WTM/MB/WRO/WRO/76/2019-20

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

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: Violation of provisions of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 and SEBI (Portfolio Managers) Regulations, 1993

In respect of:

Sr. No.	Name of the Entities	Registration Number	PAN
1	**Capital Heed Financial Research (Proprietor Mr. Shailendra Sen)**	**INA000009418**	**BUXPS9559Q**

Background:

1. Capital Heed Financial Research, Proprietor Mr. Shailendra Sen, (hereinafter interchangeably referred to as "Capital Heed/ IA / Mr. Shailendra Sen/ Noticee") is registered as an Investment Adviser ("IA") under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "IA Regulations") with effect from December 29, 2017. It has its office at 230, PU4, Scheme No.54, Indore, Madhya Pradesh, 452010. Its website address is www.capitalheed.com.

2. During the year 2015, Securities and Exchange Board of India ("**SEBI**") was in receipt of complaints through SCORES portal against an entity named Cash Cow Broking & Advisory Solution (hereinafter referred to as "Cash Cow") wherein, it was alleged that the entity has

given investors a commitment of assured returns. Based on the complaints received, an examination into the affairs of Cash Cow was carried out by SEBI. While the matter against Cash Cow is being dealt with separately, the extant order deals with Mr. Shailendra Sen (who was also a partner in Cash Cow) and his proprietorship, which is registered with SEBI as an investment adviser.

Observations regarding Cash Cow:

3. The following claims regarding Cash Cow were gathered from the entity's website www.cashcowresearch.com, which is no longer active:

   a. Cash Cow is a leading financial services company in area of broking and advisory industry in India.
   b. Cash Cow is registered with exchanges, NSE, BSE, MCX, NCDEX, MCX-SX, for providing broking services.
   c. Cash Cow offers Advisory Services, Broking Services, Portfolio Services and Fund Management.
   d. In advisory services, Cash Cow provides recommendation in all segments such as Stock cash, Stock future Tips, BTST Tips, Forex, etc. Various packages were being offered for subscription at specified rates and for specific products One such illustration is given below:

      Stock Future Tips– This service is for the traders who trade in Stock Future. These Stock Future Tips are the after effect of center exploration and investigation…and help you to get a huge profit. Our call via SMS will reach you as soon as the analysts send so there is no time lag between you reading it and working on the call.

   e. The fee ranges from Rs. 8,000/- per month to Rs. 48,000/- yearly.

f. The payment to subscribe to the services can be made directly to the bank accounts opened in the name of Cash Cow with ICICI Bank, Axis Bank and Central Bank of India. Alternatively, payments can be made through PayU Money.

4. Upon receipt of the complaints, SEBI, vide letter dated February 05, 2015, sought information from Cash Cow regarding its unregistered investment advisory activities as the entity was not registered with SEBI as an investment adviser; however, the letter was returned undelivered. SEBI also sought information regarding Cash Cow from NSE, BSE, NCDEX and MCX. The exchanges reverted that the entity, a partnership firm, is registered with Angel Broking Ltd. and Angel Commodities Broking Pvt. Ltd. as an Authorized Person. Thereafter, vide letter dated March 14, 2016, SEBI again wrote to Cash Cow seeking information about its unregistered investment advisory activities.

5. Mr. Shailendra Sen, one of the three partners of Cash Cow, responded to SEBI vide letter dated March 23, 2016, and submitted the following:

a. The partnership was incorporated on September 05, 2012, initially with two partners and the objective was to offer broking services, internet sales and support services and advisory services. The third partner joined on October 15, 2014.

b. They started advisory services in August 2014 and were offering products, such as, Stock Cash Tips, Stock Future Tips, Nifty Future Tips, Option Strategies, Commodity Tips, Forex Tips, HNI Premium Tips, etc. For these various products, they had 22 clients and generated fees of Rs. 1,90,800/- from advisory services.

c. As Cash Cow was an Authorized Person, it was their understanding that they were exempt from obtaining registration as an Investment Adviser.

d. It was further submitted that after receipt of the communication from SEBI, they have now stopped offering advisory services with immediate effect and shall offer such advisory

services only once they get registered with SEBI, for which they would make an application in the required format as soon as possible.

6. An examination of the bank statements of Cash Cow was carried out and the observations from the same are tabulated as below:

Sr. No.	Bank Account No	Transaction Period	Aggregate Value of Credit Transactions (in Rs.)
1	ICICI Bank A/c No. 004105014315	October 2015 to July 2017	10,81,521
2	Axis Bank A/c No. 915020050222831	October 2015 to Oct 2017	24,80,873
3	Central Bank A/c No. 3213140286	August 2014 to December 2016	29,89,169
	Total		**65,51,563**
4	Credits through PayU Money		38,22,530

7. As can be seen from the table above, the entity Cash Cow has collected a total of Rs. 65,51,563/- during the period August 2014 till October 2017. It is also seen that the entity continued to receive payments towards unregistered advisory services even after its submissions made to SEBI vide letter dated March 23, 2016, that they will stop their advisory business. It is observed that subsequent to the submission made to SEBI, during the period of April 2016 to February 2017, Cash Cow received payments amounting to Rs. 38, 64, 457/- (Rs. 23,48,652/- through Pay U Money gateway and cash deposits and credits amounting to Rs. 15,15,805/-) in its bank accounts.

8. The partnership deed, dated October 15, 2014, of Cash Cow was examined and it is seen that all three partners are working partners and agree to keep themselves actively engaged in conducting the affairs of the partnership firm. It is also observed that Mr. Shailendra Sen has a 55% share in the profits/ loss generated by the partnership and shall receive 55% of the remuneration that is distributed between the three partners. Further, the objective of the partnership is to carry on the business of advisory services in the share and commodity market. It is noted that though the partnership deed is dated October 15, 2014, as per the admission

Mr. Shailendra Sen vide letter dated March 23, 2016, they started advisory services in August 2014.

9. Details of a few complaints received in SCORES against Cash Cow are mentioned below:

a. Complaint of Mr. Vikram Oswal: The complainant has, *inter-alia*, alleged that he paid Rs.10,000/- on 07/01/2017 for profit commitment base plan (PCB) in which Cash Cow has committed to give minimum profit of Rs. 80,000/- in 30 days. From the email dated January 07, 2017, sent by Cash Cow to the complainant, it is seen that Cash Cow was providing investment advisory activity. The relevant extract is as below:

Subscription details
Payment Mode: Payment Gateway
Amount: 10000
Payment Date: 2017-01-07
Invoice No: INV431

Service details
Services Pack: PCB Pack
Start date: 2017-01-09
Expiry date: 2017-02-12

Cash Cow strictly follow Trading principles and Stop Loss policy wherein Customer by default agree to not do/enter any trade without defined Stop Loss.

b. Complaint of Mr. Devesh: The complainant has alleged that he has been receiving SMSs from Cash Cow asking him to subscribe to their services. Mr. Devesh has submitted copy of SMSs received in March 2015, extract of which is given below:

Stock future Pack:

SEL IDFC MAR FUTURE

BELOW 171.50 SL 172.60

TGTS 170.50, 169.50

Cash cow research

Stock Future Pack:

Ist TARGET ACHIEVED IN IDFC MAR FUTURE SELL

HOPE YOU BOOKED PROFIT

Stock Future Pack:

Kindly exit from ONGC MAR FUT BUY CALL

10. Therefore, I note from the material available on record i.e., (a) the details of the services being offered on the website of Cash Cow, (b) the submissions of the partner Mr. Shailendra Sen vide letter dated March 23, 2016, (c) contents of the partnership deed of Cash Cow, (d) examination of the bank account statements of Cash Cow and (e) material received along with complaints against Cash Cow, that there is, *prima facie*, evidence that Mr. Shailendra Sen, as partner of Cash Cow was carrying out investment advisory services, from August 2014 till October 2017 without obtaining the necessary certificate of registration as mandated under Section 12(1) of the SEBI Act, 1992, and Regulation 3(1) of the IA Regulations. These provisions are reproduced below:

Regulation 3(1) of the IA Regulations: Application for grant of certificate

"*On and from the commencement of these regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations.*"

Section 12 (1) of the SEBI Act, 1992:

"*No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser*

and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act."

11. Mr. Shailendra Sen has, *prima facie*, accepted that Cash Cow was carrying out investment advisory activities without obtaining registration from SEBI, as it was their understanding that since they were registered as an Authorized Person (AP) of a SEBI registered stock broker, they were exempt from obtaining registration as an Investment Adviser. Here, I note that Regulation 4 of the IA Regulations provides for the various categories of persons who are exempt from seeking registration from SEBI as an investment adviser. Regulation 4 (g) is reproduced below:

Exemption from registration.

4. The following persons shall not be required to seek registration under regulation 3 subject to the fulfillment of the conditions stipulated therefore,—
(a) ...
(g) Any stock broker or sub-broker registered under SEBI (Stock Broker and Sub-Broker) Regulations, 1992, portfolio manager registered under SEBI (Portfolio Managers) Regulations, 1993 or merchant banker registered under SEBI (Merchant Bankers) Regulations, 1992, who provides any investment advice to its clients incidental to their primary activity…

Through his own submissions, Mr. Shailendra Sen has accepted Cash Cow is only registered as an AP. It is clear from the above mentioned regulation that APs of SEBI registered stock brokers are not exempt from seeking registration as an investment adviser from SEBI. Further, an AP provides market access i.e., access to the trading platform of the stock exchange as an agent of the stock broker. Assuming that, and not admitting, providing of investment advice comes under the ambit of market access, the same has to be provided only to the clients of the

stock broker and the AP should not collect any amount or fees from the clients and he should receive remuneration for his services only from the stock broker. However, there is neither any material on record to show that the investors from whom Cash Cow has collected funds were clients of the stock broker with whom it was affiliated as an AP nor any evidence that funds were collected directly into bank account of the broker. Instead there is evidence that the money was directly collected in the bank account of Cash Cow, of which Mr. Shailendra Sen is a partner. Therefore, the argument of Mr. Shailendra Sen that he understood that Cash Cow was exempt from obtaining registration as an investment adviser since it was registered as an AP of a SEBI registered stock broker, cannot hold good even if the said argument is assumed to be true.

12. As per Section 25 of the Indian Partnership Act, 1932, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. It is seen from the partnership deed that all three partners in Cash Cow were active/ working partners and agreed to keep themselves actively engaged in conducting the affairs of the partnership firm. It is also observed that Mr. Shailendra Sen has a 55% share in the profits/ loss generated by the partnership and was to receive 55% of the remuneration that was distributed between the three partners. Hence, in the present case also the activities of Cash Cow are basically being carried out by its partners and in the limited context of the present matter, by Mr. Shailendra Sen who is one of the partners of Cash Cow.

13. Thus, there is evidence that, *prima facie*, Mr. Shailendra Sen, in his capacity as an active/ working partner in Cash Cow, was soliciting and inducing investors to deal in securities market on the basis of their investment advice, stock tips, etc., without having the requisite registration/ certification as mandated under the IA Regulations, and therefore, Mr. Shailendra Sen is, *prima facie*, in violation of Section 12(1) of the SEBI Act, 1992, read with Regulation 3(1) of the IA Regulations.

Capital Heed Financial Research:

14. During the course of the examination of the bank Account Opening Forms and Know Your Client documents of Cash Cow, it was observed that the partner Mr. Shailendra Sen is also currently registered with SEBI as an Investment Advisor under the proprietorship named Capital Heed Financial Research (SEBI Registration No. INA000009418 and PAN: BUXPS9559Q), based in Indore with effect from December 29, 2017.
15. Thereafter, the documents submitted by Mr. Shailendra Sen at the time of seeking registration with SEBI were examined and a perusal of Form 'A' (form for Application for Grant of Certificate of Registration as an IA) reveals the following observations:

    a. Mr. Shailendra Sen, in his application dated 11/09/2017, has declared that he was not engaged in investment advisory services prior to making the said application.
    b. To the query as to whether he has ownership/ directorship in any companies/ partnership, he has failed to disclose that he is a partner in Cash Cow.

16. At the time of seeking registration as an investment adviser from SEBI, in Form 'A', the applicant has to give a declaration on "*whether the applicant is engaged in investment advisory services prior to making application under these regulations.*" It is noted from the Form 'A' submitted by Mr. Shailendra Sen at the time of seeking registration that he has declared that he was not engaged in investment advisory services prior to making the said application. As already mentioned above, there is a, *prima facie*, finding that Mr. Shailendra Sen, through his partnership firm Cash Cow, has indulged in unregistered investment advisory activities. I note that Mr. Shailendra Sen, when seeking registration from SEBI as an investment adviser in his individual capacity, was under the obligation to disclose his activities as the partner in the partnership firm Cash Cow to SEBI. However, he has knowingly falsely stated in the application form for registration as Investment Adviser filed before SEBI that that he was not engaged in investment advisory services. I find that on the basis of having knowingly submitted the abovementioned false declaration and other documents attached to

the application for registration, SEBI has granted registration to Mr. Shailendra Sen, proprietor of Capital Heed, under the IA Regulations.

17. The IA Regulations, *inter alia*, provide the framework for regulating the activity of entities who are in the business of providing investment advice in respect of securities and investment products. These Regulations seek to create a structure within which investment advisers will operate and also make them duly accountable for their investment advice by requiring them to comply with the criteria set out in the relevant provisions.

18. I note that, *prima facie*, by knowingly providing false information to SEBI in his application for registration as IA, the Noticee has, *prima facie*, violated one of the conditions of certificate and the ensuing provisions of Regulation 13 of the IA Regulations. These provisions are reproduced below:

Conditions of certificate

Regulation 13: The certificate granted under Regulation 9 shall, inter alia, be subject to the following conditions:

(a) the investment adviser shall abide by the provisions of the Act and these regulations;
(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted

19. Further, in terms of Regulation 15(9) of the IA Regulations, every investment adviser shall abide by the Code of Conduct specified in the Third Schedule, the 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. …

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. …

20. An investment adviser is required to act in a manner and comply with all applicable regulatory requirements which are in the best interests of its clients and uphold the integrity of the securities market. I note that adherence to the code of conduct is an ongoing requirement and the conduct of the Noticee in knowingly providing false information to SEBI at the time of seeking registration is, *prima facie*, a serious violation of Clauses 1 and 8 of the code of conduct. Further, the Noticee has failed to comply with Regulation 13 (b) as the fact of his conduct as partner in providing unregistered investment advisory service was not informed by the Noticee, even after the certificate of registration was granted to him. By virtue of this violation, the Noticee has also violated Regulation 13 (a) of the IA Regulations as well. As such, the Noticee has not acted in a manner which is in the best interests of the clients and integrity of the securities market.

21. Hence, in view of the above observations, I find that, *prima facie*, the Noticee has violated Clauses 1 and 8 of the Code of Conduct read with Regulations 13 and 15 (9) of the IA Regulations.

22. During examination, it was also observed from the website of Capital Heed that the entity is claiming to offer Portfolio Management Services. The Noticee has also claimed that it has over a decade long experience in providing portfolio management services. I note here that

the Noticee is registered with SEBI only in the capacity of an Investment Adviser. Regulation 3 of the SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as the PMS Regulations), states the following:

3. Registration as portfolio manager.—

No person shall act as portfolio manager unless he holds a certificate granted by the Board under these regulations…

23. Therefore, I note that, *prima facie*, the Noticee is misrepresenting to investors that it can provide portfolio management services although it does not hold the certificate of registration from SEBI to do so and as such, the Noticee is in violation of Regulation 3 of the PMS Regulations. Further, the violation of Regulation 3 of the PMS Regulations results in the, *prima facie*, violation of Clauses 1 and 8 of the Code of Conduct read with Regulation 15 (9) of the IA Regulations.

24. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. The IA Regulations have been formulated with the main objective of regulating the activities of investment advisers so as to safeguard the interests of investors and hence the requirements/ conditions laid down therein have to be mandatorily followed.

25. The conduct of Mr. Shailendra Sen, proprietor of Capital Heed Financial Research, by knowingly providing false information at the time of seeking registration as an investment adviser before SEBI does not, *prima facie*, appear to be in the interest of investors and the securities market. Necessary action needs to be taken in this matter to prevent the Noticee from taking any new clients, which would be on the basis of the SEBI registration having been obtained through wrongful means. Allowing an investment adviser, who has obtained a certificate of registration, *prima facie*, on the basis of wrong and incorrect information, to

register new clients, would not be in the interest of the orderly development of the securities market. It may be argued that the activities of the Noticee should be stopped completely at this stage to protect even the existing clients. However, I note that the existing clients would have already made payments to the Noticee for the services of investment advisory and would have made the necessary investments in the securities market based on that advice. Hence, the action envisaged against the Noticee should not put the existing clients at a disadvantage.

26. Hence, I am convinced that this is a fit case where, pending detailed examination, effective and expeditious preventive action is required to be taken by way of an *ad interim ex-parte* order to protect the interests of investors and preserve the safety and integrity of the securities market. There is an urgent need to stop the investment advisory activities of the investment adviser and the balance of convenience is not in favour of permitting the Noticee to carry out such activities without imposing suitable restrictions. Such action needs to be taken not only to prevent any further harm to existing clients of the Noticee but also to protect prospective clients.

Order

27. In view of the above, I, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11, 11B and 11D of the SEBI Act, 1992, and Regulation 35, Chapter VI of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby issue the following directions against the Noticee, Mr. Shailendra Sen, proprietor of Capital Heed Financial Research (SEBI Registration Number: INA000009418 and PAN: BUXPS9559Q):

    a. The Noticee, and any person while working under him or under his instructions as employee or otherwise, shall cease and desist from soliciting/ acquiring any fresh clients for investment advisory services, directly or indirectly, till further orders.

    b. The Noticee, and any other person while working under him or under his instructions as employee or otherwise, shall cease and desist from offering any new investment advisory

services to its existing clients for which fresh payment is required to be made by these clients. It is clarified that the services for which the existing clients have already made payment to the Noticee shall be duly delivered to these clients and no renewal of these services shall be permitted.

c. The Noticee, and his representatives, as defined in Regulation 2(1)(r) of the SEBI (Investment Adviser) Regulations, 2013, shall discharge all their obligations, as required under these Regulations, towards the existing clients in respect of the investment advisory services that it has to deliver as mentioned in para 27 (b) above.

d. The Noticee shall remove all references regarding his holding out as a portfolio manager made by him through any media (physical or digital).

e. The Noticee shall circulate a copy of this Order to all its existing clients and display the contents of the same on its website immediately.

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

29. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entity in accordance with law. The person against whom this Order has been passed may file his objections, if any, within twenty one days from the date of this Order and, if he so desires, avail himself of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request, received from the said person.

Date: November 18, 2019 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA