

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

INTERIM EX PARTE ORDER

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

In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

In respect of:

S. No.	NAME	PAN
1	Epic Research Pvt. Ltd.	AADCE1112D
2	Nooruddin Bombaywala	ATMPB4763C
3	Mustafa Nadeem	AGKPN2154J
4	Apurva Gangwal	ASGPG0065M
5	Nisreen Nadeem	ATYPN6530B
6	Mohammed Husain Nadeem	ABAPN1418Q
7	Jamila Bombaywala	AFMPN5189E

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1. Epic Research Pvt. Ltd. (hereinafter referred to as the "**Epic / Investment Adviser / IA**") is registered as an Investment Adviser from March 10, 2014 under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**") bearing registration no. INA000001225. Registered office of Epic is at 701-801, Atulya IT Park, Bhawarkua Main Road, Indore, Madhya Pradesh – 452014. Website address of Epic is <https://www.epicresearch.co>.
 2. Details of the Directors of Epic are as under:
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Name	Designation
Nooruddin Bombaywala	Director
Mustafa Nadeem	Director / CEO
Apurva Gangwal	Director
Nisreen Nadeem	Director
Mohammed Nadeem	Director
Jamila Bombaywala	Director

3. The shareholding pattern of Epic is as follows:

Name	Designation	No. of shares	% of shareholding
Nooruddin Bombaywala	Director	4,600	46
Mustafa Nadeem	Director/CEO	4,600	46
Apurva Gangwal	Director	200	2
Nisreen Nadeem	Director	200	2
Mohammed Nadeem	Director	100	1
Jamila Bombaywala	Director	200	2
Siraj Bombaywala	NA	100	1
Total		10,000	100

4. Epic has no branches and it has the following number of clients in addition to its 600 international clients:

Financial Year	Domestic
2017-18	6436
2018- 2019 (till Jan)	4744

5. Epic's turnover is as follows:

Financial Year	Revenue as per financial statement	Revenue as per client master data
FY 2017-18	₹16.50 Crore	₹ 18.84 Crore
FY 2018-19 (till January 31, 2019)	₹ 14.35 Crore	₹ 14.13 Crore

6. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an inspection of Epic during March 27 to 29, 2019. The focus of the inspection was to look into the compliance of regulatory requirements stipulated under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”), regulations, circulars and guidelines frame thereunder, IA Regulations, KYC requirements, AML /

CFT guidelines, etc., issued from time to time. The period of inspection was from April 01, 2017 to date of inspection i.e. March 29, 2019.

7. The inspection entailed *inter alia* an analysis of the details available on the website of Epic, payment receipts issued by Epic, risk profiling of clients conducted by Epic, complaints filed by the complainants, products list, etc. The *prima facie* findings based on the inspection are noted in the subsequent paragraphs.
8. **Failure to comply with certification requirements by IA employed by Epic:**

8.1. It is observed that seven employees of IA have NISM certifications for investment advisory activity. The details of their NISM certifications as submitted by Epic is as under:

Sr. No.	Name	Date of joining Epic	NISM certification date (Level II exam.)	Non Compliance of Regulation 7 (in days*)
1	Lovelesh Sharma	18.04.2014	12.03.2015	-
2	Husain Hatim Ali Badshawala	10.11.2014	08.08.2015	108
3	Sachin Yadav	08.06.2015	09.07.2016	306
4	Mayank Chinchwadkar	12.05.2015	22.10.2016	437
5	Sunil Patel	08.04.2016	25.08.2018	779
6	Ritesh Jain	15.01.2013	06.01.2015	-
7	Manish Sharma	02.11.2015	28.09.2015	159

*Delay days calculated from April 21, 2015 being the trigger date for non-compliance as per IA Regulations. Two year period was given as per IA Regulations with effect from April 21, 2013 for compliance of NISM certification requirements.

8.2. It can be seen from the above that 5 out of 7 employees have not obtained requisite NISM certifications within the prescribed timelines and were *prima facie* providing investment advice without requisite qualification. It is observed from the Inspection Report these employees are part of Research Team. Research is an important part of the process of the “investment advice”. Since 5 out of 7 employees have no valid NISM certifications at the relevant point in time, the same is not as per the IA Regulations. The delay in complying with the requirement of NISM certification ranges from 108 days to 779 days.

8.3. NISM certifications detail of 7 employees is as under:

Sr. No.	Name	NISM Series X-A: Investment Adviser Level-1 examination certificate validity date	NISM Series X-B: Investment Adviser Level-2 examination certificate validity date
1	Lovelesh Sharma	08.12.2020	11.03.2021
2	Ritesh Jain	16.11.2020	05.01.2021
3	Husain Hatim Ali Badshawala	19.05.2021	07.08.2021
4	Manish Sharma	26.01.2021	27.09.2021
5	Mayank Chinchwadkar	25.03.2019	21.10.2019
6	Sachin Yadav	06.11.2021	08.07.2019
7	Sunil Patel	10.02.2020	24.08.2021

8.4. It is observed that validity of Level-1 certification of one of the IA (Mr. Mayank Chinchwadkar) has expired on March 25, 2019 and the same was not renewed till inspection date i.e. March 29, 2019.

8.5. The following are the relevant provisions of IA Regulations to be considered: regulation 15 (13) read with regulation 7(2) of IA Regulations and clause 8 of Code of Conduct for IA as mentioned in Third Schedule of IA Regulations. The text of the same is reproduced below:

IA Regulations

Qualification and certification requirement.

7 (1)...

(2) An individual registered as an investment adviser and partners and representatives of investment advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:

(a) from NISM; or

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

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

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

General responsibility.

15 (1)...

(13) It shall be the responsibility of the Investment Adviser to ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements under Regulation 7 at all times.

Code of Conduct

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8. Compliance

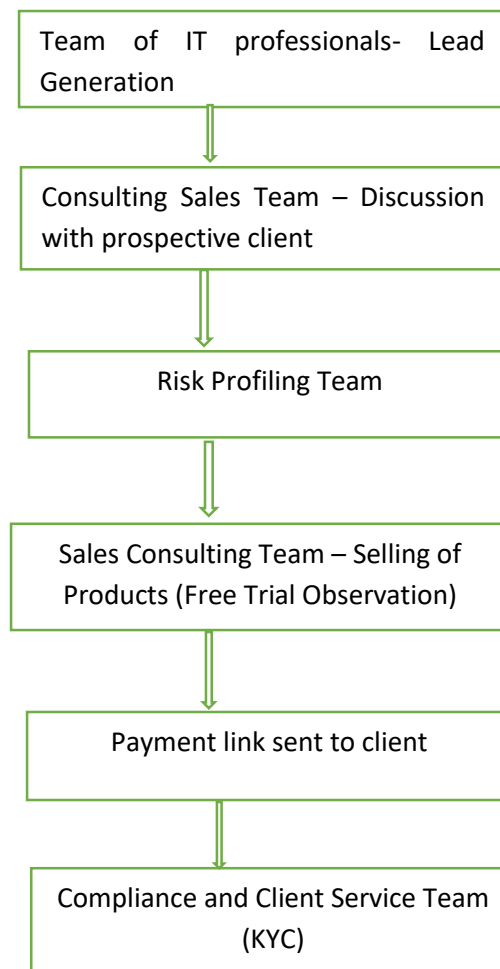
An investment adviser including its representative(s) shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

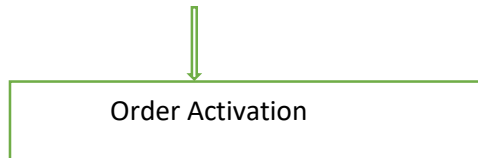
- 8.6. In view of the aforesaid discussion, it is *prima facie* observed that IAs employed by Epic have not complied with the certification requirement prescribed under the IA Regulations and have therefore, *prima facie* violated provisions of regulation 15 (13) read with regulation 7(2) of IA Regulations and clause 8 of Code of Conduct for IA as mentioned in Third Schedule of IA Regulations.
9. Further, it is noted from the document “Organizational Process Flow” submitted by Epic that starting from reaching out to the prospective clients to risk profiling and then to allocation and selling of type of advisory product / services and subsequently providing advice / tips / messages, etc., there is no contact between the IA and the clients. It was noted at the time of inspection that Epic has Sales Consulting Team comprising of 206 employees for selling advisory product / service and a Risk Profiling Team of 5 members. Once the potential subscriber lead is generated, the Consulting Sales Team gets in touch with the prospective subscriber for further discussions. Then the interested prospective subscriber is forwarded to Risk Profiling Team which gets in touch with the client to fill risk profile questionnaire over telephone of which no call recording is maintained by Epic. Subsequently, as noted during inspection, the employees having NISM certification are not involved in the product selection for the clients. The decision of selection of products based on suitability is inherent part of investment advice. Therefore, the requirement of certified personals are needed in the case of persons associated with the decision of product selection. Instead, Sales Consulting Team carries out activities pertaining to suitability of advisory product. For instance, for an investor who has been classified as “Growth Investor” as per his Risk Profile, it is noted from Epic’s Product List that the Product Risk which is assigned to him is both High Risk and Moderate Risk and

the product covers 4 segments: Cash, Derivatives, Commodity and Currency. Moreover, it is noted from the Epic's Product List that there are various combinations of Investor Type with Product Risk and Segment. Few instances are reproduced below:

Sl. No.	Product Type	Segment	Product Risk Type	Investor Type
1.	BTST Limited	Cash	High Risk	Growth Investor
2.	Premium Cash	Cash	Moderate Risk	Growth Investor
3.	BEP Pack	Commodity	High Risk	Growth Investor
4.	Copper Pack	Commodity	Moderate Risk	Growth Investor
5.	Stock Futures	Derivatives	High Risk	Growth Investor
6.	Bank Nifty Options	Derivatives	Moderate Risk	Growth Investor
7.	Forex Premium	Currency	High Risk	Growth Investor
8.	FOREX:NSE	Currency	Moderate Risk	Growth Investor

10. The flow chart depicting the aforesaid process flow is produced here under:





11. It was noted during inspection that once any service / product is selected for the client, all advices generated for that service / product automatically flows to that client. Further, it is observed from the compliance audit report for year ended March 31, 2017 that *“the company is continuing its process of tagging the risk profile of the clients to specific products and not individual advices. We recommend that all the advices provided in a particular product should strictly adhere to the risk profile for which the product is designed.”* Thus, considering the business model of Epic, selection of service / product for the client is immensely important and the same is *prima facie* being done by the non-qualified personnel in Sales Consulting Team instead of IA.
12. In this factual context, the following provisions of the IA Regulations are relevant for consideration. The text of regulations 7 (1), 15 (9) of IA Regulations and clauses 1, 2,3 and 8 of Code of conduct for IA, is reproduced below,

IA Regulations

Qualification and certification requirement.

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

- (a) A professional qualification or post-graduate degree or post graduate diploma in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the central government or any state government or a recognised foreign university or institution or association; or*
- (b) A graduate in any discipline with an experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management.*

General Responsibility

15(1)...

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

Code of Conduct

1. Honesty and fairness

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

2. Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

3. Capabilities

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

...

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.

13. Perusal of the above the provisions of the IA Regulations show that the Regulations casts the obligation and responsibility on the IA to act honestly, fairly and in the best interests of its clients. However, as *prima facie* noted above selection of services / products is done by unqualified employees of IA. The said employees of IA are not qualified and competent to assess the information provided by the clients about their financial situation, investment experience, risk appetite and investment objectives. Consequently, the client would be saddled with a service / product which is not in his best interest. It can further *prima facie* be said that the IA has not employed effective and appropriate resources which are needed for the efficient performance of its business activities as the appropriate resource of qualified persons were not staffed at the stage where the product selection is carried out.

14. Thus, it is *prima facie* held that the IA has violated provisions of regulation 15(13) read with regulation 7 of IA Regulations and clauses 1, 2, 3 and 8 of Code of conduct for IA under Third Schedule read with regulation 15(9) of IA Regulations.

15. Risk Profiling

15.1. Insufficient and incomplete information about the clients for carrying out risk profiling.

15.1.1. Before proceeding further, I would like to refer to the provisions of regulation 16 (a) of IA Regulations which states as follows:

16. Investment adviser shall ensure that -

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

(i) age;

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

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

15.1.2. Regulation 16 of the IA Regulations, *inter alia*, requires that the investment adviser shall obtain from its clients information necessary for the purpose of giving investment advice, such as, their age, investment objective, income details, prior experience, existing investments, risk appetite, liabilities/ borrowings, etc. The objective behind this provision of the Regulations is that the clients get only the investment advice consistent with their risk appetite. If the Regulations are interpreted that there is no requirement for verification of the information provided by the client, the entire objective behind the provision would be defeated as in that case, the possible advice given by the IA would become inconsistent with real risk appetite of the client which the verified information would show up. It is noted that even for KYC requirements, the information provided by the clients are required to be verified. The information for risk assessment stands at a higher pedestal when it comes to the IA where not only the identity of the client is verified but also the information relating to his risk appetite needs to be verified under the Regulations. In the instant case, it is noted from Epic's risk profiling questionnaire that it has 10 questions to measure risk appetite / tolerance of the clients. For carrying out risk profiling, the representative of IA (risk profiling team) seeks response of clients telephonically, as stated in the "Organization flow document", for each question and fills the

questionnaire. Consequently, based on their score, the clients are put into following risk categories.

Risk profiling questionnaire score	Risk category of client
0 – 10	Defensive
10 – 16	Moderately Defensive
17 – 24	Balanced
25 – 34	Growth
35 – 42	High Risk and High Growth

15.1.3. It was noted during the inspection that the IA is not collecting any supporting documents such as income proof, proof of investment experience, etc., to check the authenticity of response and to carry out its due diligence for properly assessing the risk profiling of the client. In the compliance audit report for FY 2017-18, this issue was observed. The Auditor made observations in compliance audit report for financial year ended March 31, 2018 which are as under:

“Risk profiling is done based on the questionnaires answered by the client but no documents are collected to ensure the correctness of the data.”

15.1.4. Further, it is observed that Epic’s risk profiling questionnaire does not contain any questions to obtain information about the following as required under regulation 16(a) of IA Regulations. The perusal of the said regulation shows that seeking information on these two items are mandatory:

- Existing investments/assets
- Liability/borrowing details

15.1.5. In the absence of the above information about the clients, it is *prima facie* observed that the risk profiling of the client will not depict the correct financial situation and risk appetite of the client, leading to an incorrect risk assessment and consequently faulty investment advice by the IA. The same is *prima facie* detrimental to the interest of the client.

15.1.6. In this factual context, clause 4 of Code of Conduct read with regulation 15(9) of the IA Regulations is relevant for consideration. The text of the said provision is reproduced below:

IA Regulations
15(1)...

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

Code of Conduct

...

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.

15.1.7.I note that the purpose for which it has been mandated by the IA Regulations that the IA must necessarily carry out risk profiling before selling its services, as stated in preceding paragraphs, is to give an informed investment advice to the client which is consistent with the real risk appetite of the client which the verified information would show up. In the extant matter, *prima facie* it is noted that the IA has neither verified the information provided by the client nor the IA's risk profile questionnaire has the complete list of information stipulated under regulation 16 (a) of IA Regulations to adequately assess the risk a client is able to take. Thus, the IA has *prima facie* violated regulation 16 (a) of IA Regulations and clause 4 of Code of Conduct for IA as given under Third Schedule read with regulation 15(9) of IA Regulations.

15.2. Selling multiple advisory packages

15.2.1. Regulations 16(f) of IA Regulations requires the IA to periodically update risk assessment of its client. But, in the current matter, it is *prima facie* observed that risk profile of the clients were frequently updated/ changed in a dubious manner (without any supporting documents) in order to sell the advisory packages suitable for different risk profile and maximize revenue without any regard to client's benefit. Some instances are given below:

15.2.1.1. Mr. Nitin Shivankar:

Risk Profiling of the client done by Epic is reproduced below:

Risk profiling date	Client's willingness to take financial risk	Client's Annual Income mentioned in risk profiling	Client's investment experience	Risk Profile Score (out of 39)

	mentioned in risk profiling		mentioned in risk profiling	
12.02.2018	Low risk taker	1-5 Lakh	1 to 3 years	20
05.03.2018	High risk taker	5-10 Lakh	4 to 6 years	29
22.03.2018	Very high risk taker	Above 25 Lakh	>10 years	39
23.04.2018	Low risk taker	1-5 Lakh	1 to 3 years	20
24.04.2018	High risk taker	5-10 Lakh	4 to 6 years	28

As per Epic's "Client Registration and Application Form", gross annual income mentioned by this client is between ₹ 1 to ₹ 5 lakh. However, from the above table, it can be seen that Epic has changed client's annual income in the risk profiling questionnaire (from ₹ 1- ₹ 5 lakh to ₹ 5- ₹10 lakh to above ₹ 25 lakh and again ₹ 1- ₹ 5 lakh) for changing / increasing the risk profiling score of the client in order to sell him multiple advisory product/service.

Details of various advisory product/ services sold to the client are given below:

Invoice date	Product/Service sold	Service period	Amount of service (₹)
12.02.2018	Stock cash	20 days	5000/-
05.03.2018	Premium cash	360 days	100200/-
22.03.2018	Rhodium Index Options	30 days	20000/-
23.04.2018	Nifty Options	30 days	7000/-
24.04.2018	Bank Nifty Options	45 days	10000/-
24.04.2018	Base Metals & Energy Pack	34 days	12000/-
05.06.2018	Bank Nifty Options	33 days	5210/-
06.09.2018	Options Call and Put	30 days	6000/-
07.02.2019	TMC Bluechip	90 days	13300/-
	Total		178710/-

From the analysis of aforesaid Tables, it can be *prima facie* seen that Epic has been changing the risk profile of the client as per the requirement of the product / service it wants to sell to the client. From the aforesaid data, it can be observed that on April 23, 2018, the client was classified as a low risk taker and within one day i.e. on April 24, 2018, he became a high risk taker client. Further, on March 05, 2018 the annual income of the client was between ₹ 5 to ₹ 10 lakh and experience of the client was between 4 to 6 years whereas

within 17 days i.e. on March 22, 2018 client's annual income became above ₹ 25 lakh and his investment experience became more than 10 years.

Thus, from the above, in the given facts and circumstances of the case, it is *prima facie* held that the changes recorded by Epic in the risk profile questionnaire has no factual basis (not supported by documents), the frequency with which the risk profile of the client is changed / modified which ranges between one day to couple of weeks and the fact that the categorization of risk appetite of the client moves from Low Risk taker to High Risk taker to again Low Risk taker within a short span of time, indicates that the changes recorded by Epic in the risk profile questionnaire are *prima facie* non-genuine.

15.2.1.2. Mr. Jitendra Sonar:

Risk Profiling of the client done by Epic is reproduced below:

Risk profiling date	Client's willingness to take financial risk mentioned in risk profiling	Client's Annual Income mentioned in risk profiling (₹)	Client's investment experience mentioned in risk profiling	Risk Profile Score (out of 39)
16.10.2017	Very high risk taker	Above 25 lakh	>10 years	39
29.12.2017	High risk taker	10 to 25 lakh	7 to 10 years	36
15.02.2018	High risk taker	5 to 10 lakh	4 to 6 years	28
28.02.2018	Very high risk taker	Above 25 lakh	>10 years	37
20.03.2018	Low risk taker	1 to 5 lakh	1 to 3 years	20
21.03.2018	Very high risk taker	Above 25 lakh	>10 years	39

From the above table it can be *prima facie* seen that Epic has been making frequent changes in the risk appetite, annual income level and investment experience of the client in the risk profile questionnaire to arrive at different risk profile scores. Such changes are made without any supporting documents from the client. The frequency of such changes are from 1 day to 2.5 months. Client's investment experience on October 16, 2017 was more than

10 years whereas after 6 months i.e. on March 20, 2018 it became less than 3 years, which on face of it appears to be non-genuine.

Details of advisory products/ services sold to the client are given below:

Invoice date	Product/Service sold	Service start date	Service period	Amount of service (₹)
16.10.2017	Swing MCX	17.10.2017	30 days	50000/-
17.10.2017	Swing MCX	18.10.2017	100 days	70000/-
28.11.2017	Swing MCX	16.02.2018	10 days	20000/-
29.12.2017	Premium Futures	29.12.2017	20 days	15000/-
01.02.2018	Stock Futures	08.03.2018	50 days	15000/-
06.02.2018	Premium Futures	12.02.2018	38 days	28000/-
15.02.2018	BEP Pack	15.02.2018	10 days	5000/-
28.02.2018	PCG Cash	28.02.2018	5 days	15000/-
15.03.2018	PCG Futures	16.03.2018	90 days	157000/-
15.03.2018	PCG Futures	19.03.2018	30 days	80000/-
15.03.2018	PCG Futures	02.05.2018	7 days	157000/-
15.03.2018	Options Call and Put	16.03.2018	24 days	5000/-
15.03.2018	BEP Pack	22.03.2018	20 days	10000/-
15.03.2018	BEP Pack	19.04.2018	180 days	55500/-
20.03.2018	Stock Futures	19.06.2018	13 days	4000/-
20.03.2018	PCG Futures	18.06.2018	7 days	19000/-
21.03.2018	PCG Futures	09.07.2018	10 days	27000/-
26.03.2018	PCG Futures	23.07.2018	5 days	15000/-
14.04.2018	Stock Futures	16.08.2018	17 days	50000/-
24.04.2018	Premium Futures	01.10.2018	57 days	42000/-
24.04.2018	Premium Futures	01.11.2018	40 days	30000/-
24.04.2018	Swing Future+	15.10.2018	4 days	16000/-
24.04.2018	BEP Pack	02.05.2018	20 days	10000/-
07.05.2018	Rhodium Index Options	07.05.2018	26 days	20000/-
24.05.2018	Bank Nifty Options	28.05.2018	31 days	6500/-
13.06.2018	Rhodium Index Options	15.08.2018	16 days	12000/-
16.06.2018	Nifty Options	18.06.2018	24 days	5000/-
08.08.2018	Rhodium Index Options	03.12.2018	24 days	18000/-
	Total			957000/-

15.2.1.2.1. From the aforesaid table, following is *prima facie* observed:

15.2.1.2.1.1. New service is frequently sold to the client before completing the earlier service.

15.2.1.2.1.2. It cannot be a coincidence that whenever the risk profile of the client is modified / changed a new product is sold to the client and in some instances, for e.g., March 20, 2018 – March 21, 2018, the risk profile is changed within a day and a new product is sold to the client even before the completion of earlier service.

15.2.1.2.1.3. Vide invoice dated October 16, 2017, Swing MCX service was sold for ₹ 50,000/- for a service period of 30 days starting from October 17, 2017 and again the same product was sold for ₹ 70,000/- the very next day, vide invoice dated October 17, 2017 for a service period of 100 days starting from October 18, 2017.

15.2.1.2.1.4. Similarly, on March 15, 2018, PCG Futures service was sold for ₹ 1,57,000/- for a service period of 90 days starting from March 16, 2018 and again on the same day, the same service has been sold for ₹ 80,000/- for a service period of 30 days starting from March 19, 2018.

15.2.1.2.1.5. Further, on April 24, 2018 Premium Futures service was sold for ₹ 42,000/- for a service period of 57 days starting from October 1, 2018 and again on the same day, the same service has been sold for ₹ 30,000/- for a service period of 40 days starting from November 1, 2018.

15.2.2. During the inspection, it was found that Epic has changed the risk profiling very frequently and sold multiple services to its clients. On a sample basis risk profiling of 83 clients was inspected and the frequency of changing of risk profiling of the said 83 clients is given below:

Change in risk profiling frequency	No. of clients
1 to 5 times	11
5 to 10 times	29
10 to 20 times	19
More than 20 times	24

Total	83

It can be seen from the table above that in the sample selected more than 50% of the cases risk profiling has been changes more than 10 times within the inspection period i.e. FY 2017-18 and FY 2018-19. Further, in case of 24 sample clients, Epic has changed their risk profiles more than 20 times i.e. almost every month in last 24 months. For instance, in case of Mr. Amar Mehta, his risk profile was changed 36 times in a year (December 9, 2017 to December 31, 2018). Example of change in 3 risk profiling forms of Mr. Amar Mehta is reproduced below:

Question	Answer and (Score assigned in risk profiling dt.11.12.2017)	Answer and (Score assigned in risk profiling dt.14.02.2018)	Answer and (Score assigned in risk profiling dt.25.04.2018)
How familiar are you with capital and commodity markets?	I understand that markets fluctuate and that different market sectors offer different income, growth and taxation characteristics. (3)	I have just enough experience to understand some aspects of capital and commodity markets. (2)	I am experienced with all sectors and understand the various factors which Influence portfolio performance. (4)
What best describes how you feel after you have made a decision which will affect your financial future?	Neutral (3)	Neutral (3)	Very Confident (5)
How many years of investment experience do you have?	4-6 years (2)	1-3 years (1)	7-10 years (3)
Gross annual income:	5-10 lakh (3)	1-5 lakh (2)	10-25 lakh (4)
How do you rate your willingness to take financial risk (risk appetite)?	High risk taker (4)	Low risk taker (2)	High risk taker (4)
Total risk score	28	20	36
Risk category	Growth	Balanced	High risk high growth investor
Invoice date	11.12.2017	19.02.2018	25.04.2018
Product sold	BEP Pack	Nifty Futures	Premium Futures
Product category	High risk	Moderate risk	High risk

It was noted during inspection that the risk category of clients is changed from moderate risk to high risk in order to sell advisory product / services falling in that risk category in a very short interval of time.

15.2.3. Before moving forward, I would like to quote the relevant provisions which have to be considered. The said provisions are regulation 4 (1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and regulations 16(a), 16 (b) of IA Regulations and clauses 1 and 2 of Code of Conduct in Schedule III read with regulation 15 (9) of IA Regulations. The text of the said provisions are reproduced below;

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

IA Regulations

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.

...

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

16. Investment adviser shall ensure that,-

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

(i) age;

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

(iii) income details;

(iv) existing investments/ assets;

(v) risk appetite/ tolerance;

(vi) liability/borrowing details.

16 (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.

Code of Conduct

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.

15.2.4. From the aforesaid discussions, it is *prima facie* observed that the risk profiling done by Epic is not genuine. The changes made in the risk profile questionnaire appears to be made by Epic on its own in the following 3 parameters /question to manipulate the risk profile score in order to sell advisory product / service with a different risk:

15.2.4.1. Client's willingness to take financial risk mentioned in risk profiling.

15.2.4.2. Client's annual income mentioned in risk profiling.

15.2.4.3. Client's investment experience mentioned in risk profiling.

15.2.5. Thus, from the above, *prima facie* it seen that Epic has frequently updated / changed risk profile of the clients within a short span of time which *prima facie* indicates that the IA does not have adequate systems in place for assessing the risk a client is willing and able to take. It is also noted in the preceding paragraphs that the risk profile of the client is deliberately updated / modified to sell a new product to him which is not as per his correct and non-manipulated risk profile. The said act of Epic is a fraudulent act as defined under PFUTP Regulations as it has the effect of investors dealing in securities which is not in their best interest as per their risk appetite. Further, this also *prima facie* shows that Epic has failed to comply with the obligations and responsibility cast upon it and has not been fair in its dealing with its clients. Epic has acted in complete disregard to the fiduciary responsibility entrusted on it under IA regulation and has kept its own interest ahead of its client's interest. Moreover, *prima facie* it appears that the IA has not been honest and fair in its dealings with its clients and has been acting in a manner so as to maximize its service fees by selling multiple advisory services within a short period of time and even before completion of the earlier service rather

than rendering best possible advice to its clients. Furthermore, the frequency with which the risk profile of the clients are modified / changed and the information contained therein more particularly with respect to client's investment experience and client's annual income, *prima facie* indicates that the IA is not carrying out its due diligence properly for assessing the risk which the client would be able to bear.

15.2.6. The aforesaid actions of the IA has *prima facie* led to the following violations:

15.2.6.1. Epic has failed in its responsibility to act in a fiduciary capacity towards its client which is entrusted upon it under regulation 15 (1) of IA Regulations.

15.2.6.2. Epic has failed to do risk profiling in a prudent and in an appropriate manner as per regulations 16(a) and 16 (b) of IA Regulations.

15.2.6.3. Epic has acted in a fraudulent manner as per regulation 4 (1) of PFUTP Regulations.

15.2.6.4. Epic has failed to abide by the clauses 1, 2 and 6 of Code of Conduct in Schedule III read with regulation 15 (9) of IA Regulations.

The text of the aforesaid provisions, except regulation 16(a) of IA Regulations is reproduced below:

16. Suitability Assessment

16.1. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice and the risk profile should be communicated to the client so as the client too can assess his risk profile before agreeing to accept the advice.

16.2. In this factual context, the following provisions, regulation 4 (1) of PFUTP Regulations and regulations 17(a), 17(d), 17 (e) and clauses 1 and 2 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations

of the IA Regulations are relevant for consideration. The text of the said regulations is reproduced below:

PFUTP Regulations

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

IA Regulations

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

17. Investment adviser shall ensure that,-

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

...

(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.

Code of Conduct

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.

16.3. It is *prima facie* observed based on the analysis of advisory products / services offered to the client vis-à-vis their risk profile that Epic has sold advisory products / services to Low Risk clients which are actually meant for High Risk clients. Some instances are given below:

16.3.1. Mr. R. D. Thiagarajan:

Vide invoice dated August 1, 2017 Epic had sold BEP pack in commodity derivatives segment to the client for ₹ 25,000/- for the service period of 50 days commencing from August 9, 2017. As per the service categorization of Epic, the said service falls under High Risk category. Vide email dated August 9, 2017, the client informed Epic that his risk profiling is not correct since he is a Defensive Category investor whereas Epic has categorized him as High Growth investor. Even though the client has disagreed to the risk profiling, as noted from his email dated August 9, 2017, Epic has sold High Risk category service to the investor. The client had suffered huge losses and has filed a complaint in SCORES.

16.3.2. Mr. B. Siva Kumar:

It is noted from client's risk profile dated June 16, 2018, that his risk profile was categorised as "Balanced" i.e. Medium Risk Taker. However, as noted from Epic's Product List and invoice dated June 18, 2018 that the advisory product / service meant for High Risk Category (Stock Futures) was sold to him for ₹ 5,000/-. The details of risk profiling is given below:

Particulars	Risk Profiling on 16.06.2018
Answer to Q.4 of RPM	I am not familiar with investing and am cautious.
Answer to Q.10 of RPM	Low risk taker
Total Points score	20
Risk category	Balanced

16.3.3. Mr. Amar Mehta:

The client is a senior citizen (Date of birth is May 3, 1952). His risk profiling is given below:

Particulars	Risk profiling date 29.11.2018
Q.4 Experience in investing?	Not familiar with investing & I am cautious
Q.10 Risk capacity	Low risk taker
Risk profiling score	20
Risk category	Balanced

It is noted from his risk profile dated November 29, 2018 that the client is a Low Risk Taker and his risk category is "Balanced" and hence High Risk Service should not have been sold to client. However, on very same day i.e. November 29, 2018, it is noted from the invoice that "Stock Futures" service

which as noted from Epic's Product List is high risk category was sold to client for ₹ 22,000/-.

17. Thus, *prima facie*, it appears that the IA has failed to act with due skill, care and diligence as the IA has been selling advisory services / products without ensuring suitability of advice to its clients in accordance to their risk profile. Further, the IA has not been honest and fair in its dealings with its clients as the IA has selected and sold package / product to its clients without any regard to its clients' investment experience and his risk appetite. Moreover by recommending complex product "Stock Futures" to its clients who has a low risk appetite and has no securities market investment experience *prima facie* shows that the recommendation of the IA was not based upon a reasonable assessment that the structure and risk reward profile of the financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Moreover as held by Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Kanaiyalal Baldevbhai Patel and Ors.* 2017 SCC Online SC 1148 that a trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between the parties engaged in business transactions. In the instant matter, the act of the IA of knowingly selling a product which is ill suited to the risk profile of the client, *prima facie* indicates that the IA was not dealing with its clients in good faith and was *prima facie* indulging in an unfair trade practice.

18. The aforesaid actions of the IA has *prima facie* failed to comply with regulation 4(1) of PFUTP Regulations, regulations 17(a), 17(d), 17 (e) and clauses 1 and 2 of Code of Conduct as specified in Schedule III read with regulation 15 (9) of IA Regulations.

19. Unfair and Unreasonable Charges

19.1. It is noted from Epic's Product List that Epic has charged advisory/service fee more than the amount mentioned in the fee structure. It is also observed from the invoices as stated in the table below that Epic is charging additional fee in the name of "Internal Calls" which is not disclosed in the fee structure. The analysis of few sample clients' invoices is given below:

Client Name	Invoice date	Service	Period of service	Service Charges as per Epic's fee	Fees collected (₹)
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				structure (₹ per month)	
Pradeep Rawat	15.04.2017	Bank Nifty Options	42 days	6200	137001
Pradeep Rawat	01.08.2017	Internal Calls	360 days	*	70000
Pradeep Rawat	01.08.2017	Internal Calls	360 days	*	80000
Pradeep Rawat	04.08.2017	Internal Calls	360 days	*	32160
Fakir RizwanaBanu	06.10.2017	Swing Future	30 days	59000	130000
AkilaSubbiah	06.10.2017	PCG Options	360 days	79700	1100000
Jitendra Vilas Sonar	14.04.2018	Stock Futures	17 days	8800	50000
Kuldeep Kumar	19.04.2018	BEP Pack	8 days	14750	136900
S. B. Lokesh	09.08.2018	HNI cash	90 days	53100	250000

* No such service exists in Epic's service category list.

19.2. Before proceeding forward, I would like to refer to the relevant provisions of IA Regulations which are regulation 15 (1) and clauses 1 and 6 of Code of Conduct for IA as given under Third Schedule read with regulation 15(9) of IA Regulations. The text of the said provisions is reproduced below:

IA Regulations

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.*

...

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

Code of Conduct

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.

...

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.

19.3. From the aforesaid table, it is *prima facie* noted that the IA is charging fees to its clients which is more than what is disclosed as per its fee structure, as noted from Epic's Product List. Hence, the same is *prima facie* unfair to its clients. Further, the IA has not been honest in its dealing with its clients as it has not disclosed upfront to its clients that a service named "Internal Calls" is not included in the fee structure but is billing them for the same.

19.4. I further note that in order to determine the “reasonableness” of the fee charged by the IA, I note that while no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness, it cannot also be stated that reasonableness of fee cannot be judged at all. IA Regulations, provides for the principle based determination of fee by the IA indicating that such fees have to be reasonable and the same can be tested as a violation of code of conduct. What is reasonable in a particular circumstance may be the outcome of several competing factors which are relevant for such determination. While determining the reasonableness of the fee the same has to be seen from the perspective of various factors such as proportionality, uniformity etc. However, the test of “reasonableness” of the fee, in my view does not mean, the same has been “agreed and paid”. If such standard is adopted, the reasonableness of the fee cannot be tested as the client has agreed to and paid the same. In the instant case, different amount has been charged from the same client in the name of “Internal Calls”, though the period of service is same. Thus, the said conduct of the IA is *prima facie* unreasonable as if the test of proportionality is applied, the fees for the same service over a period should be proportional to the period. Though, the “reasonableness” can accommodate the commercial realities where “discounts” for longer commitment of the clients in terms of money and duration with the IA are extended, the same cannot be termed as “reasonable” where the clients pays more for the same duration of service. The same is also *prima facie* not in the best interest of its clients.

19.5. In view of the aforesaid, it is further *prima facie* held that the IA has failed to act in a fiduciary capacity towards its clients which is entrusted upon the IA under regulation 15 (1) of IA Regulations and it has also failed to abide by clauses 1 and 6 of Code of Conduct for IA as given under Third Schedule read with regulation 15(9) of IA Regulations.

20. To summarize, the following is *prima facie* observed from the analysis of compliance audit reports, employees details including qualifications, NISM certificates, invoices / receipts issued to clients, risk profiling forms and IA’s product list:

- 20.1. Investment Advisors employed by Epic have not complied with the certification requirement within the timelines as prescribed under the IA Regulations.
- 20.2. Epic's Sales Consulting Team who deal with clients in key area of selection of service / products, do not have the requisite qualifications.
- 20.3. Risk profiling questionnaire designed by Epic collects insufficient and incomplete information without supporting documents about the clients for carrying out risk profiling.
- 20.4. IA has been selling multiple advisory services to its clients by frequently updating / changing risk profile of the clients.
- 20.5. IA has been selling advisory services / products to its clients without ensuring suitability of advice in accordance to their risk profile.
- 20.6. IA has not been transparent to its client regarding the advisory fees and has charged unreasonable fees.
21. It is noted that as per regulation 2(m) of the IA Regulations "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.* The term "investment advice" has been defined under regulation 2(l) *as 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. On a perusal of the aforesaid definitions, it becomes clear that the role of an "investment adviser" envisaged under the Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, risk profile etc. The investment adviser should also make adequate disclosures with respect to its products / services to its clients and should charge fair and reasonable fee from its

clients, which is also stipulated under the Code of Conduct for Investment Advisers under the IA Regulations.

23. The discussions in the aforesaid paragraphs *prima facie* show that Epic was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve having the requisite qualifications and certifications which will enable the IA to give an effective advice to its clients based on his risk profile. In the absence of necessary qualifications of the employees who were selling the products to the clients, the IA will not be in a position to interpret appropriately the information provided by its clients namely, client's financial situation, risk appetite, financial goal etc. From the findings of the preliminary examination, *prima facie* it appears that Epic was running a pre-meditated device where under the tele-callers / employees of Epic would approach prospective clients and enroll them for a free trial and once the client agrees to subscribe to its service, the unqualified employees of IA would sell multiple advisory products to the client and in some instances even before the completion of the tenure of the previous product, thereby increasing its income at the expanse of the best interests of its clients. Further, it is also noted that Epic by manipulating the risk profile score of its clients is selling unsuitable advisory product / service to its clients and is *prima facie* indulging in a fraudulent act. Moreover, Epic by selling products to its clients which does not match their risk profile and by charging unreasonable and arbitrary fees for services which were not disclosed to the client at the time of subscription, is *prima facie* also indulging in unfair trade practice and is not acting in the best interest of its clients. The conduct of the IA as enumerated above, is *prima facie* not in good faith towards its clients.

24. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he /she / it operates and it ill-behooves the intermediary to become a party to any market misconduct. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of its business dealings and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts. Under regulation 15 (1) of IA Regulations, an IA shall act in a

fiduciary capacity towards its clients. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct for an investment adviser prescribed under the IA Regulations, relevant provisions whereof are reproduced below:

Code of Conduct for Investment Adviser

1. Honesty and fairness

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

2. Diligence

An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

3. Capabilities

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

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

...

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.

...

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

25. Looking at the activities and manner of operation of Epic in the present case, which have been discussed in detail in the preceding paragraphs, I am of the *prima facie* view that Epic has failed to abide by the code of conduct on all counts mentioned above.

26. It is observed that the website of the IA is functioning and it is one of the medium via which new / prospective clients may subscribe to the services of the IA. As discussed in preceding paragraphs, the conduct of the IA has been *prima facie* found to be in violation of PFUTP Regulations and IA Regulations, thus, it is imperative that the new

/ prospective clients are safeguarded from the activities if IA which are *prima facie* not as per the provisions of applicable laws.

27. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of Epic mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and taking into account the business model of IA's *prima facie* found in this case, I am convinced that this is a fit case where effective and expeditious preventive and remedial action is required to be taken by way of ad interim ex -parte order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to the existing investors but also to new / prospective investors.
28. It was noted at the time of inspection that Epic's turnover as per its financial statement for the financial year 2018-19 till January 31, 2019 was ₹ 14.35 crore and was per client master data was ₹ 14.13 crore. As noted earlier, in the present case, *prima facie* violations of securities laws have been noticed on the basis of the inspection carried out by SEBI. Thus, it is noted that an amount of ₹ 14.13 crore has been collected by Epic *prima facie* through fee for carrying out investment advisory activity which is not as per the applicable provisions of law.
29. It is pertinent to mention that in the event, upon conclusion of the extant proceedings, it is found that the money was taken by Epic from the clients in *prima facie* violation of the applicable law, Epic would be liable to refund the money collected by it from the clients subject to the adjudication of the allegations on merits. While the current proceedings are ongoing there is a possibility that Epic may divert the money collected from the clients. I, therefore find that pending conclusion of the extant proceedings, in view of the alleged liabilities and the *prima facie* evidence against Epic, it is also essential to take urgent steps to prevent Epic from alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous.

30. It has already *prima facie* been found that many of Epic's clients have been sold services by its unqualified employees irrespective of their financial situation, investment objective and risk profiling. The selling of such plans goes against the best interest of the client as the same is not based on the investors' risk profile and the responses given by the client was not interpreted by qualified personnel of the IA. The requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. In some instances the risk profile score of the clients were *prima facie* fraudulently manipulated by Epic. Thus, exposing the existing clients to such advice, which has no co-relation to their risk profile, is against the interest of those investors and is a fraudulent act and an unfair trade practice. Thus, in order to prevent the existing as well as the prospective clients from getting such advice which has no co-relation to their risk profile, urgent steps need to be taken against Epic. Further, as discussed hereinabove, the very nature of the investment advisory activity being practised by Epic has been found to be *prima facie* in violation of the provisions of PFUTP Regulations and IA Regulations. In view thereof, allowing Epic to continue its services to its clients, regardless of whether they have complained against Epic or not, would tantamount to allowing the *prima facie* investment advisory activity of Epic to be operated by unqualified personnel, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations. Considering the above, in my view, the balance of convenience lies against Epic and immediate steps needs to be taken against Epic to protect the investors / clients from freshly subscribing to or continuing to get such *prima facie* investment advisory service from Epic through its unqualified personnel.

31. I further note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors collectively being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual Directors also. Here I would like to refer to

the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI* decided on April 26, 2013, wherein the Court observed as follows:

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

In the present case, as noted in preceding paragraphs, Mr. Nooruddin Bombaywala, Mr. Mustafa Nadeem, Ms. Apurva Gangwal, Ms. Nisreen Nadeem, Mr. Mohammed Nadeem and Ms. Jamila Bombaywala are the present directors of Epic. Consequently, the said Directors are statutorily required to exercise due care and diligence as expected from a prudent person which among other things entails running the affairs of the company within the four walls of the relevant statutory provisions. In the extant matter, *prima facie* the investment advisory activity carried out by Epic has been found to be fraudulent and an unfair trade practice and is not in compliance with the IA Regulations. The *prima facie* violations committed by Epic which have been discussed above also pertain to the time periods when 4 out of 6 persons (Mr. Nooruddin Bombaywala, Mr. Mustafa Nadeem, Ms. Nisreen Nadeem and Mr. Mohammed Nadeem) were acting as Directors of Epic. However, considering Epic is still continuing its service, when the remaining 2 persons have joined as Directors of Epic, therefore, all the present Directors of Epic are *prima facie* responsible for the violations committed by Epic.

32. Moreover, the employees who render investment advice are required to satisfy greater degree of regulatory requirements under the IA Regulations, such as compliance with "fit and proper conditions", requirements on qualification and certification and compliance with requirement of code of conduct under IA

Regulations. In addition, the PFUTP Regulations prohibits the market participants which includes the IA and its employees from fraudulently inducing any person to deal in securities with the objective of selling multiple products and increasing the income of the market participant. I note such prohibition is applicable on every employee of the Investment Adviser as market participant irrespective of whether they are involved in the process of giving investment advice. Therefore, there is requirement on all the employees to conduct the affairs of the Investment Adviser without “omission” or “commission” that amounts to fraud as per the PFUTP Regulations. Therefore, appropriate directions in this regard is incorporated in the operative portion of this order.

33. In view of the foregoing, pending detailed investigation, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Sections 11, 11B and 11D read with section 19 of the SEBI Act, 1992, direct as under :

33.1. Epic and its Directors are restrained from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any manner whatsoever, till further directions.

33.2. Epic, its Directors and any other employee/person working under Epic in its investment advisory activity shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.

33.3. Epic and any person, who is presently an employee of Epic, is directed to cease and desist, in course of his employment with Epic or with any other Investment Advisers, from commission or omission of any activity amounting to “fraud” as mentioned in paragraphs 15.2.5 and 17 of this order.

33.4. Epic is directed to provide a full inventory of all assets held in its 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.

- 33.5. Epic is directed 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 its name, including money lying in bank accounts except with the prior permission of SEBI.
- 33.6. The Depositories are directed to ensure that till further directions no debits are made in the demat accounts of Epic.
- 33.7. The Banks are directed to ensure that till further directions, no debits are made in the bank accounts held by Epic.
- 33.8. The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of Epic are not transferred.
34. The order shall come into force with immediate effect. A copy of the order shall be sent to the Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure that all the above directions are strictly enforced.
35. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entities in accordance with law. The entities against whom this order has been passed may file their objections, if any, within twenty one days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request, received from the said persons.

DATE: December 18, 2019

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA