BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/DS/2024-25/30896]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

IN THE MATTER OF

Lamron Analysts Private Limited
PAN No.: AABCL1113H
SEBI IA Regn No.: INA300003772

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted comprehensive inspection of Lamron Analysts Private Limited, Investment Adviser (hereinafter referred to as "**Lamron Analysts**" / "**Noticee**") jointly with BSE Administration and Supervision Limited (hereinafter referred to as "**BASL**") on November 22, 2023 to look into various compliance requirements adhered by the Noticee with respect to the provisions of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations, 2013**") and applicable SEBI Circulars. The period covered in inspection was from April 01, 2022 to October 31, 2023 (hereinafter referred to as "**inspection period**" / "**IP**"). Noticee is registered as an investment adviser with SEBI registration no. INA300003772.

2. The findings/ observations made during the course of inspection were communicated to the Noticee by SEBI vide letter dated January 19, 2024. After examining the reply submitted by the Noticee vide letter dated January 25, 2024,

it was alleged that the Noticee violated various provisions of IA Regulations, 2013, and applicable SEBI Circulars. The extracts of violations alleged to have been committed by the Noticee and the corresponding provisions of IA Regulations, 2013 and SEBI Circulars are given in the tabulation below:

Table 1

Sr. No.	Alleged Violations	Regulatory Provisions
1	Fees and Charges charged in both fixed fee and AUA mode.	Regulation 15A of IA Regulations, 2013 read with point (b) under "General Conditions under both modes" as specified in Clause 2(iii) of SEBI Circular SEBI\HO\IMD\DF1\CIR\P\2020\182 dated September 23, 2020.
2	Not providing suitable advice	Regulation 17 of the IA Regulations, 2013

3. SEBI initiated adjudication proceedings against the Noticee under Section 15EB of the SEBI Act, 1992 for the alleged violations of the relevant provisions as stated above.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated August 21, 2024 under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire into and adjudge under Section 15EB of the SEBI Act, 1992, the violations of aforesaid provisions alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

5. Show Cause Notice No. SEBI/EAD/BM/DS/27396/1/2024 dated August 29, 2024 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and rule 4 of SEBI Adjudication Rules, to show cause

as to why an inquiry should not be held against it and why penalty, if any, under Section 15EB of the SEBI Act, 1992 be not imposed on the Noticee.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide letter dated September 18, 2024, the Noticee submitted its reply.

7. The submissions made by the Noticee are as summarized below:

Fees and Charges charged in both fixed fee and AUA mode

7.1. The actions of the Noticee are within the four corners of the Circular dated 23.09.2020. The amount of Rs.1,13,030.58/- represents the total amount received from 10 clients. The Show Cause Notice proceeds on the presumption that each client was charged twice each year both under AUA mode and Fixed Fee mode. This presumption is incorrect inasmuch as there are years where the client has been charged only under 1 mode. The Show Cause Notice has considered even such amounts at the time of quantifying the sum of Rs.1,13,030.58/-. In view thereof, the total amount of overlap stands reduced to Rs.1,05,960/-. The Noticee has provided calculations as annexure to its reply.

7.2. Noticee's interpretation is that AUA Mode and Fixed Fee Mode are together exclusive to any other mode.

7.3. Some clients of the Noticee, who chose 2 different products/services had the liberty to choose which way they wanted to be billed. A client had the flexibility of choosing AUA Mode for a particular product / service and a Fixed Fee mode for another. By charging a client under AUA mode for a Product A for the full year and under the Fixed Fee mode for Product B, the Noticee complied with the requirements of the said Circular.

7.4. Since the regulations explicitly envisage a situation where multiple advisory services can be availed by a client in the same period the choice in the mode

of charging the fees has to be made for each service and not across all services. An IA cannot charge fee under both the modes for the same product. If the intent of the regulator was such that the same mode of charging fees had to be applied across ALL services for a client, then it would have explicitly mentioned the same, there being no reason to.

7.5. *However, to avoid any further confusion, the Noticee has stopped charging clients as per AUA totally and is now only charging as per Fixed Mode. As pointed out in the Show Cause Notice, the brief overlap of fees in respect of 10 clients totals to Rs.1,13,030.58/-. The fees recovered under AUA Mode totals to Rs.47,715/-. Insofar as restitution of the fees collected under AUA mode, the Noticee has initiated the process of refund by reaching out to the clients and seeking their bank details for transfer. Presently, 7 of the 10 clients have been refunded in full. The remaining 3 clients have been reached out to but they are yet to revert with their bank details. The amount due to be refunded is merely Rs.1,333/- which also the Noticee will refund upon receipt of bank details from clients*

7.6. *The alleged contravention is technical in nature and at best a procedural irregularity and therefore in the nature of a rectifiable defect. It is therefore prayed that as the excess fee has been refunded to the clients, the Noticee has complied with the said Regulations and the said Circular, the Show Cause Notice be dropped.*

<u>Not providing suitable advice</u>

7.7. *The Noticee has always provided its client suitable advice. The Noticee provides investment advisory services based on "stocks and debt ETFs". Stocks by nature are inherently high risk unlike debt where there is a guaranteed return.*

7.8. The clients are profiled into "low, high and medium" risk depending on their answers to the questionnaire. Likewise, the services/products being offered by the Noticee are also classified as "low, high and medium".

7.9. As required by Regulation 16(e) of the said Regulations, the risk profile of the client is communicated to the client after risk assessment is done. Whenever there is a mismatch between the client profile and product/service chosen, the system communicates the said mismatch to the client. Post such communication, the client is at liberty to take a call as to the type of product he wants to invest in; meaning thereby, that a low risk profile client can choose to invest in a moderate/high-risk product.

7.10. By doing risk profiling and providing the risk profiling assessment to the client, the Noticee is adhering to its fiduciary duty of making the client aware about the inherent risk of trading as well as the risk taking capacity of the client.

7.11. There is no provision in law or otherwise that prohibits a low-risk profile client from investing in a high-risk product if his investment objective is to invest in a high-risk product. Unlike purchase of a low-risk product, when a low-risk profile client opts to invest in a high-risk product, the Noticee on its part complies with the requirement of the said Regulations by categorically spelling out in unequivocal and clear terms that the product being considered by the "low risk profile" client is inherently a "high-risk one".

7.12. The advisory services provided are in tandem with the requirement of individual clients. For instance, a client classified as a "high risk profile" is offered a high-risk product/service. Such classification does not prevent the high-risk profile client from subscribing to a low-risk product.

7.13. Also, the Noticee enters into an Investment Agreement with each of its clients, which includes the following clause-

"20. Risk Factor

The investor has the financial ability to bear the economic risk of the investments that it makes including any investments made as a result of the services rendered by the Investment Adviser hereunder, has adequate means for providing for its current requirements and possible contingencies, and possesses such degree of financial sophistication so as to understand the Investment recommendations, advice and Models provided by the Investment Adviser hereunder. Investment in securities market are subject to market risks, Read all the related documents carefully before Investing. Registration granted by SEBI, membership of BASL (in case of IAs), and certification from NIBM in no. way guarantee performance of the intermediary or provide any assurance of returns to investors."

7.14. It is submitted that the Noticee's responsibility is restricted to making the client aware of the perils of investing in an inherently high-risk service/product and nothing more. The Noticee does not assure any kind of return to the client from investment in the securities market. The Noticee has not lured any client into investing in a high-risk product by promising higher returns.

7.15. Noticee has referred and quoted the SEBI AO Order in respect of Dr. Nikhil Dayanand Baljekar, Investment Advisor, wherein benefit of doubt was given in the absence of any specific instance of mis-advise to the client.

7.16. However, after receiving the SCN, the Noticee has disabled sale of high-risk products/services to low/moderate risk profiles entirely. Even if a "low risk profile" client despite being fully aware of the high risk associated with high risk services/products is keen on investing accordingly, the Noticee is not effecting any sale thereby effectively blocking him out.

8. Vide letter dated September 27, 2024, hearing notice was issued to Noticee to provide opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear for the hearing on October 17, 2024. The Noticee

appeared for the scheduled hearing through its authorized representative (**AR**). The AR reiterated submission made vide letter dated September 18, 2024.

CONSIDERATION OF ISSUES AND FINDINGS

9. Considering the allegations made out in the SCN and the submissions made by the Noticee, the following issues require consideration in the present case:

   ISSUE I - Whether the Noticee is in violation of the provisions of IA Regulations, 2013 and applicable SEBI Circulars, as given in Table 1 above?

   ISSUE II - Do the violations, if any, attract penalty under section 15EB of the SEBI Act, 1992?

   ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

10. The said provisions under which violations have been alleged against the Noticee are reproduced below –

SEBI (Investment Advisers) Regulations, 2013

Fees

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

Suitability

17. Investment adviser shall ensure that,-

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

(b) It has a documented process for selecting investments based on client's investment objectives and financial situation;

(c) It understands the nature and risks of products or assets selected for clients;

(d)It has a reasonable basis for believing that a recommendation or transaction entered into:

(i)meets the client's investment objectives;

(ii)is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

(iii)is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction

(e)Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based 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.

SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 – Guidelines for Investment Advisers

2. In addition to the above, Investment Advisers shall ensure compliance with the following guidelines:

(i) …

(ii) …

(iii) Fees

Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:

(A) Assets under Advice (AUA) mode

a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.

b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.

c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.

(B) Fixed fee mode

The maximum fees that may be charged under this mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

General conditions under both modes

a. In case "family of client" is reckoned as a single client, the fee as referred above shall be charged per "family of client".

b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

11. The findings in each of the alleged violations against the Noticee in the SCN dated August 14, 2024 are given below.

12. **Fees and Charges charged in both fixed fee and AUA mode** –

12.1. It was observed that the Noticee charged fees of ₹37,71,656 from its advisory clients during the inspection period. It was further observed that the Noticee had charged fees in both fixed and AUA mode from 10 clients during April, 2022 to March, 2023. Further, for 2 clients out of the aforementioned 10 clients, fixed and AUA based fee has been charged between April, 2023 and October, 2023. The total fee charged by the Noticee from both fixed and AUA mode amounts to ₹1,13,030.58.

12.2. As per the provisions of Regulation 15A of the IA Regulations, 2013, an investment adviser shall charge fees for providing investment advisory from the clients, in the manner as specified by SEBI. As per the provisions of SEBI circular SEBI/HO/IMDDF1/CIR/P/2020/182 dated September 23, 2020, an investment adviser shall charge fees from a client under any one mode i.e. (Asset Under Advice Mode) or (Fixed Fee Mode) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/ last change of mode.

12.3. As the Noticee had charged fees and charges from 10 clients under both fixed mode and AUA mode, it has been alleged that the Noticee has violated the provisions of Regulation 15A of IA Regulations, 2013 read with point (b) under "General Conditions under both modes" as specified in Clause 2(iii) of SEBI Circular SEBI\HO\IMD\DF1\CIR\P\2020\182 dated September 23, 2020.

12.4. In this regard, the Noticee, vide email dated April 08, 2024, submitted that total amount which charged from the same clients under both the modes was ₹1,05,960/- and not ₹1,13,030.58. It further submitted that it has not charged double fees. Further, the fees was charged from the clients for different service products, i.e. fees under fixed fee mode for one service product and under AUA mode for another service product, from the same client was charged in few cases. As the Noticee has not charged fees under both the modes for the same service product from a client, there is no violation of the IA Regulations, 2013. However, upon receipt of the SCN, the Noticee has stopped charging fees under AUA mode and is in the process of refunding the fees charged under AUA mode. As of now, it has refunded ₹46,382 charged under AUA mode and only ₹1,333 is yet to be refunded, which is pending due to non-availability of updated contact and bank details of the clients. Presently, the

Noticee is in compliance with this requirement of the IA Regulations, 2003. Thus, the violation, if any, is merely technical and has been rectified.

12.5. It is noted that the Noticee had charged ₹67395.75/- from 7 clients during April, 2022 - March, 2023 and ₹13779.14/- from 4 clients during April 2023 – October, 2023 under both AUA and fixed fee mode. Two of the four clients who were charged fees in both modes during the period April, 2022 - March, 2023, were also charged fees in both modes during April 2023 – October, 2023. As per the provisions of SEBI circular SEBI/HO/IMDDF1/CIR/P/2020/182 dated September 23, 2020, an IA shall charge fees under only one of these modes, and on an annual basis. Subsequent change of mode of charging fees can be made only after 12 months of onboarding the client or last change of mode. However, the Noticee has charged fees in both modes from the aforementioned clients in the same financial year. While it is observed that the Noticee has refunded the fees charged under AUA mode to the clients, and has discontinued charging fee in AUA mode, the Noticee has not complied with the aforesaid provisions during the April, 2022 – October, 2023.

12.6. The Noticee has submitted that it has charged under different modes for different service products, and it has not charged twice for any of the services provided by it. In this regard, It is noted that the aforementioned SEBI circular does not provide any exception in cases where multiple service products are sold to the clients in the same financial year. Therefore, the Noticee's contention is not tenable.

12.7. Thus, the allegation of violation of provisions of Regulation 15A of IA Regulations, 2013 read with point (b) under "General Conditions under both modes" as specified in Clause 2(iii) of SEBI Circular

SEBI\HO\IMD\DF1\CIR\P\2020\182 dated September 23, 2020, against the Noticee stands established.

13. **Not providing suitable advice –**

13.1. It was observed that during the F.Y. 2022-23, there were 743 low risk clients out of 843 clients and from April, 2023 till October, 2023, there were 814 low risk clients out of 945 clients. From the clients summary provided by the Noticee, it was observed that the Noticee was not providing advice based on the requirement of individual clients. Instead, it was providing the same set of investment advice to a particular set of clients (based on the schemes selected by clients). The advice provided to clients was neither customized as per clients need nor personalized. For instance, the "smart values - basic" product/ scheme is provided to a set of 26 clients, which inter-alia includes 11 low risk, 6 moderate risk and 9 high risk clients during F.Y 2022-23 and a set of 12 clients, which inter-alia includes to 6 low risk, 2 moderate risk and 4 high risk clients during April – October, 2023.

13.2. All 743 Low risk clients for FY 22-23 and 814 Low risk clients for the period April to October, 2023, were provided with various products/schemes which had only Equity advise, which is inherently a high risk product. There was no asset class diversification provided by the Noticee to its clients. Further, different product advice was provided to the same client, which shows that the Noticee had not performed suitability analysis for the clients. Thus, it was alleged that the Noticee has violated the provisions of Regulation 7(1)(c) of IA Regulations, 2013.

13.3. As per the provisions of Regulation 17 of the IA Regulations, 2013, an investment adviser shall ensure that all investments on which investment

advice is provided is appropriate to the risk profile of the client; the investment adviser understands the nature and risks of products or assets selected for clients.

13.4. Noticee has submitted that the Noticee had profiled its clients into “high, medium and low risk”, depending on their answers to the questionnaire. The risk profile is communicated to the clients. Similarly, the products / service are also categorised as “low, medium and high risk”. Whenever a client chooses a product which does not match with its risk profile, the mismatch is communicated to the client. After that, the client is at liberty to take a call as to the type of product it wants to invest in. Noticee has submitted that in this way, it fulfils its fiduciary duty towards the clients. The Noticee further submitted that its investment agreement with the client contains a clause which inter-alia states that the investor (client) has the financial ability to bear the economic risk of the investments.

13.5. It is noted that an investment adviser is required to ensure that all investments on which investment advice is provided, is appropriate to the risk profile of the client. Thus, the Noticee, being an investment adviser, was required to ensure that the clients with low or moderate risk profile do not buy high risk product / service from the Noticee. It was its fiduciary duty to act in the best interests of the clients. The Noticee cannot absolve from its responsibility to provide suitable advice to clients by merely informing the clients with respect to the mismatch of the risk profiles of the clients and the products / service or by including the risk factor clause in the investment agreement. The Noticee should not have advised the clients to buy products / subscribe to service which is compatible with the risk profile determined by the Noticee. An investment adviser is required to advise its clients regarding their investments, after

understanding their financial goals and their risk tolerance. It has fiduciary responsibility towards its clients, and thus, it shall always provide advise which is in the best interest of the clients. However, in the present case, the Noticee has sold products / service to clients which was not suitable to their respective risk profiles. It was also observed that the Noticee has sold the same products / service to clients of all risk profiles, without determining the suitability of the products / service with respect to the clients. Thus, the allegation of violation of provisions of Regulation 17 of the IA Regulations, 2013, against the Noticee, stands established.

14. To summarize the foregoing findings, Noticee has violated following provisions:

14.1. Regulation 15A of IA Regulations, 2013 read with point (b) under "General Conditions under both modes" as specified in Clause 2(iii) of SEBI Circular SEBI\HO\IMD\DF1\CIR\P\2020\182 dated September 23, 2020

14.2. Regulation 17 of the IA Regulations, 2013

ISSUE II - Do the violations, if any, attract penalty under Section 15EB of the SEBI Act, 1992?

15. It is noted that the above violations make the Noticee liable for monetary penalty under Section 15EB of the SEBI Act, 1992, the text of which is reproduced hereunder:

SEBI Act, 1992

Penalty for default in case of investment adviser and research analyst.

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

16. In context of the above, reference may be made to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach ofcivil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not."*

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

17. While determining the quantum of penalty under Section 15EB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

SEBI Act, 1992

15J While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

18. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to

ascertain the exact monetary loss to the clients on account of default by Noticee. Further, as per the available records, it is observed that Noticee has not been penalised earlier for any of the aforesaid violations. Thus, violations are not repetitive in nature. The Noticee has submitted that it has taken various corrective actions, including discontinuing with the AUA mode of charging fees, so that all the fees is charged to the clients under fixed fee mode, and modifying its systems, so that clients with a certain risk profile can buy only those products / service, which are suitable to the clients' risk profiles. However, the fact cannot be ignored that as a SEBI registered intermediary, Noticee was under statutory obligation to comply with the applicable circulars, rules and regulations. The very purpose of the said regulations is to deter wrong doing and promote ethical conduct in the securities market. Therefore, such non-compliance deserves and attracts imposition of suitable penalty.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, 1992, and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90, in exercise of power conferred under Section 15-I of the SEBI Act,1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, following penalty is hereby imposed upon the Noticee for the violations made hereunder.

Name of Noticee	**Violation provisions**	**Penal Provisions**	**Penalty**
Lamron Analysts Private Limited PAN No.: AABCL1113H	• Regulation 15A of IA Regulations, 2013 read with point (b) under "General Conditions under both modes" as specified in Clause 2(iii) of SEBI Circular	Section 15EB of SEBI Act, 1992	₹2,00,000/- (Rupees Two Lakh Only)

Name of Noticee	Violation provisions	Penal Provisions	Penalty
	SEBI\HO\IMD\DF1\CIR\P\2020\182 dated September 23, 2020 • Regulation 17 of the IA Regulations, 2013		

20. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:
ENFORCEMENT → Orders → Orders of AO → PAY NOW.

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

22. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

DATE: OCTOBER 22, 2024 **BARNALI MUKHERJEE**
PLACE: MUMBAI **ADJUDICATING OFFICER**