation; (iii) the IA understands the nature and risks of products or assets selected for clients; (iv) the IA has a reasonable basis for believing that a recommendation meets client's investment objective and is such that the client is able to bear any related investment risks consistent with his investment objectives and risk tolerance and the client has necessary experience and knowledge to understand the risks involved in the transaction; and (v) a recommendation or advice given to client is based on reasonable assessment that the risk reward profile of the financial product is consistent with client's experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.
21. Trifid operated its advisory activities/business by providing investment advice through products/ services. Some of these products/ services sold by Trifid were Intraday

Cash, Jobbers Cash, Galaxy Cash Services, Intraday Future, MMR Future Express, HNI Options, etc. The following were observed regarding the suitability of investment advice given to clients by the Noticee:

High-risk product/ service sold to client with Moderate/ Low risk appetite:

- **Client Mr. Bharat Bhatt:** During the period, May 30, 2017, to October 03, 2017, as per RPF of the client prepared by Trifid, the risk category was Moderate; however, it was observed that during this period, products from high risk category had been sold to client e.g., PCG (Equity), on June 23, 2017, and PCG Equity (F&O), on July 11, 2017. On October 31, 2017, when the risk category of the client was Moderate, high risk category product TPP Pack Gold, Silver, Crude oil, etc., was sold to the client. It is observed from the submissions of the IA dated October 17, 2019, that these two products belong to the high-risk category and the product's period of service started in May 2018 i.e., 7 months later.

Invoice Date	Product	Product risk category	Client risk category as per RPF
23.06.17	PCG Equity	High	Between May 30, 2017, to October 03, 2017, risk category is "Moderate"
11.07.17	PCG(F&O)	High	
31.10.17	TPP Pack Gold, Silver, Crude oil	High	From October 24, 2017, till December 27, 2017, risk category is "Moderate"

- **Client Mr. Yashwant Hande:** As per RPF dated June 12, 2017, risk category of the client was 'Moderate'. It had changed to 'High' on October 6, 2017; however, PCG (Equity) product from 'High' risk category (as per product risk categorization provided by Trifid) was sold to the client on June 12, 2017, itself. Trifid collected Rs.1,00,050/- as fees for the same. It was observed that on June 15, 2017, client had sent an email to Trifid mentioning that he had not opted for the said product.

However, Trifid did not respond to this email. The period of service for this product started from November 13, 2017.

Invoice Date	Product	Product risk category	Client risk category as per RPF
12.06.2017	PCG (Equity)	High	Moderate

- **Client Mr. Venu Babu Tella:** Trifid had sold high risk product to the client on September 13, 2017, despite client's risk category being Moderate.

RPF date	Risk category as per RPF	Name of product sold	Product risk category	Invoice/ Payment date	Amount collected (Rs.)
13.09.17	Moderate	TPP Pack ZLA	High	12.09.17	1,09,999/-

- **Client Mr. Abhay Datar:** As per RPF dated July 12, 2018, client's risk category was "Moderate", whereas on July 17, 2018, and July 23, 2018, Trifid had sold product 'PCG Equity' (for Rs.1,47,500/-), which was meant for high risk category clients, as per product list provided by Trifid.
- **Client Mr. Pramod Upadhyay:** Trifid has sold high risk product despite client's risk category being Moderate.

RPF date	Risk category as per RPF	Name of product sold	Product risk category	Invoice/ Payment date	Amount collected (Rs.)
15.04.19	Moderate	PCG Equity	High	23.04.19	53,690/-
15.04.19	Moderate	PCG Equity	High	01.05.19	70,800/-
15.04.19	Moderate	PCG Equity	High	02.05.19	25,016/-

- **Client Mr. Rajesh Pratap Singh:** Trifid has sold high risk product despite client's risk category being Medium.

RPF date	Risk category as per RPF	Name of product sold	Product risk category	Invoice/ Payment date	Amount collected (Rs.)
17.05.19	Medium	PCG F&O	High	22.05.19	1,88,800/-

22. From the above, it was, *prima facie*, observed that Trifid had sold products/ services, which were suitable for a client having a High Risk appetite, to clients having Moderate Risk appetite and hence, had not acted with due skill, care, diligence, honesty and in the best interest of its clients. In view of the same, it was *prima facie* found that Trifid had (a) failed to provide the investment advice as per the risk profile of clients in accordance with Regulation 17 of the IA Regulations; (b) failed in its responsibility to act in fiduciary capacity to its client, which was entrusted upon it under Regulation 15(1) of IA regulation; and (c) failed to abide by Clauses 1, 2 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations.

23. With regard to the above, the Noticees have submitted as under:

- (a) The IA has always advised the products to the clients as per their risk profile and the Suitability Assessment.
- (b) As regards the allegation that the IA had sold high-risk products to clients with Moderate/Low Risk Appetite, the same has been made on the basis of instances of 6 clients. The products were sold to the clients as per their consent and instructions and there was no compulsion on the client to subscribe to a specific service and it was only on acceptance of the same that services got started.
- (c) In respect of cases relating to Mr. Bharat Bhatt, Mr. Vashwant Hande, Venu Babu Telia, Abhay Datar, Pramod Upadhyay and Rajesh Pratap Singh, during the inspection conducted by SEBI, while importing Bulk Data of Client Risk Profiling from Client CRM, Client data was merged due to technical error and same was

collected by SEBI official. Venu Babu Telia, Abhay Datar, Pramod Upadhyay and Rajesh Pratap Singh were identified as moderate to high risk category and none of them fell under the 'low risk' category. The products had been sold to clients as per their consent and instructions.

(d) In case of Mr. Bharat, in all 3 Risk Profiling forms sent to him, he was categorized as 'aggressive trader'.

(e) In case of Mr. Yashwant, the correct / original risk profiling data dated 03.04.2017 relevant to the services sold on 12.06.2017 showed him as 'aggressive trader'.

24. I note that the Noticees have contended that in respect of all the six instances cited in the Interim Order, wrong data was provided to SEBI inspection team due to a due to technical glitch which had resulted in merging of client data. However, for the reasons recorded in para 19 above, the said contention of the Noticees cannot be accepted. Further, I note that the Noticees have not been able to show with documentary evidence that the high risk products sold to the clients, viz. Venu Babu Telia, Abhay Datar, Pramod Upadhyay and Rajesh Pratap Singh, were appropriate to the risk profile of the said clients. While the Noticees' have claimed that the said clients fell under moderate to high risk category, they have not produced any proof showing that the said clients had high risk profile. I thus find that the IA has failed to provide the investment advice as per the risk profile of clients in accordance with Regulation 17 of the IA Regulations; failed to act in fiduciary capacity to its client, as mandated under Regulation 15(1) of IA regulation; and failed to abide by Clauses 1, 2 and 8 of the Code of Conduct of Schedule III read with Regulation 15(9) of IA Regulations.

Product/ service sold to client prior to risk profiling:

25. As per Regulation 17 of the IA Regulations, an IA has to ensure that all investments on which investment advice is provided, is appropriate to the risk profile of the client. Accordingly, an IA can sell a particular product/ service to a client and collect payment for the same only after carrying out the risk profiling. However, in the following

instances, it was observed that Trifid had collected payment from clients even before carrying out the risk profiling. As the Noticee followed a 'No Refund' policy (i.e. the fees once collected would not be refunded), it appeared that Trifid had sold product/ service to client before carrying out the risk profiling and without having any understanding of the requirements of the clients, in order to earn advisory fees/ profits.

Name of Client	Date of first risk profiling	Date of payment as per first invoice
Mr. Abhay Datar	July 11, 2018	July 09, 2018
Mr. Mohammad Abdul Imran	July 26, 2019	July 24, 2019

26. The Interim Order had therefore observed that Trifid had, *prima facie*, not acted with due skill, care diligence, honesty and in the best interest of its clients, thereby violating the provision of Clauses 1, 2, and 8 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

27. In respect of the abovementioned allegation, the Noticees have submitted the following:

- (a) The IA and the client entered in a relationship only after the payment was received from the client. Prior to the payment by client, in many cases, the clients did not easily share their email ids and became cautious after the IA sent them risk profile etc. This used to create a prejudice in the mind of the clients and hence in order to comply with the requirement of SEBI as well for the ease of the clients, the executives asked seven questions during the process of Initial risk profiling and the complete risk profiling was done if the client wanted to avail the services.
- (b) As regards the instances observed in the Interim Order, the client Mr. Abhay Datar had made a payment of Rs 8142/- by himself on 09.07.2018 and then informed the

IA in respect of the same, pursuant to which the IA completed his Risk Profiling on 11.07.2018 and he was categorized as a Moderate Trader and his services were started immediately on 11.07.2018 i.e. after the date of risk profiling.

(c) In case of Mr. Mohammad, the said client had also made an online payment by himself on 24.07.2019 and then informed the IA about the same. Hence, the IA initiated his risk profiling on 26.07.2019. After completing his risk profiling, his risk score was termed as "Aggressive Trader", hence he was allowed to start taking the subscribed services on 29.07.2019, while risk profiling was done 3 days prior to the date of start of services.

28. I note that in respect of the two instances where the IA had allegedly sold products / services prior to risk profiling, the Noticees have contended that the clients themselves had made online payment to the IA before the risk profiling was done. However, I find it difficult to believe that the said clients had made payment to the IA without the IA asking them to do so. Further, the Noticees have not submitted record of any communication between the said clients and the IA which could support the contentions made by the IA. Hence, I find the Noticees' contentions in this regard to be devoid of credence. Accordingly, I conclude that the IA has violated the provision of Clauses 1, 2, and 8 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

Incorrect categorization of 'High Risk' products as 'Low Risk' products

29. Trifid had 20 different investment products, which were categorized into Low, Medium and High risk. As per the Business Model submitted by Trifid, while selling the product, risk category of the products was required to be matched with the risk category of the client. Accordingly, products with low risk were required to be sold to clients with low risk capacity. It was observed that out of 20 investment products, following 5 derivatives products had been categorized under Low risk category:

Sr. No.	Product Name	Segment	Risk Category
1	Stock Futures	Equity	Low
2	Stock Options	Equity	Low
3	Nifty Tips (Index futures)	Equity	Low
4	MCX Tips, Bullion Pack, Base Metal pack	Commodity	Low
5	Forex Domestic	Currency	Low

30. Derivative products such as stock futures, index futures, commodities and currency futures are, by nature, leveraged products and are inherently considered as very risky in the financial world. For example, if a person is recommended to sell a call option on a particular stock at a particular strike price, he earns the fixed premium on the same. However, if the price of that stock increases above the strike price, the loss to such an investor can be huge and beyond his means. However, Trifid had categorized the aforesaid derivatives as 'low risk' products.
31. It thus appeared, *prima facie*, that Trifid was not taking due care while categorizing the products offered by it. It was wrongly categorizing high-risk products as low-risk products and was selling them to low risk or moderate risk clients on the pretext that these products were categorized as low risk. Trifid, being a registered IA, knew and understood the high risks involved in such products. It thus appeared, *prima facie*, that Trifid had knowingly misrepresented the derivative products as low risk products, thereby violating the provision of Clause 1 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.
32. In respect of the above, the Noticees have submitted the following:
- (a) The risk categorization of the products was done on the basis of product designing and not on the basis of the product market.

- (b) The IA had designed its Option advisor services in such a way that it only provided buy recommendation of Call / Put option as the buyer had limited risk and unlimited gain. Therefore, the IA had mentioned Option advisor services as a low risk product. The same example was quoted in Para 9.16 of the Interim order by stating that on selling a call / put option the seller has unlimited liability (risk). However, in the IA's case, since it only provided buy call / put advice to its clients where client had limited risk, the IA had mentioned/categorized Option as Low Risk product. From the date of launch of this product, the IA had not given a single advice for selling Call/put option to any of its client in the low/ medium Risk category. Though by nature, derivative market is very risky, each of the IA's products had been designed in a low risk pattern on the basis of investments.
- (c) *Prima facie*, it may seem that trading in Option markets/option related advisory service is very Risky as the buyer risk is limited and seller risk is unlimited. However, the IA only provide buy related tips. Thus, only on the basis of market risk involved it cannot be inferred that the IA was not taking due care and was negligent while product categorization. SEBI in the Interim Order has itself stated this fact that the said inference of incorrect categorization of products was on the basis of business model submitted by the IA to SEBI. The said business model was submitted by the IA to SEBI on 17.10.2019, however, no deficiency was raised by SEBI at that time. If any deficiency was brought to the IA's notice, it would have taken corrective steps.

33. I note that in respect of the above allegation of wrongful categorization of derivatives product under 'low risk category', the Noticees have contended that since the IA only advised buying call / put options to its clients where client had limited risk, the IA had mentioned/categorized Option as Low Risk product. I find that the said contention of the Noticees cannot be accepted. Firstly, the products ought to be categorized on the basis of their basic characteristics and inherent risks involved rather than what strategy is employed while using such products. Secondly, for a lay investor, the categorization of derivative products as per the logic adopted by the IA can be

misleading and can put them to immense risk. Thus, I do not find the contentions of the Noticees in this regard to be satisfactory. Further, the Noticees have only referred to categorization of Options, but have not provided any explanation regarding wrongful categorization of other products like MCX Tips, Bullion Pack, Forex Domestic, which are inherently risky derivative products. I therefore find that the IA had knowingly misrepresented the derivative products as low risk products, thereby violating the provision of Clause 1 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, Regulation 15(1) and Regulation 17 of IA Regulations.

Unreasonable / Unfair Fees Charged from Clients:

34. As per Clause 6 of the Code of Conduct specified in Schedule III of the IA Regulations, an investment adviser, advising a client may charge fair and reasonable fees, subject to any ceiling as may be specified by SEBI, if any. The following instances of collection of unreasonable/ unfair fees were observed.

Service fees charged were disproportionate to the annual income/ proposed investment:

35. It was observed for clients mentioned in the table below that Trifid had charged fees disproportionate to the annual income/ proposed investment of the clients, as disclosed in the respective risk profile forms of the clients, which appeared unreasonable.

Sl. No	Name of client	Fees received from client (Rs.)	Annual income as per RPQ (Rs.)	Proposed investment by client as per RPQ (Rs.)
1	Mr. Bharat Bhatt	20,45,506/-	< 1 lac/ 2-5 lacs	50000-5 lacs

Sl. No	Name of client	Fees received from client (Rs.)	Annual income as per RPQ (Rs.)	Proposed investment by client as per RPQ (Rs.)
2	Mr. Yashwant Hande	7,30,586/-	< 1 lac/ < 50000	50000
3	Mr. Suvarna Rajesh Khandagale	34,16,300/-	> 10 lacs	> 50000 > 5 lacs

36. The Noticees in respect of the abovementioned allegations, have submitted the following:

- (a) The IA had always charged fees on a reasonable basis, which is evident from the fact that it had served 15820 clients in 5 years and had received good response from them.
- (b) There is no rule prescribed by SEBI as regards the maximum amount that can be charged from a customer. The IA had a proper fee structure prescribed on the basis on which it charged the fees.
- (c) Some clients did professional trading and were involved in whole day trading and actively traded in market. Hence, they opted for many services together like cash, F&O and MCX. Due to this type of packages, the cost of services increased. When the client was willing to take long term services and opt and subscribe for longer duration, he had to pay higher fees. Similarly, when a client was satisfied with one service and opted for more services, he had to pay higher services charges.
- (d) The IA had given invoices for the services provided to the clients and clearly mentioned the duration and type of service under it and also provides services for that period.
- (e) The fees charged to the clients were in parts and not on the basis of one-time charge. In fact, the fees were not charged for a specific period/limited period but for multiple period and in respect of multiple services.

- (f) In the case of Mr. Bharat, there were around 25 different invoices generated wherein various services from the year 2017 to 2020 were provided to him for multiple time duration. The Invoice No. INV31373 dated 30.05.2017 for Mr. Bharat shows that the first service started from 05.06.2017 to 24.06.2017 and pursuant to the same, there were multiple services sold to him. Further, Invoice No. INV42566 dated 23.01.2018 shows that the date of service was from 13.04.2020 to 04.05.2020. Hence, it can be seen that there were multiple services sold for multiple time periods/frame. In all three risk profiling forms of the said client, he was categorized as 'aggressive trader'. In the last risk profiling form of 27.06.2018, his gross annual income group was mentioned as 'Above 10 Lakh, and proposed investment was between Rs.2 Lakh to Rs.5 Lakh.
- (g) In case of Mr. Yashwant Hande, the Risk Profiling as relied upon by SEBI while passing the Interim Order is incorrect, which was a result of technical glitch in the IA's system during the time of Inspection. The client was categorized as 'Aggressive Trader' in all 3 Risk Profiling Forms, submitted once on 03.04.2017 and twice on 03.11.2017. In the original / correct risk profiling form dated 03.11.2017 of the said client, it was specified that his annual income was above Rs. 10 Lakhs and proposed Investment amount was above Rs. 5 lakhs. A copy of risk profiling form of the said client dated 03.11.2017 is enclosed.
- (h) In case of Suvarna Rajesh Khandagale, as per the updated Risk Profiling on 28.08.2018, her Annual Income was above Rs. 10 Lakh and proposed Investment amount was above Rs. 5 Lakh. In respect of the total fees of Rs.24,48,740 paid by the said client, there were certain discrepancies raised by her for a portion of services. Hence, in order to amicably resolve the issue, a sum of Rs 16,90,000/- was refunded via Cheque payments on 22.08.2019 and updated to SEBI on the SCORE portal. A copy of her email to Cyber Cell, Navi Mumbai, along with the IA's email dated 22.08.2019 to Ms. Suvarna is enclosed. In fact, after the amount as mutually decided, was refunded, the IA had to adjust the remaining amount/balance available with the IA in relation/context to the services already delivered and services pending. Since the exact amount for which services were

pending was not possible to calculate, the IA had on the basis of mutual discussion made the Invoice/bills of the services that she wished to continue and was adjusted in the 2 invoices dated 13.11.2018 and 03.09.2019 for Rs.2,10,000 and Rs.7,57,560 respectively. The fees charged from Ms. Suvana for advisory services was Rs 24.48 Lakhs and not Rs 34.16 Lakh as alleged or otherwise. The computation of SEBI for calculating the total fees paid might have included the bills of Rs 2.10 Lakhs and Rs 7.57 Lakhs (Approx.) being the bills/invoices in respect of services adjusted.

37. I note that in respect of allegation of charging unreasonable fees from the clients mentioned in the Interim Order, the Noticees have contended that the said fees were charged for multiple services, as agreed by the said clients. The Noticees have also contended that since SEBI has not fixed the maximum amount which can be charged as fees, the IA cannot be faulted for the fees collected. In this regard, I note that while SEBI has not specified any limit for fees to be charged by an IA, Clause 6 of the Code of Conduct, as mentioned in Schedule III of the IA Regulations, provides in clear terms that any fee charged has to be reasonable and justifiable. In the case of clients cited in the Interim Order, the fees collected were running into lakhs. Even though the Noticees have contested the annual income figure of the three clients cited in the Interim Order by claiming that for each of the said three clients, it exceeded Rs. 10 Lakh, the charging of hefty fees in the range of Rs.25 Lakh approx. in case of Ms. Suvana (as per the Noticees own admission) and more than Rs.20 Lakh in case of Mr. Bharat Bhatt appears unfair, unreasonable and disproportionate, especially when the proposed investment by the said clients was only exceeding Rs. 5 Lakh (as per Noticees' own admission). I note from Annexure-E7 enclosed with Noticee's reply dated October 28, 2022, that the Noticee has raised an Invoice dated September 04, 2018 to Mrs. Suvana Rajesh Khandagale wherein the IA had charged Rs.14,16,000 for the product 'PCG(F&O) WITH ETS YEARLY' and Rs.3,42,200 for the product 'MOMENTUM BREAKOUT FUTURE YEARLY'. However, I note from the Annexure-6 to the Noticee's reply dated October 18, 2022 which contains the list of products

offered by the IA along with the fee structure that the prices mentioned against the said products were much lesser than what was charged by the IA to the said client. It is therefore clear that the Noticee was charging exorbitant amounts to the clients for its products which were even higher than its own price list. I, thus, find that the IA had charged fees disproportionate to the annual income/ proposed investment of the clients, as disclosed in their respective risk profile forms, which appeared unfair and unreasonable.

Locking-in clients by collecting advance service fee:

38. It was observed that Trifid sold a second subscription and, in some cases, multiple subscriptions, of the same advisory product/ service to the same client even before the existing subscription of the same product/ service had ended or had even started. It meant that two/ multiple subscriptions of the same product/ service were sold with different service periods and fees had been collected for the subsequent subscription(s) while the first subscription was either active or had not even started. The same meant that if the client was dissatisfied/ didn't want to continue with the IA after the first subscription had ended, he could not do so as he had already paid for the subsequent subscriptions of the same product/ service in advance and Trifid had a "No Refund" Policy. An illustrative instance for client Mr. Bharat Bhatt is provided below:

Sr. No.	Date of invoice	Product/ Service	Period of product/ service	Amount (Rs.)
1	17.10.17	MCX Combo	October 23, 2017 to December 24, 2017	29,500/-
2	14.11.17	MCX Combo	December 15, 2017 to March 23, 2018	47,200/-

39. The inspection had brought out similar instances, which are mentioned in the table below:

Client Name	Date of invoice	Product/ Service	Period of product/ service	Amount (Rs.)
Mr. Bharat Bhatt	30.05.17	Stock Cash	June 05, 2017 to August 05, 2017	11000/-
	31.07.17	Stock Cash	August 08, 2017 to August 20, 2017	3450/-
Mr. Yashwant Hande	18.04.2017	PCG (F&O)	April 26, 2017 to May 16, 2017	68137/-
	20.04.2017	PCG (F&O)	May 17, 2017 to July 05, 2017	60030/-
	27.10.2017	PCG (F&O)	October 30, 2017 to November 12, 2017	41300/-
	30.10.2017	PCG (F&O)	November 13 to 22, 2017	29500/-
	20.04.2017	PCG (Equity)	May 17, 2017 to July 05, 2017	60030/-
	12.05.2017	PCG (Equity)	July 06, 2017 to September 06, 2017	100050/-
	19.05.2017	PCG (Equity)	September 07 to 26, 2017	30015/-
	29.05.2017	PCG (Equity)	September 27, 2017 to November 10, 2017	70000/-
	12.06.2017	PCG (Equity)	November 13, 2017 to January 13, 2018	100050/-
Ms. Suvarna Khandagale	12.09.2018	Fundamental Value HNI Premium	September 17, 2018 to July 01, 2019	118000/-
	15.09.2018	Fundamental Value Premium	July 02, 2019 to August 01, 2020	118000/-

40. The Interim Order alleged that the abovementioned manner in which Trifid had charged fees to its clients was, *prima facie*, meant to generate more and more fees for itself and was clearly not in the best interests of the clients. Thus, Trifid had, *prima facie*, violated the provisions of Clauses 1, 2, 6 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations.

41. In respect of the above, the Noticees have submitted the following:

- (a) The IA always charged fee for the second service only on request of client himself. If the client liked the service, he himself requested the IA to extend the service or take two or more services in continuous period.
- (b) As regards "No Refund and Cancellation" policy, the IA has refunded to many clients as they wished to discontinue the services. It has never locked any client nor forced them to pay for future services. It was a general tendency of clients that the first time they subscribed for short duration of services, like monthly, and after getting satisfactory services for few days they upgraded themselves for longer duration services like quarterly/half yearly/ yearly. The reason behind is simple that its longer duration services cost cheaper than subscribing monthly every time.
- (c) As regards the allegation of locking in clients by collecting advance fees, the reason for charging advance fee was that the clients were satisfied with the services and wanted to subscribe the services for longer duration. Since the IA used to review and modify the fees every year and clients wanted to pay the same fee for upcoming years, certain clients including Ms. Suvarna paid an advance fee. However, when she herself requested to refund the fee paid in advance, the IA after mutual discussion, refunded the amount of Rs. 16,90,000 from her total fee paid.
- (d) In respect of the instances of Mr. Bharat and Mr. Yashwant, as mentioned in the Interim order, during their complete service tenure, none of the said clients ever complained about service nor asked for any refund. In fact, the services provided to them in the overlapping period were different in nature and had separate features.
- (e) In case of Ms. Suvarna, she had raised a complaint in respect of services and requested for refund. Hence, in order to amicably settle the matter and in the interest of client satisfaction, the IA had processed the refund of Rs 16,90,000/- and resolved the issue.

42. I note that the Noticees have made a general contention that the advance fees collected were as per the requests of the clients themselves. However, the Noticees have not provided any documentary proof of the same in the form of communication exchanged with the clients which could show that the clients indeed had requested the IA to collect advance payment for services. Further, the Noticees have not provided explanations in respect of the specific instances mentioned in the Interim Order and have merely stated that the clients had never complained nor asked for refund during the service period. Thus, the submissions of the Noticees in this regard cannot be accepted. Accordingly, I find that the IA has violated the provisions of Clauses 1, 2, 6 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and Regulation 15(1) of IA Regulations.

Services not provided to clients even though advisory fees were paid

43. During inspection by SEBI, the advisory services offered by Trifid to its clients were analyzed on a sample basis. It was observed that Trifid provided investment advice/ message to its clients on the mobile number of its clients. The invoices raised by the Trifid included the contact no. of its clients on which message/ investment advices were sent. The invoice also included the date of payment made by the client. From the analysis of message logs and invoices raised in the name of clients, it was observed that Trifid had raised the invoices and mentioned the period for which investment advices / message were to be provided to the client on the contact no. mentioned on the invoices. However, from the message logs of the respective clients, it was observed that in certain cases the investment advice/ message had not been sent by Trifid for the period mentioned on the respective invoices. The instances are as under:

- **Client Mr. Vishu Mittal:** It was noted that Advisory services/ messages had been provided to the client starting from May 04, 2018. However, the invoices raised showed that payment had been taken for period starting from January 10, 2018.

It thus appeared that while payments had been taken from the client, no advisory services/ messages were provided by Trifid to the client until May 4, 2018.

- **Client Mr Akhilesh Kumar Choudhary:** It was observed that Advisory services/ messages had been provided to the client starting from December 17, 2018. However, the invoices raised showed that payment had been taken for period commencing from January 11, 2018. It thus appeared that while payments had been taken from the client, no advisory services/ messages were provided by Trifid to the client until December 17, 2018.

44. In view of the above, it was observed in the Interim Order that Trifid had, *prima facie*, not acted honestly and fairly with its clients, and had violated Clause 1 of the Code of the Conduct, mentioned in Schedule III, read with Regulations 15(1) and 15(9) of the IA Regulations.

45. In respect of the above, the Noticees have submitted the following:

- (a) As regards the allegation that services were not provided to clients even though advisory fees were paid by the clients Mr, Vishnu Mittal and Mr. Akhilesh Kumar Choudhary for period mentioned in their Invoices, both the clients had raised the issue related to service. In order to resolve the concern raised by them, the IA processed the refund for the disputed amount to both the clients.
- (b) In case of Mr. Vishnu, the refund was provided through 3 cheques dated 20.02.2020, 10.03.2020 and 20.04.2020.
- (c) In case of Mr. Akhilesh, the refund was processed by online transfer of funds on 24.01.2019. A copy of acknowledgement for online transfer of funds dated 24.01.2019 and email communications dated 17.01.2019 and 18.01.2019 are enclosed.

46. I note that the IA has claimed to have refunded fees to the above-mentioned clients. As regards Mr. Akhilesh Kumar Choudhary, the Noticee has enclosed copies of an

E-Receipt dated January 24, 2019 showing a transfer of Rs.20,000 to the said client and an email confirmation dated January 18, 2019 from the said client to the Noticee about the resolution of his complaint. However, it is noted that though the payment by the said client was made in 2018, the refund was made only in 2020. Further, as regards Mr. Vishnu Mittal, though the Noticees have claimed that the money was refunded, they have not enclosed any documentary proof of such payments, like bank statements, receipts, confirmation from client etc. Considering the same, I find that the Noticee's claims cannot be accepted in entirety.

47. The above observations and findings clearly establish that the IA was not carrying out risk profiling in the prescribed manner, had indulged in selling of incompatible products and services to clients, had sold the products / services to clients prior to risk profiling, had wrongly categorized 'High Risk' derivative products as 'Low Risk', had collected unreasonable fees disproportionate to the annual income / proposed investment of the clients, had locked-in clients by collecting advance payments with a 'No Refund Policy' and had not provided services to clients even after collecting fees. All the above show that the IA was working with the sole objective of maximizing his profits at the cost of gullible clients by defrauding them. I find that the IA by adopting such practices has used and employed manipulative and deceptive device / contrivance and has engaged in an act which operated as fraud and deceit upon its clients. I thus hold that the IA has violated the provisions of Section 12(a), (b) & (c) of the SEBI Act, 1992 read with Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations.

48. I note that Mr. Vivey Tyagi (Noticee no. 2) and Ms. Lidya Thomas (Noticee no. 3) are partners in Trifid (Noticee no. 1) which is a partnership firm. Considering the observations in the Interim Order about the liability of the said partners for the violations committed by Trifid, which the Noticees have not rebutted, I hold all the three Noticees liable for the violations established above.

49. Considering the violations of the provisions of the SEBI Act, 1992, IA Regulations, 2013 and the PFUTP Regulations, 2003, committed by the Noticees, I deem it fit to issue appropriate directions against the Noticees in the interest of the securities market. In this regard, I note from the Noticees' submissions made during the personal hearing on October 14, 2022 that Mr. Vivek Tyagi, Partner of Trifid, who is Noticee no. 2, has been arrested by Police, apparently in connection with complaints filed by the clients of Trifid. I further note that Trifid has submitted an application dated October 17, 2022 to SEBI for surrender of certificate of registration. I have taken note of the same while issuing the appropriate directions.

DIRECTIONS:

50. In view of the foregoing, I, in exercise of the powers conferred upon me in terms Sections 11, 11(4) and 11B of the SEBI Act, 1992 and Regulation 35 of the Intermediaries Regulations read with Section 19 of the SEBI Act, 1992, hereby direct the following:

- (a) The Noticees shall continue to be prohibited from accessing the securities market and further be restrained from buying, selling or otherwise dealing in securities in any manner whatsoever, either directly or on behalf of any of his clients through their accounts, for a period of five years from the date of this order. However, while calculating the period of restraint / debarment as directed above, the period of restraint / prohibition already undergone by the Noticees as per the directions contained in the Interim Order shall be set off against the period of restraint / prohibition directed above.
- (b) The Noticees are directed to resolve the complaints pending against Trifid in the SCORES and otherwise, within the period of 30 days from the date of this Order and furnish a report to SEBI. Such report shall be filed within 3 months of this order.

- (c) In case of failure of the Noticees to comply with the aforesaid directions at sub-para (b) above, the directions issued at sub-para (a) shall continue to be in force beyond the period of five years till the date of compliance with direction given in para (b) above, by the Noticees.
- (d) After the compliance of direction mentioned at sub-para (b) above, the application submitted by Trifid for surrender of certificate of registration shall be dealt with in accordance with provisions of applicable laws.
- (e) During the period of restraint, the existing holdings of securities, including the holdings of units of mutual funds, of the Noticees, shall remain frozen.
- (f) The restraint imposed vide the Interim Order on the Noticees not to divert any funds collected from investors, kept in bank account(s) and/or in their custody and not to alienate any assets, whether movable or immovable, or any interest or investment or charge on such assets held in the name of Trifid, including money lying in bank accounts, shall continue except for making refunds to clients, with prior permission of SEBI, for the purpose of resolution of pending complaints, as directed at sub-para (b) above. The said restraint shall stand vacated after pending complaints are resolved and a report, as mentioned at sub-para (b) above is filed to the satisfaction of SEBI.

51. This order comes into force with immediate effect.

52. A copy of this order shall be sent to the Noticees, recognized Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents to ensure that the directions given above are strictly complied with. A copy of this order shall also be sent to concerned police authorities and the Government of Madhya Pradesh.

-Sd-

Place: Mumbai

Date: December 29, 2022

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA