

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/GN/2024-25/30895]**

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

In respect of

Noticee No.	Name of the Noticee	PAN
1	Capital Vraddhi Financial Services (Proprietor: Raju Jhariya)	AQKPJ9329B

In the matter of

Capital Vraddhi Financial Services (Proprietor: Raju Jhariya)

Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted comprehensive inspection of M/s. Capital Vraddhi Financial Services (Proprietor: Mr. Raju Jhariya) (hereinafter referred to as '**Noticee**') during April 19, 2022 to April 22, 2022. The period of inspection was from April 01, 2020 till March 31, 2022 (hereinafter referred as "**Inspection Period/ IP**"). The focus of the inspection was to look into the compliance of regulatory requirements stipulated under SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as '**IA Regulations**') and circulars and guidelines framed thereunder, by Noticee.
2. Noticee is registered with SEBI as an Investment Adviser bearing registration no. INA000005291. Mr. Raju Jhariya is the Proprietor of the Noticee.
3. Pursuant to the Inspection conducted by SEBI, and the response of the Noticee dated January 02, 2023 submitted to SEBI, certain alleged non-compliances were observed of PFUTP regulations, IA regulations and circular issued by SEBI. The extracts of the violation

alleged to have been committed by the Noticee and corresponding provision of the securities law are given in the tabulation below:-

S. No.	Alleged violations	Regulatory provisions
1	Lack of Requisite Qualification	Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
2	Non-Compliance with Fee Structure	Regulation 15A of SEBI (IA) Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated Sept 23, 2020 and Clause 6 of Code of Conduct (Fair and Reasonable Charges) for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
3	Agreement with Clients	Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dt. September 23, 2020 and Clause 1(Honesty and fairness) and 2(Diligence) of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
4	Non-Maintenance of Records	Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013.
5	Not carrying out Risk Profiling and Suitability assessment	Regulation 16 and 17 of SEBI IA Regulations, 2013 read Clause 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
6	Similar Products sold for the concurrent Period	Regulation 15 (1) of IA Regulations, 2013 and Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations, 2013 Regulations 3(a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992
7	Providing free trials to 116 clients	Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct as mentioned Schedule III read with Regulation 15(9) of IA Regulations.
8	Employees using personal phone number for pitching advisory services	Clauses 1 & 2 of Code of Conduct as specified in Schedule III read with Regulations 15(9) of IA Regulations, 2013.
9	Fake Reviews about IA through blog	Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA

		Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.
10	Fees charged more than investment amount and faulty suitability Assessment	Regulation 15(1) and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013.
11	Profit Guarantee and advising clients to trade without stop loss	Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k),(s) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992. Regulations 15(1) of IA Regulations, 2013 read with Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations, 2013.
12	Receipt of Fees before entering into any agreement with client	Regulation 19(1)(d) of SEBI IA Regulations, 2013 read with Clause 2(ii) of Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations, 2013.
13	Misrepresentation to clients by employees of IA	Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Regulation 6(f) of IA Regulations, 2013

APPOINTMENT OF ADJUDICATING OFFICER

- SEBI, vide order dated March 19, 2024 appointed Shri Biju S as Adjudicating Officer to inquire into and adjudge under the provisions of Section 15EB, Section 15HA, Section 15B and Section 15A(c) of SEBI Act for the violations alleged to have been committed by the Noticee. Subsequent to the transfer of the case, the undersigned was appointed as an Adjudicating Officer in the matter vide communique dated July 29, 2024.

SHOW CAUSE NOTICE, REPLY AND HEARING

- Show Cause Notice (hereinafter referred to as “**SCN**”) dated April 04, 2024 was issued to the Noticee under rule 4(1) of the SEBI (Procedures for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as SEBI Rules) to

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show cause as to why an inquiry should not be held against it in terms of Rule 4 of SEBI Rules read with Section 15-I of SEBI Act and penalty, if any, be not imposed on Noticee under Section 15EB, 15HA, 15B and 15A(c) of the SEBI Act.

6. The SCN was sent to Noticee through Speed Post which returned undelivered, thereafter SCN was sent via digitally signed Email on June 05, 2024 which was duly served upon Noticee and the delivery of which is on record. Vide email dated June 06, 2024 Noticee acknowledged the receipt of the SCN. Vide letter dated June 26, 2024, Noticee submitted its reply, the same is summarized below:-

- a) Violation 1- Compliance with the qualification requirement** – Noticee submitted that only proprietor was engaged in giving investment advice. In case of staff, who have been considered as person associated with investment advice, were not involved in offering investment advice, and their roles were restricted to coordinating with client. The proprietor of the firm had adequate qualification and certification requirements to perform function as an investment advisor under IA regulations.
- b) Compliance with fee structure** – Noticee submitted that they have charged fees in compliance with provisions of Regulation 15A read with Clause 2(iii) of SEBI circular dated September 23, 2020 and clause 6 of Code of Conduct. The maximum fees charged by them is Rs. 1,25,000/- from any client in a financial year. Noticee submitted that it is well established under law that indirect taxes (GST) collected from customer are not part of sales or revenue of organization. Noticee submitted that the specified limit came into force from April 01, 2021.
- c) Agreement between IA and its clients** – Noticee submitted that during the course of their business they have on boarded around 1793 clients out of which agreements could not be entered into with 29 clients, due to lockdown in Covid second wave. These clients are for period from April to June 2021.
- d) Maintenance of Record** – Noticee submitted that they have maintained all records with respect to all clients as mandated in Regulation 19(1) of the IA regulations. Noticee submitted that it is alleged that call recordings are not maintained by the IA, however, in the inspection observation report itself, other violations have been alleged on the basis of call recordings obtained from the system, so the allegation itself is contradictory. They are unable to provide documents for one Mr. Kaizar Yunus Kangahwala who is

neither their client nor has taken any service from them. Noticee submitted screenshot of system with call recordings up to April 2022.

- e) **Carrying out KYC** – Noticee submitted that they are compliance with regulation 15(8) of IA regulations as they have duly followed all the circulars issued by SEBI on KYC-compliances related to IA. Noticee submitted that as per clause 3 of SEBI circular dated December 02, 2011 no initial KYC was required to be done at their end for such clients as all of them were already registered in the KRA. Noticee further submitted that risk profiling and suitability assessment of each clients is done before offering them investment advisory services. Out of the 5 alleged instances, one is not even their client and for rest 4 instances KYC is available with them.
- f) **Similar products sold for the concurrent period** – Noticee submitted that as per their records, there is no overlap of services. With respect the list of clients provided in para 45 of the inspection observation, subsequent services were given only after/aroud end of tenure of one subscription. Noticee submitted that the clients have made payment to them on their own free will and not under any kind of duress. Thus they acted in fiduciary capacity.
- g) **Providing free trials to clients** – free trails were given to clients whose onboarding was at final stage, to make them experience what they are going to receive during the services. Most of the clients alleged to have received free trials are paid clients.
- h) **Employee using personal SIMs for pitching advisory services** – Noticee submitted that the employees were using the cell numbers of the organization. Noticee submitted that the inspection team has made farfetched observation that by use of personal phone employees were giving personal recommendation. Time and again they have issued warning emails to employees to refrain from giving personnel recommendation. Noticee referred to the matter of Suhanika Chourey vs SEBI and submitted that by legally charging fees after obtaining the consent of clients by a SEBI registered investment adviser is not a fraud by any means.
- i) **Fake reviews about capital Vraddhi through blog <https://capitalvraddhi.in>** - Noticee submitted that their official website is www.capitalvraddhi.com. There are no misleading comments / reviews, etc. on www.capitalvraddhi.com. The alleged website www.capitalvraddhi.in is neither owned by them or used for conduct of business.

j) Unfair amount charged from clients and faulty suitability assessment – Noticee submitted that fees collected by them was not under any duress and with full consent of client. The clients have made payments in several parts over a long duration. Noticee submitted that fees collected by clients are based on their subscription pricing mentioned online. Apart from annual income and [proposed investment, various other ability factors are considered while risk profiling and assessing the suitability of services to clients. Only suitable services are services are offer to clients. Out of 10,294 clients served by them, only 42 unique complainants have come.

k) Profit guarantee, advising clients to trade without stop loss – Noticee submitted that all recommendations given to clients contain entry price, target price and stop losses. The reliance has been placed on certain call recordings and Whatsapp chats which are in isolation and nothing to establish this to be a routine practice is observed. They have had a strict policy of not giving personnel recommendations to clients for the employees.

l) Receipt of fees before entering into agreement with clients – Noticee submitted that they have collected fees and provided services only after due risk profiling and suitability assessment. Agreement could not be entered into were pertaining to the Covid-19 period. However, services were started after agreement only.

m) Misrepresentation to clients by employees of IA – Noticee submitted that the allegation is based on one isolated call recording. They have not committed any such act which falls within definition of fraud which is given in PFUTP regulation. Noticee submitted that except this one case, no false statement, misrepresentation of truth, reckless dealing was done by their company with such clients. Nothing is brought on record either through clients complaint or any specific findings to show that they committed a fraud with these clients.

7. In the interest of natural justice, vide hearing notice dated August 29, 2024 opportunity of hearing was provided to the Noticee on September 11, 2024. The said hearing notice was sent through SPAD which returned undelivered, thereafter it was sent via digitally signed email dated August 30, 2024 which was duly served and the delivery of the same is on record.

8. Vide email dated September 04, 2024, Noticee sought adjournment of hearing scheduled on September 11, 2024, therefore, vide email dated September 04, 2024, second opportunity of hearing was provided to Noticee on September 26, 2024, which was delivered.
9. Authorised representative (AR) of the Noticee attended the hearing on the scheduled day i.e. on September 26, 2024. During hearing, Noticee sought time till September 30, 2024 for making the following additional submissions –
 - (a) Details of agreement of Noticee with its 29 clients along with documentary evidence
 - (b) Complete copy of Annexure D of Noticee's reply i.e. KYC details of 4 clients of Noticee.
10. Vide email dated October 01, 2024, Noticee made the following additional submissions –
 - a) Noticee submitted that they have successfully retrieved the risk profiles, suitability reports, and invoices for the 29 clients. However, unfortunately, the IT team was unable to recover the digitally signed agreements, which were handled through a specific software and server. Additionally, regarding the KYC details requested for four clients, the proper KYC documents for three clients are attached. For the remaining client, Mr. Madan Sahoo, they were only able to retrieve the risk profile, which has also been attached.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

11. The facts and circumstances of the case, the submissions of the Noticee and the material available on record have been taken into consideration. The issues that arise for consideration in the present case are:

ISSUE I: (a)-Whether Noticee has violated provisions of securities law by:-

- i. **Non - Compliance with the qualification Requirement**
- ii. **Non-Compliance with Fee Structure**
- iii. **Not entering in agreement with Clients**
- iv. **Non-Maintenance of Records**
- v. **Not carrying out Risk Profiling and Suitability assessment**
- vi. **Similar Products sold for the concurrent Period**

- vii. Providing free trials to clients
- viii. Employees using personal phone number for pitching advisory services
- ix. Fake Reviews about IA through blog
 - x. Fees charged more than investment amount and faulty suitability Assessment
- xi. Profit Guarantee and advising clients to trade without stop loss
- xii. Receipt of Fees before entering into any agreement with client
- xiii. Misrepresentation to clients by employees of IA

ISSUE II- Does the violation, if any, attract monetary penalty under the provisions of Section 15EB, Section 15HA, Section 15B and Section 15A(c) of SEBI Act?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act for Noticee?

12. Before proceeding further, it will be appropriate to refer to the relevant provisions-

PFUTP Regulations

Regulation 3: Prohibition of certain dealings in securities: No person shall directly or indirectly-

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder;"*

Regulation 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.*

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:*

(k) *disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;*

(o) *fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;*

...

(s) *mis-selling of securities or services relating to securities market;*

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) *knowingly making a false or misleading statement, or*

(ii) *knowingly concealing or omitting material facts, or*

(iii) *knowingly concealing the associated risk, or*

(iv) *not taking reasonable care to ensure suitability of the securities or service to the buyer;”*

SEBI Act

12A - Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. - No person shall directly or indirectly—

(a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

(b) *employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*

(c) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

6 - For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —

(f) whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

IA regulation

7. Qualification and certification requirement

(1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times -

²⁵[(a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;]

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

(c) Persons associated with investment advice shall meet the following minimum qualifications, at all times –

(d) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and

(e) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management:

Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and

experience requirements within three years:

Provided further that the requirements at clauses (a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board.

(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services -

(a) from NISM; or

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

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

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.]

15. General responsibility

(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.

[(13) It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.]

15A. *Investment Adviser shall be entitled to charge fees for providing investment advice from a client⁴⁰[, including an accredited investor]in the manner as specified by the Board.]*

Risk profiling.

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.*
- (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.*
- (c) *where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated.*
- (d) *any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:*
 - (i) *questionnaire is not vague or use double negatives or in a complex language that the client may not understand;*
 - (ii) *questionnaire is not structured in a way that it contains leading questions.*
- (e) *risk profile of the client is communicated to the client after risk assessment is done;*
- (f) *information provided by clients and their risk assessment is updated periodically.*

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.*

Maintenance of records.

19 (1) *An investment adviser shall maintain the following records,-*

(g) *Know Your Client records of the client;*

(h) *Risk profiling and risk assessment of the client;*

(i) *Suitability assessment of the advice being provided;*

³⁶[(d) *Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;*]

(e) *Investment advice provided, whether written or oral;*

(f) *Rationale for arriving at investment advice, duly signed and dated;*

(g) *A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.*

(2) *All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years.*

THIRD SCHEDULE

Securities and Exchange Board of India (Investment Advisers) Regulations, 2013

[See sub-regulation (9) of regulation 15]

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. Honesty and fairness

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

2. Diligence

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

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 [***]. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

8. Compliance

An investment adviser including its [partners, principal officer and persons associated with investment advice] 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.

SEBI Circular No.

SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020

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

(ii) Agreement between IA and the client

- a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in **Annexure-A**.*
- b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder.*
- c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.*
- d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.*

(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.

c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.

d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.

(vi) Maintenance of record

Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:

a. IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:

i. Physical record written & signed by client,

- ii. Telephone recording,
 - iii. Email from registered email id,
 - iv. Record of SMS messages,
 - v. Any other legally verifiable record.
- b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.
- c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

SEBI Circular No.

SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019

1. Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (IA Regulations) provides for code of conduct to be followed by IAs. In order to further strengthen the conduct of IAs, while providing investment advice and to protect the interest of investors seeking their advice, the IAs shall comply with the following:

- i. Restriction on free trial

As per SEBI (Investment Advisers) Regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products/services to prospective clients. Further, IAs shall not accept part payments (where some part of the fee is paid in advance) for any product/service.

FINDINGS

13. Inspection findings are based on analysis of samples and test checking of various books and other records of the Noticee. Consequently, the instances of irregularities/observations pointed out in inspection report are illustrative in nature and are not all-inclusive. The allegations, and observations based on the documents available on record and the submission of the Noticee are narrated below:

ISSUE I: Whether Noticee has violated provisions of securities law by:-

Non - Compliance with the qualification Requirement

14. During inspection it was observed that 36 employees associated with Noticee who dealt with clients, do not possess requisite qualification and certifications. Therefore, it was alleged that Noticee has violated the Regulation 15(13) r/w Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
15. It is noted that regulation 15(13) read with regulation 7 of IA regulations provides that an investment adviser and persons associated with investment advice shall have at all times a certification from NISM. Further, I note that Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and in the integrity of the market and shall comply with all regulatory requirements applicable.
16. Noticee submitted that the only proprietor was engaged in giving investment advice. Staff were not involved in offering investment advice, and their roles were restricted to coordinating with client and proprietor had adequate qualification and certification requirements.
17. It is noted from the material available and submission of the Noticee that on April 08, 2022 Noticee had total 40 employees, out of 40 employees 38 employees were involved in providing investment advisory services to its clients. The details of Investment Advisor certification of 38 employees of the Noticee are as under –

Particulars	Number of employees
Number of employees having both, valid NISM Investment Advisor Level 1 and Level 2 certification	2
Number of employees not having both NISM – Investment Advisor Level 1 or Level 2 certification	36

18. During the visit of inspection team on April 19, 2022, out of 36 non-compliant employees (as mentioned in the above table) 19 employees were still continuing to provide investment advisory services. During the inspection it was observed that, the said employees were acting as a client facing person and was engaged in the process related to risk profiling of clients, suitability of clients, agreement with clients and payment procurement from clients.
19. As per regulation 15(13) read with regulation 7 of IA regulations an investment adviser and persons associated with investment advice shall have at all times a certification from NISM. Thus all 36 employees of the Noticee were associated with the investment advice without having the requisite certification and qualification.
20. In view of the above, it is observed that the Noticee violated Regulation 15(13) read with Regulation 7 of IA Regulations and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

Non-Compliance with Fee Structure

21. During inspection it was observed that in 1355 payments instances Noticee has charged fees in excess to Rs. 1,25,000 on annual basis. Therefore, it was alleged that Noticee has violated Regulation 15A of SEBI (IA) Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated Sept 23, 2020 and Clause 6 of Code of Conduct (Fair and Reasonable Charges) for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
22. Noticee submitted that the maximum fees charged by them is Rs. 1,25,000/- from any client in a financial year.
23. It is noted that as per Regulation 15A of SEBI (IA) Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated Sept 23, 2020 and Clause 6 of Code of Conduct (Fair and Reasonable Charges) for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 Investment Adviser shall be entitled to charge fees for providing investment advice from a client in the manner as specified by the Board and it is subject to ceiling as specified by the Board. The maximum fees that maybe charged under fix fee mode shall not exceed INR 1,25,000 per annum per client across all services offered by IA.

24. It is noted from the material available that in 1355 instances Noticee has charged fees in a manner which amounts to more than Rs. 1,25,000 on annual basis. From the available documents, few of the instances observed from the client master of April 1, 2020 to March 31, 2022 of Noticee, where Noticee has charged more than Rs. 1,25,000 on annual basis are tabulated as under:

S.N o.	Date Of Payment	Name	PAN	Services	Payment	Service Start Date	Service End Date
1	21-Apr-21	Tilak Raj	AXTPR9559B	Wealth Management	125000	22-Apr-2021	19-Sep-2021
	19-Apr-21	Tilak Raj	AXTPR9559B	Wealth Management	5500	20-Apr-2021	26-Apr-2021
Total					1,30,500		
2	14-Dec-21	Mr. Vicky	AEAPV4790G	Wealth Management	114000	15-Dec-2021	30-Apr-2022
	13-Nov-21	Mr. Vicky	AEAPV4790G	Wealth Management	5500	14-Nov-2021	20-Nov-2021
	15-Dec-21	Mr. Vicky	AEAPV4790G	Wealth Management	27500	16-Dec-2021	18-Jan-2022
Total					1,47,000		
3	03-Sep-21	Binay Kant Sharma	AOFPS4968C	Wealth Management	100300	4-Sep-2021	2-Jan-2022
	04-Sep-21	Binay Kant Sharma	AOFPS4968C	Wealth Management	41700	5-Sep-2021	25-Oct-2021
Total					142000		
4	21-Jun-21	Abbu Hasan ansari	AHVPA8553A	Wealth Management	97350	22-Jun-2021	16-Oct-2021
	18-Jun-21	Abbu Hasan ansari	AHVPA8553A	Wealth Management	8500	19-Jun-2021	29-Jun-2021
	21-Jun-21	Abbu Hasan ansari	AHVPA8553A	Wealth Management	41850	22-Jun-2021	11-Aug-2021
Total					147700		
5	02-Jul-21	Rahul Iahanu Sonawane	ESHPS9358L	Wealth Management	90300	3-Jul-2021	19-Oct-2021
	28-Jun-21	Rahul Iahanu Sonawane	ESHPS9358L	Wealth Management	5500	29-Jun-2021	5-Jul-2021

	01-Jul-21	Rahul lahanu Sonawane	ESHPS93 58L	Wealth Management	10000	2-Jul-2021	14-Jul-2021
	03-Jul-21	Rahul lahanu Sonawane	ESHPS93 58L	Wealth Management	41700	4-Jul-2021	23-Aug-2021
Total					147500		

25. It is noted from the above table that Noticee has charged Rs. 1,30,500/- from its client Tilak raj for the period from 20-Apr-2021 to 19-Sep-2021. Rs. 1,47,000/- from its client Mr. Vicky for the period from November 14, 2021 to April 30, 2022. Rs. 1,42,000/- from its client Mr. Binay Kant Sharma for the period from September 04, 2021 to October 05, 2021. Rs. 1,47,700/- from the Mr. Abbu Hasan Ansari for the period from June 19, 2021 to October 16, 2021 and Rs. 1,47,500 from Mr. Rahul lahanu Sonawane for the period from June 29, 2021 to October 19, 2021. Hence it is observed that the Noticee has charged more than Rs. 1,25,000/- in a fees from its clients in a year.

26. Further, from the material available, it is observed that in case of one client Noticee has charged a fee of rs. 18.22 Lakh which is in excess of the stipulated amount.

27. Therefore, it is observed that Noticee is in violation of Regulation 15A of SEBI (IA) Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated Sept 23, 2020 and Clause 6 of Code of Conduct (Fair and Reasonable Charges) for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

Not entering in agreement with Clients

28. During inspection, it was observed that in 29 out of 1980 clients, the Noticee has received fees without executing any agreement with them. Therefore, Noticee is alleged to have violated the provisions of Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 1 and 2 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

29. Noticee admitted that agreements could not be entered into with 29 clients, due to lockdown in Covid second wave.

30. It is noted that as per Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 1 and 2 of Code of Conduct for Investment Advisers as

specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013 the investment advisory agreement between IA and its clients is mandatory. No fee shall be charged by the IA until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.

31. During inspection from the client master submitted by IA, it was observed that along with other clients there were 29 clients in client master who were availing services post April 1, 2021. The date of agreement entered for these 29 clients was mentioned as NA. During inspection, Noticee provided that for the following clients they have taken advisory services without executing agreements with the clients –

S. No.	Client Name	Payment date	Agreement
1	Akash Suman	7-April 2021	NA
2	Jayram Shiv Kumar Singh	April 08, 2021	NA
3	Ravendra Patel	April 17, 2021	NA
4	Amar Purushottam Nimje	April 27, 2021	NA
5	Mr. Sanjay Kumar Gupta	April 06, 2021	NA
6	Ovesh Mahammadhushen Luhar	April 29, 2021	NA
7	Subhash Mahaveer Gupta	May 04, 2021	NA
8	Sunil Kumar	May 12, 2021	NA
9	Akram Gunga Kadam	May 20, 2021	NA
10	Patel Nausikumar Pravinbhai	May 31, 2021	NA
11	Mr. Raghujee Gowardhan Patil	June 25, 2021	NA
12	Amritesh Kumar Dubey	May 04, 2021	NA
13	Bansilal Menariya	May 14, 2021	NA
14	Ranjeet Kumar	April 23, 2021	NA
15	Rishikant Nirala	May 12, 2021	NA
16	Kishan Sureshbhai Chavda	April 16, 2021	NA
17	Rahul Kumar Pandit	April 18, 2021	NA
18	Jaswant Singh	April 21, 2021	NA
19	Ladoo Singh	April 22, 2021	NA
20	Rafik jaynuddin Sayyad	April 26, 2021	NA
21	Pratik Dineshbhai Dholariya	April 27, 2021	NA
22	Vijay Tukaram Shete	April 29, 2021	NA
23	Jayesh Kanabhai Chetariya	April 29, 2021	NA
24	Uttam Kumar	May 16, 2021	NA
25	Rishabh Mahesh Bhosale	May 19, 2021	NA
26	Deepak Mangla	May 21, 2021	NA
27	Rajendra Bandgar	June 15, 2021	NA
28	Deepak Singh	June 25, 2021	NA
29	Rohit Kumar Mahato	June 30, 2021	NA

32. It is noted from the above table that Noticee has provided services to 29 clients without entering agreement with clients. Thus admittedly no agreements were entered into with 29 clients. As per Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 Noticee should not have charged any fees unless agreement was entered into, however, Noticee collected fee from the aforesaid clients.

33. Thus Noticee violated the provisions of Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 and Clause 1 and 2 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

Non-Maintenance of Records

34. During inspection, it was observed that Noticee has not maintained the call recordings of its clients and thereby alleged to have failed in complying with Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013.

35. Noticee submitted that other violations have been alleged on the basis of call recordings obtained from the system, so the allegation itself is contradictory. In this regard, it is observed from the material available that during inspection Noticee did not maintained call data records for the period April 1, 2020 till March 8, 2022, the IA was advised to provide call records for the period March 9, 2022 to April 19, 2022 and the other observation were made in the inspection report on the basis of the call records for the period March 9, 2022 to April 19, 2022. Therefore, the aforesaid contention of the Noticee is not tenable.

36. It is noted that as per Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013, it is mandatory that IAs shall maintain all records, including call records, of interactions with its clients/ prospective clients from start of interactions done via any mode.

37. It is noted from the material available that during inspection, Noticee was asked to provide the call records, (since applicability of this clause i.e., January 01, 2021) of the clients from their first conversation/ interaction. In this regard, vide letter dated April 21, 2022 Noticee inter alia submitted that *"I have not maintained call data records of any clients from April 1, 2020 till March 8, 2022."*

38. Further, in reply to the SCN Noticee just submitted the screenshot of call recording of April 04, 2022 and did not submit the call recordings which they should have maintained, for the period from January 01, 2021 till March 08, 2022. Thus, no call records were maintained by the Noticee.

39. Therefore, it is observed that Noticee is in violation of Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013.

Not carrying out Risk Profiling and Suitability assessment

40. During inspection, it was observed that in 5 out of sample 40 clients, Noticee has provided services without carrying out KYC documents, Risk Profiling and suitability assessment and hence, it is alleged that the Noticee have failed in complying with the provisions of Regulation 16 and 17 of SEBI IA Regulations, 2013 read Clause 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

41. Noticee submitted that out of the 5 alleged instances, one is not even their client and for rest 4 instances KYC is available with them. Noticee submitted that they have maintained all records with respect to all clients. However, with respect to documents other than KYC no supporting documents were submitted by the Noticee, therefore, the contention of the Noticee is not tenable.

42. It is noted that as per Regulation 16 and 17 of SEBI IA Regulations, 2013 read with Clause 1, 2 and 8 of the Code of Conduct for IA as specified under third Schedule read with Regulation 15(9) of IA Regulations, 2013 IA shall mandatorily carry out risk profiling and suitability assessment of the client before providing any investment advisory services to its clients. The records of the same shall be maintained by IA. An investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and in the integrity of the market and shall comply with all regulatory requirements applicable.

43. It is noted from the material available that during inspection Noticee was advised to provide details (copy of agreement, KYC documents, invoices, Risk Profiling, email communications, call recordings) of 40 sample clients. Noticee vide letter dated April 22, 2022 submitted that, *".....for the following five clients I do not have any supporting documents (viz. KYC, Risk Profiling, Suitability Assessment, Invoices, Client Agreement, call recordings, email communications).*

1. Deepak Ramchandra Kulakarni
2. Kaushik Kundu

3. *Madan Kumar Sahoo*
4. *Kaizar Yunus Kagalwala*
5. *Dharmaveer Sahore*

44. It is noted that in reply to the SCN, Noticee submitted that Kaizar Yunus Kagalwala is not their client and of the rest four i.e. Deepak Ramchandra Kulakarni, Kaushik Kundu, Madan Kumar Sahoo and Dharmaveer Sahore they have KYC available with them. Noticee further submitted that they have successfully retrieved the risk profiles, suitability reports and the invoices for the 29 clients, however, no documentary evidence was submitted by the Noticee. Therefore, the contention of the Noticee is not tenable.
45. It is observed that as per Regulation 16 and 17 of SEBI (IA) Regulations, 2013, Noticee shall mandatorily carry out risk profiling and suitability assessment of the client before providing any investment advisory services to its clients. The records of the same shall be maintained by Noticee. By not carrying out the risk profiling and suitability assessment of four aforementioned clients (i.e. Deepak Ramchandra Kulakarni, Kaushik Kundu, Madan Kumar Sahoo and Dharmaveer Sahore) the Noticee has failed to comply with the provisions of Regulation 16, 17 of SEBI (IA) Regulations, 2013 and read with clauses 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations, 2013.

Similar Products sold for the concurrent Period

46. During inspection it was observed that the Noticee has sold similar products in the concurrent period. The Noticee, by inducing a client(s) to buy the same product during overlapping periods, has allegedly defrauded the client(s) and has failed to act in a fiduciary capacity towards its clients. Therefore, Noticee is alleged to have violated Regulation 15 (1) of IA Regulations, 2013 and Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations, 2013 Regulations 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992.
47. Noticee submitted that subsequent services were given only after/around end of tenure of one subscription. Noticee also submitted that the clients have made payment to them on their own free will and not under any kind of duress.

48. It is noted that Regulation 15 (1) of IA Regulations, 2013 provides that IA acts in a fiduciary capacity towards its clients. Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives. Further an investment adviser shall act in a fiduciary capacity towards its clients. Regulations 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12 A(a),(b) and (c) of SEBI Act, 1992 provides that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner; use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under, employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder;”

49. During inspection, from the client master provided by the Noticee it was observed that during FY 2020-21 Noticee has sold overlapping services to 10 clients and during the FY 2021-22 Noticee has sold the overlapping services to 11 clients. Some of the sample clients to whom overlapping services sold are mentioned below:

Payment Date	Client Name	PAN	Services	Service in Days	Service Start	End Date
24-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	19	25-Dec-2021	13-Jan-2022
08-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	9-Dec-2021	21-Dec-2021
10-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	11-Dec-2021	23-Dec-2021
14-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	15-Dec-2021	27-Dec-2021
17-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	12	18-Dec-2021	30-Dec-2021

11-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	8	12-Dec-2021	19-Dec-2021
22-Nov-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	23-Nov-2021	30-Nov-2021
09-Dec-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	10-Dec-2021	17-Dec-2021
18-Nov-21	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	7	19-Nov-2021	25-Nov-2021
1-Jan-22	Kundan Sagar Loniya	ADYPL6514D	Wealth Management	6	2-Jan-2022	8-Jan-2022
6-Oct-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	33	7-Oct-2021	8-Nov-2021
22-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	32	23-Sep-2021	24-Oct-2021
18-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	29	19-Sep-2021	18-Oct-2021
20-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	24	21-Sep-2021	15-Oct-2021
24-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	24	25-Sep-2021	19-Oct-2021
15-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	22	16-Sep-2021	7-Oct-2021
10-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	7	11-Sep-2021	18-Sep-2021
06-Sep-21	Sayyad Mohd Shabbir Maula Hussain	EKZPS4261L	Wealth Management	7	7-Sep-2021	13-Sep-2021

50. From the above table, it is observed that the Noticee has sold the service named wealth management to Mr. Kundan Sagar Loniya multiple times for an overlapping period of December 11, 2021 to January 08, 2022. Similarly, Noticee sold the service named wealth management to Mr. Sayyad Mohd Shabbir Maula Hussain multiple times for an overlapping period of September 11, 2021 to October 24, 2021. Furthermore, it is observed from the material available that Noticee has sold overlapping services to 10 clients during financial year 2020-21 and to 11 clients during the FY 2021-22.

51. Thus, it is observed that the Noticee was selling same advisory products/services multiple times with overlapping subscription period with the objective of extracting maximum amount of fees/ commission from the clients. Thus the act of the Noticee is in disregard to the responsibility entrusted on it under IA Regulations to act in fiduciary capacity and in the best interest of its clients and Noticee kept its own interest ahead of its client's interest. Therefore, it is observed that Noticee violated Regulation 15 (1) of IA Regulations, 2013 and Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations, 2013.
52. From the material available, it is observed that there are no SCORES complaints wherein fraud is alleged against the Noticee for the aforesaid violation. From the submission of the Noticee and documents/information available it is noted that there are no evidence specifying fraud committed by the Noticee. It has not been demonstrated how fraud has been committed by the Noticee or any loss suffered by its clients due to the above act of the Noticee.
53. Therefore, the alleged violation of provisions of Regulations 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992 does not stand established against the Noticee.

Providing free trials to clients

54. During inspection it was observed that the employees of Noticee has provided free trials to 116 clients and thereby alleged that Noticee has failed to comply with Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct as mentioned Schedule III read with Regulation 15(9) of IA Regulations.
55. Noticee admitted that they provided free trials to clients whose onboarding was at final stage, to make them experience what they are going to receive during the services.
56. As per paragraph 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clause 1 & 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations the IAs shall not provide free trial for any products/services to prospective clients and an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market

and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

57. During inspection, vide letter dated April 21, 2022, Noticee stated that during the inspection period (April 1, 2020 till March 31, 2022) they have provided free trial service to 116 clients. The extract of the same are as follows-

“.....during the SEBI inspection conducted from April 19, 2022 to April 22, 2022 the inspection team had sought details of clients to whom free trial was given. The data w.r.t clients to whom free trial was provided was extracted from my CRM module. The copy of said excel sheet containing the client data to whom free trial was provided is attached.

In this regard I hereby confirm that, during the inspection period (April 1, 2020 till March 31, 2022) we have provided free trial service to 116 clients. It is also submitted that the free trial services were provided to these clients before their agreement and risk profiling.

The same is submitted to the Inspecting Authority.”

58. Further, in reply to the SCN Noticee submitted that they provided free trials to clients whose onboarding was at final stage. However, the provision is clearly stating that IAs shall not provide free trial for any products/services to prospective clients, whereas Noticee was providing free trials to its prospective clients.

59. In view of the above, it is observed that Noticee has violated Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct as mentioned Schedule III read with Regulation 15(9) of IA Regulations.

Employees using personal phone number for pitching advisory services

60. During inspection it was observed that the employees of Noticee were involved in providing tips/ recommendations to clients using their personal numbers, which is in the nature of unregistered investment advisory activity. Therefore, it is alleged that, the Noticee has failed to comply with Clauses 1 & 2 of Code of Conduct as specified in Schedule III read with Regulations 15(9) of IA Regulations, 2013.

61. Noticee submitted that the employees were using the cell numbers of the organization. However, no supporting document was provided by the Noticee, therefore, the contention of the Noitcee is not tenable.

62. It is noted that Clauses 1 & 2 of Code of Conduct as specified in Schedule III read with Regulations 15(9) of IA Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

63. During inspection, certain sim cards and mobile numbers were identified by SEBI. The Noticee was asked to provide the details of these sim cards. Noticee vide letter dated April 21, 2022 submitted that:

"I hereby submit and agree that, my employees are using their personal SIMs having personal mobile numbers for pitching advisory services to my clients and onboarding the clients for investment advisory services in the name of Capital Vraddhi Financial Services. The details of 19 personal SIM cards having 19 personal mobile numbers are also submitted to the Inspecting Authority.

I also agree that some of my employees are also involved in providing personal recommendations/tips to clients using their personal numbers, which was in my knowledge.

The list of 19 SIM and phone numbers and caution e-mail to the employees for stopping to provide personal recommendation to clients is also attached."

64. In view of the above, it is observed that the employees of Noticee were involved in providing personal recommendations/ tips to clients using personal numbers. Noticee knowing the fact that these employees were using personal numbers to lure clients, Noticee had not taken any action against these employees.

65. Therefore, it is observed that the Noticee has violated clauses 1, 2 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations.

Fake Reviews about Noticee through blog

66. During inspection, it was observed that Noticee has produced a fake review of itself in its website by creating a blog, which mislead clients to be onboard and buy the Noticees services. Therefore, it is alleged that the Noticee has violated Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12 A(a),(b) and (c) of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.

67. Noticee submitted that their official website is www.capitalvraddhi.com. There are no misleading comments / reviews, etc. on www.capitalvraddhi.com. The alleged website www.capitalvraddhi.in is neither owned by them nor used for conduct of business.

68. It is noted that Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12 A(a),(b) and (c) of SEBI Act, 1992 provides that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner; use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under, employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder;”. Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives. Regulation 6(f) of IA Regulations, 2013 provides that for the purpose of the grant of certificate the Board shall take into account whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

69. During inspection, it was observed that Noticee was running a blog named <https://capitalvraddhi.in/>. On perusal of said blog, it was noted that there were certain reviews posted by some people. All these reviews were positive reviews about Capital Vraddhi and its investment advisory services. IA was asked to provide the details of clients who posted reviews on the said blog.

70. Vide letter dated April 21, 2022 Noticee submitted that:

*“I Raju Jhariya Proprietor of Capital Vraddhi Financial Services state that for publicity of our advisory services, we have a blog named <https://capitalvraddhi.in/>. In the said blog **we have published fake created reviews purportedly to be of our clients speaking good about our services**. Accordingly, in this manner we mislead prospective clients and onboard them for advisory services. The details w.r.t certain fake as well as created reviews posted on the blog. (<https://capitalvraddhi.in/capital-vraddhi-reviews/>) are attached.”*

71. However, in reply to the SCN, Noticee submitted that their official website is www.capitalvraddhi.com. And claimed that the website www.capitalvraddhi.in is neither owned by them nor used for conduct of business. However, Noticee has not taken any legal action for making such positive reviews. Further, Noticee admitted vide letter dated April 21, 2022 that they had published fake reviews. Therefore, submission of the Noticee in reply to the SCN is just an afterthought of the Noticee.
72. It is observed from the above that in its blog, Noticee had published fake reviews to mislead the prospective clients and onboard them for advisory services and thereby has tried to deceive its clients.
73. It is further observed that by making fake statements Noticee acted fraudulently on the investors to induce them in taking advice from the Noticee. I note that the Hon'ble Supreme Court while interpreting the definition of "fraud" in SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1 held that to constitute fraud under definition of fraud only "inducement" while dealing in securities is required. I note that in terms of Regulation 2(b)(ii) of PFUTP Regulations, 2003 definition of 'dealing in securities' also includes the acts which are designed to influence the decision of investors in securities and therefore rendering advice which influences investors to invest in securities also constitute 'dealing in securities'.
74. Therefore, the fake reviews of the Noticee shown on its website is the false representation knowingly made by the Noticee. The above-mentioned acts of the Noticee are squarely covered by the definition of 'fraud' in Regulation 2(1)(c) of the PFUTP Regulations, 2003 and is fraudulent under regulation 3 of the PFUTP regulations.
75. In view of the same, it is observed that the Noticee is in violation of Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12 A(a),(b) and (c) of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.

Fees charged more than investment amount and faulty suitability Assessment

76. During inspection, it was observed that in 23 out of sample 35 clients, Noticee has charged fee more than the proposed investment amount and has done faulty risk profiling and faulty suitability assessment of its clients and hence, alleged to have violated Regulation 15(1)

and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013.

77. Noticee submitted that fees collected by them was not under any duress and with full consent of client. Only suitable services are offered to clients.

78. It is noted that Regulation 15(1) and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013 IA acts in a fiduciary capacity towards its clients. IA shall ensure that it has a documented process for selecting investments based on client's investment objectives and financial situation, *a recommendation or transaction entered into meets the client's investment objectives and is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance and is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction. 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.* An investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.

79. It is noted from the material available that for the following clients, Noticee has charged fees more than the proposed investment mentioned by clients in their respective risk profiling form:

S. no	Client Name	PAN Number	Proposed investment as per RPM (Rs)	Total fees received from client (Rs)	Service Name
1	Deepak Kumar Sharma	DMAPS4313 F	50000 to 200000	291500	WEALTH CASH
2	Amiya anand	AKMPA4787 G	<100000	472000	Wealth Management
3	SUMIT CHHUGANI	ANXPC2656 E	<100000	98000	Stock Cash

4	Muniya Aishpunani	BASPM8544C	<100000	228000	WEALTH CASH
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80. From the above table it is observed that the proposed investment amount of Deepak Kuamr Sharma was Rs. 50000 to 200000 and the total fees received by Noticee from the aforesaid client was Rs. 2,91,500/-, which is more than the proposed investment of Deepak Kumar Sharma. Similarly, the proposed investment amount of Amiya Anand was Rs. <100000, whereas the fee received by Noticee from the aforesaid client was 472000/- which is more than her proposed investment amount. Similarly, Noticee received more fee than the proposed investment from the client named Muniya Aishpunani and almost equal fee to the proposed investment from the client named Sumit Chugani.

81. It is also noted that for the following clients fees received from the client was more than the annual income disclosed in RPM of the respective clients:

S.no	Client Name	PAN Number	Annual income of the Client as per risk profile	Total fees receipt from client (Rs)	Service Name
1	Deepak Kumar Sharma	DMAPS4313F	2-5 Lacs	291500	wealth cash
2	Amiya anand	AKMPA4787G	1-5 Lacs	472000	Wealth Management
3	Muniya Aishpunani	BASPM8544C	1-5 Lacs	228000	wealth cash

82. From the above table it is observed that the annual income of clients named Deepak Kumar Sharma and Muniya Aishpunani is more than the total fees received by the Noticee from aforesaid clients. However, the annual income of client named Amiya Anand is 1-5 lacs which is almost equal to fee received by the Noticee from the aforesaid client i.e. Rs. 472000/-.

83. It is also noted that in its reply Noticee has neither disputed the fact that they have charged fees which are more than annual income and/ or proposed investment mentioned in clients risk profile form, nor submitted any documentary evidence. Noticee submitted that the fees collected from clients are based on their subscription pricing mentioned online. Therefore,

it is construed that Noticee has admitted that they have collected fees from clients beyond client's annual income and proposed investments.

84. Thus Noticee has charged fees which are more than annual income and/ or proposed investment mentioned in clients risk profile form. It is observed that Noticee has kept its own interest at higher level compared to interest of its clients with having single motive of maximizing revenue instead of providing best services to clients.
85. It is also observed that Noticee has not acted with due skill, care, diligence and honesty while charging advisory fees from the clients. Further, considering the fees charged to the client vis-à-vis the annual income and/or proposed investment by the client, it is evident that fair and reasonable fees have not been charged by the Noticee.
86. In view of the above, it is observed that having known the financial details of its clients, Noticee has charged exorbitant amount of fees from clients, which is sometimes more than the clients proposed investment. Such act of Noticee is in complete disregard to the responsibility entrusted on him under the provisions of IA Regulations to act in fiduciary capacity and in the best interest of its clients. Thus Noticee has failed to comply by the provisions under regulation 15 (1) of IA Regulations, regulation 17(b), (d) and (e) of IA Regulations read with clauses 1 and 2 of the Code of Conduct for IA as specified under Third Schedule read with regulation 15(9) of IA Regulations, 2013.

Profit Guarantee and advising clients to trade without stop loss

87. During inspection it was observed that the Noticee by making/ promising assured profits and unrealistic returns has tried to deceive its clients and thereby alleged to have violated Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k),(s) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992. Regulations 15(1) of IA Regulations, 2013 read with Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations, 2013.
88. Noticee submitted that reliance has been placed on certain call recordings and Whatsapp chats which are in isolation and nothing to establish this to be a routine practice is observed.

89. It is noted that Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k),(s) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992. provides that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner; use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under, employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder;”
90. Regulations 15(1) of IA Regulations, 2013 read with Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013 provides that provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.
91. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations, 2013 provides that an IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions.
92. It is noted that during inspection, Noticee has provided call data records for the period March 9, 2022 to April 19, 2022. On perusal of call recordings following findings are made

SI no	Name	Unique ID of call/whats app	Conversation with Executive	Findings	Call
1	Ashok Mer	Call recording +9170****4_2201 06_****15.m4a Call time: 1:00 to 1:20	Executive: mai jaha se bol rahi hoon vo capital vraddhi research firm hai yah ape aapko totally research based calls provide kiye jaate hain jisme aapko daily basis pe aapke investment ke accordingly agar <u>maan ke chale ki aapka agar Rs. 10000/- ka bhi investment rahe to daily ka Rs. 1500/- se Rs. 2000/- ka investment pe</u>	IA is promising the guaranteed return. AS envisaged in the Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum	Call-1

			<u>return nikalta hai thik hai.</u> <u>Profit aap daily ka nikal te hain.</u>	returns or target return to the clients or prospective clients.	
2	Ashwani Mishra	Whats app details attached.	"ye karwa do....to jackpot call milega sir.....single day par aapka <u>profit kahi nh gaya uski surety mai de rahi hu aapko...</u> phone to uthao sir ab aa aap..."	IA is promising the guaranteed return. AS envisaged in the Circular SEBI/HO/IMD/DF1/CI R/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	Whats app chats
3	Kalandar khan	Call recording Capital Vraddhi Md Jalish_211126_1* **** Call time: 06:32 to 06:44	Executive: Sir mereko 5 minute ka time dedo, sir mere number se call karke aapko koi bank nifty, nifty me trade karwa rahi hoon, <u>aur usme profit hoga sir.</u>	IA is promising the guaranteed return. AS envisaged in the Circular SEBI/HO/IMD/DF1/CI R/P/2020/182 dated September 23, 2020, IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.	Call-2
		Call recording Capitalvraddhi Vibhothi_211126_1* **** Call time: 1:08 to 2:24	Executive: 2 nd December ka lena hai sir, Client: ha 2 nd December ka pachaso che rupay chal raha hai Executive: Ha to thik hai le lijiye <u>Client: aur madam isko stop loss kuch nahi laganeka</u> <u>Executive: Ha mat lagana</u> Client: Ha thik hai aapke bharose ke upar kar. Client: Madam ek lot lena ya do lot lena Executive: Ek lot lelo ab to, le liya? Client: Ha le liya. Executive: Kitne ka hua Client: 57.50	From the conversation it is observed that IA advising client to trade without stop loss.	Call-3
		Call recording Neha Capital Vraddhi_211113_1* **** Call time:1:30 to 2:14	Executive: Mere suggestion se aapko pehle hi saal me 12-15 lakh ka profit ho jaaye to sir aapka hi kuch accha hoga, kam se kam aap mujhe yaad to karenge ki itna profit de diya. Aapki jo bhi jaroorat hai vo puri hogi sir. Jyada kuch nahi to dua to denge aap. Aapka future bright hoga	IA is convincing client that he/she would get 12-15 lakh rupees profit in a year.	Call-4

4	Vaibhav Gaekwad	<p>Call recording +9191*****2_211 012_**** AETrim16353862 42224 Call time: 2:30 to 2:55 Call time: 3:45 to 3:60</p>	<p>2:30 to 2:55 Executive: Aur agar aap Rs. 10000/- ka bhi investment karte ho humare saath to <u>hum market se aapko Rs. 3000/- se Rs. 4000/- ka profit aaraam se nikaal kar denge sir. Per day ka profit aapka Rs. 3000/- se Rs. 4000/- kahi nahi jaanewala aapka.</u></p> <p>3:45 to 3:60 Executive: <u>Humare saath judiye Rs. 10000/- ka investment kijiye. Rs. 10000/- ke fund par hi mai daily aapko mai Rs. 3000/- se Rs. 4000/- ka profit nikaal kar dung.</u></p>	<p>IA is promising the guaranteed return.</p> <p>AS envisaged in the Circular SEBI/HO/IMD/DF1/CI R/P/2020/182 dated September 23, 2020,</p> <p>IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.</p>	Call-5
		<p>Call recording Share Neha Dhakad_211015_**** AETrim16353873 72740 Call time: 1:20 to 1:45</p>	<p>Executive: Rs. 20000/- par bhi agar unke saath rehke working karoge aur aap mere saath working karoge <u>to daily ka Rs. 5000/- se Rs. 6000/- ka profit nikaal ke dung hi dung.</u></p>	<p>IA is promising the guaranteed return.</p> <p>AS envisaged in the Circular SEBI/HO/IMD/DF1/CI R/P/2020/182 dated September 23, 2020,</p> <p>IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.</p>	Call-6
5	Surjeet	<p>85*****8-4012-20****4-17***9- profit guarantee at 2min</p> <p>Call time: 2:00 to 2:20</p> <p>Call time: 3:35 to 3:55</p> <p>Call time: 7:45 to 8:10</p>	<p>2:00 to 2:20 Executive: 36000 aapko investment karna hi nahi hai, aap 8000/- to 10000/- bhi investment karoge na to <u>yaha pe Rs. 2500/- Rs 2000/- to aaram se profit nikal ke aayega.</u></p> <p>3:35 to 3:55 Executive: Yadi agar market me aapko trade lagate bhi nahi aayega na to vo bhi hu, aapko batayenge sir. Sirf dmat me aapko daalna hai Rs. 10000/- , <u>Rs 10000/- ke behalf pe ek mahine me aapko Rs. 30000/- se Rs. 40000/- ka profit nikal ke aayega daily ka 1500/- se 2000/- ka profit bhi hoga sir.</u></p> <p>7:45 to 8:10</p> <p>Executive: abhi mujhe batao agar aapke savings account me 10000/- rakhe hai to ek mahine ke baad 40000/- ho jayenge kya? Rakhe rakhe. <u>Lekin sir itne samay me</u></p>	<p>IA is promising the guaranteed return.</p> <p>AS envisaged in the Circular SEBI/HO/IMD/DF1/CI R/P/2020/182 dated September 23, 2020,</p> <p>IA shall not give any kind of assured returns or minimum returns or target return to the clients or prospective clients.</p> <p>Further, IA observed to be convincing client in the name of SIP where in IA is convincing saying there will not be single rupees loss.</p>	Call-7

			<p><u>10000/- bhi aap laga doge to ek mahine me mai aapko 30000/- se 40000/- ka profit nikaal ke de rahi hoon.</u> Meri company me jo aapka working hoga vo SIP plan me kaam hoga sir Systematic Investment Plan matlab jo aap investment karenge na usme ek rupaye ka bhi loss nahi hoga sir.</p>		
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93. Further, it is noted that, during the inspection Noticee vide letter dated April 22, 2022 submitted the following:

"I hereby submit that, during the SEBI inspection conducted from April 19, 2022 to April 22, 2022 the inspection team had searched email id info@capitalvraddhi.com

In the inbox of info@capitalvraddhi.com the inspection team found email dated December 4, 2021 received from client kalandar Khan. The email contained call recordings of client and our employee Muskan Mishra. The call recordings were heard in my presence with inspection team.

In this regard I hereby submit that, our employee Muskan Mishra has provided Investment Advisory service to client without stop loss and provided profit commitment in the range of Rs. 12 lakhs to Rs. 15 lakhs. The services to client Khalandar Khan were provided during the inspection period.

I agree that, services have been provided to clients without providing stop loss and profit guarantee/ commitment are also provided to clients."

94. From the above recordings of conversation between IA and clients/ prospective clients it is noted that following unfair and fraudulent practices have been adopted by the IA to lure the client and maximize its revenue

- a) Promising the guaranteed return to the clients.
- b) Advising clients to trade without stop loss.
- c) IA is convincing client that he/she would get 12-15 lakh rupees profit in a year.
- d) Convincing client in the name of SIP plan wherein client will not incur any loss.

95. In view of the above discussion, it is observed that by making / promising assured profits and unrealistic returns, the Noticee tried to deceive its client. Neither there exist any grounds for belief for such unrealistic returns nor can the assured profits be achieved. Further, knowing fully well that IA cannot give assured profits / guaranteed returns in securities market, Noticee knowingly misrepresented the truth. Further it is observed that Noticee was advising its clients to trade in securities market without stop loss. Such misrepresentation is therefore, fraudulent and is covered within the definition of "fraud" as

defined under regulation 2(1)(c) of the PFUTP Regulations. Trading without stop loss can incur huge losses eroding the funds available with the clients. In such cases investor can lose their entire capital. Further, it is noted that as per the terms and condition of the investment advisory agreement, Investment Adviser shall declare that Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return. By giving profit assurance Noticee has violated the provisions of the terms and condition of the agreements.

96. Hence, it is observed that Noticee has violated Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k),(s) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992. Regulations 15(1) of IA Regulations, 2013 read with Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations, 2013.

Receipt of Fees before entering into any agreement with client

97. During inspection, it was observed that in 209 out of 1793 clients, Noticee has received fees and provided services before entering into any agreement with them. Therefore, Noticee is alleged to have violated Regulation 19(1)(d) of SEBI IA Regulations, 2013 read with Clause 2(ii) of Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations, 2013.
98. Noticee admitted that the agreements that could not be entered into were pertaining to the Covid-19 period.
99. It is noted that Regulation 19(1)(d) of SEBI IA Regulations, 2013 read with Clause 2(ii) of Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations, 2013 provides that an IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client. An investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into

account available alternatives. *An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board [***]. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*

100. It is noted from the material available that Noticee has collected fees and provided his services to 1793 number of clients. Out of 1793 clients it was observed that from 209 clients Noticee has charged fees from clients even before entering the agreement with the clients. Some of the sample clients are mentioned below:

Payment Date	Client Name	PAN	Date of Agreement	Services	Service in Days	Amount
13-Apr-21	Govinda Kumar	BT*****5A	26-Jun-21	Stock Cash	19	5500
29-May-21	Renuka Sumit Jain	BF*****0H	30-Jul-21	Stock Cash	19	5500
31-Jul-21	Vikas Jangra	AL*****7C	24-Sep-21	Stock Cash	19	5500
30-Jul-21	Mr. Balister Singh	BX*****0A	18-Sep-21	Stock Cash	11	3000
28-Apr-21	Ritesh Kumar Harendrabhai Thakor	AS*****0E	10-Jun-21	Stock Cash	19	5500

101. From the above table, it is observed that the Noticee has charged fees from Mr. Govinda Kumar on April 13, 2021 and entered into agreement with the aforesaid client on June 26, 2021. Similarly from the 208 clients, Noticee charged fees before entering into agreement with them.

102. Further, it is noted that in reply to the SCN, Noticee admitted that they could not enter into agreement with the 209 clients due to Covid 19. In such case Noticee should have refrained from charging fees and giving services until the agreement was entered into. Therefore, it is observed that Noticee has not acted diligently and honestly with its clients.

103. In view of the above, it is observed that Noticee has violated Regulation 19(1)(d) of SEBI IA Regulations, 2013 read with Clause 2(ii) of Circular SEBI/HO/IMD/DF/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations, 2013.

Misrepresentation to clients by employees of IA

104. During inspection, it was observed that an employee of the Noticee has misrepresented and mislead a client by saying that the client's risk profile is approved by SEBI and has

solicited payment from client, which amounts to fraud which is in violation of Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.

105. Noticee submitted that the allegation is based on one isolated call recording and they have not committed any such act which falls within definition of fraud which is given in PFUTP regulation.
106. It is noted that Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 provides that no person shall directly or indirectly buy, sell or otherwise deal in securities in a fraudulent manner; use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under, employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange and engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.
107. Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013 provides that an investment adviser shall act honestly, fairly, with due skill, care and diligence in the best interests of its clients and integrity of the market and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives. Regulation 6(f) of IA Regulations, 2013 provides that for the purpose of the grant of certificate the Board shall take into account whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

108. It is noted that from the material available that the employee of the Noticee informed to the client that, the client's risk profiling has been approved by SEBI. Noticee vide letter dated April 21, 2022 submitted the following:

"I hereby submit that during the visit of the Inspection team, the audio call records of one of my client viz. Mr. Shivshankar Poddar has been obtained from my CRM Module in the computer of my employee Ms. Muskan Mishra. The said call records have also been mailed on April 21, 2022 to SEBI. While speaking to the said client my employee has informed the client that his Risk Profile has been approved by SEBI, in the process of convincing the client to take our advisory services and solicited payment from the client.

I also submit that the said employee Ms. Muskan Mishra does not possess NISM Level 1 and NISM Level 2 certifications and accordingly does not comply with Regulation 7 of SEBI (IA) Regulations, 2013.

The same is submitted to Inspection Authority."

109. Further, it is noted that in reply to the SCN, Noticee submitted that the allegation is based on one isolated call recording. Therefore, it is construed that the Noticee has admitted the said violation.

110. In view of the above, it is observed that the employee of the Noticee during the process of convincing the client misrepresented the client saying his Risk Profiling is approved by SEBI and solicited payment from client. The above conduct comes under the definition of 'fraud' as mentioned in regulation 2(1)(c) of PFUTP Regulations, 2003. Further, it is noted that Noticee is not of adequate integrity, reputation and character which is required for an intermediary registered with SEBI.

111. In view of the above, it is observed that the Noticee has violated Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.

ISSUE II- Does the violation, if any, attract monetary penalty Section 15EB, Section 15HA, Section 15B and Section 15A(c) of SEBI Act?

81. As has been established above that the Noticee is in violation of the following provisions-

a) Regulation 15 (13) read with Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.

- b) Regulation 15A of SEBI (IA) Regulations, 2013 read with Clause 2(iii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated Sept 23, 2020 and Clause 6 of Code of Conduct (Fair and Reasonable Charges) for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
- c) Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dt. September 23, 2020 and Clause 1(Honesty and fairness) and 2(Diligence) of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
- d) Clause 2(vi) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013.
- e) Regulation 16 and 17 of SEBI IA Regulations, 2013 read Clause 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations, 2013.
- f) Regulation 15 (1) of IA Regulations, 2013 and Clause 1 and 2 of Code of Conduct as specified in Schedule III read with Regulation 15 (9) of IA Regulations, 2013.
- g) Clause 1(i) of SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 and Clauses 1 and 2 of the Code of Conduct as mentioned Schedule III read with Regulation 15(9) of IA Regulations.
- h) Clauses 1 & 2 of Code of Conduct as specified in Schedule III read with Regulations 15(9) of IA Regulations, 2013.
- i) Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a),(b) and (c) of SEBI Act, 1992 and Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013 and Regulation 6(f) of IA Regulations, 2013.
- j) Regulation 15(1) and 17(b), (d) and (e) of IA Regulations read with Clauses 1 and 2 of the Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations, 2013

- k) Regulations 3(a), (b), (c) and (d), 4(1) and 4(2)(k),(s) of PFUTP Regulations, 2003 read with Section 12A (a),(b) and (c) of SEBI Act, 1992. Regulations 15(1) of IA Regulations, 2013 read with Clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Regulation 19 (1) (d) of IA Regulations, 2013.
- l) Regulation 19(1)(d) of SEBI IA Regulations, 2013 read with Clause 2(ii) of Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 read with Clause 1, 2 and 6 of Code of Conduct for Investment Advisers as specified under Third Schedule of IA Regulations, 2013.
- m) Regulation 3 (a), (b), (c) and (d) of PFUTP Regulations, 2003 read with Section 12A(a), (b) and (c) of SEBI Act, 1992 read with clauses 1 and 2 of the Code of Conduct for IA as specified under Regulation 15 (9) of IA Regulations, 2013. Regulation 6(f) of IA Regulations, 2013.
111. In context of the above, the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} is referred to 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 of civil 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."
112. Therefore, the aforesaid violations committed attract monetary penalty under Section 15EB Section 15HA, Section 15B and Section 15A(c) of SEBI Act. The text of provision is reproduced hereunder:

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

15EB. *Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees*

but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for failure by any person to enter into agreement with clients.

15B. *If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to [a 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]]*

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to [a 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]].

ISSUE III- If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

Factors to be taken into account by the adjudicating officer under SEBI Act

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*

114. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. As regard to the repetitive nature of the default, from the available records, there is no regulatory action taken by the SEBI in the past against Noticee
115. It is noted that the role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that it has failed in its fiduciary duties owed to its clients and attracts penalty. It is also noted that the Noticee has defrauded the investors of securities market. This violation of the Noticee, if dealt with lightly could seriously undermine investors confidence in the securities market and has to be viewed seriously and calls for appropriate penalty.

ORDER

116. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in 15J of SEBI, the purpose of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred under section 15I of the SEBI Act read with Rule 5 of the SEBI Rules, 1995, is hereby imposed following penalty under Section 15EB, 15HA, 15B and 15A(c) of SEBI Act on the Noticee:

Name of the Entity	Penalty Provisions	Penalty (Rs.)
Capital Vraddhi Financial Services (Proprietor Mr. Raju Jhariya)	Section 15EB of SEBI Act, 1992	₹ 20,00,000/- (Rupees Twenty Lakh Only)
	Section 15HA of SEBI Act, 1992	₹ 15,00,000/- (Rupees Fifteen Lakh Only)
	Section 15B of SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakh Only)
	Section 15A(c) of SEBI Act, 1992	₹ 2,00,000/- (Rupees Two Lakh Only)
	Total	₹ 40,00,000/- (Rupees Forty Lakh Only)

The said penalty is commensurate with the lapse/omission on the part of the Noticee.

117. 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. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.
118. In terms of the provisions of rule 6 of the SEBI Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: October 22, 2024

BARNALI MUKHERJEE

ADJUDICATING OFFICER