BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/GR/BM/2022-23/20648]

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:

Name of the Entity	Registration Number	PAN
Ayushi Chauksey	**INA1000008075**	**AVUPC8746J**

In the matter of "Inspection of Ayushi Chauksey (Investment Adviser)"

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an inspection of Ms Ayushi Chauksey, registered Investment Adviser (hereinafter referred as "**IA**") under the SEBI Investment Adviser Regulations, 2013 (hereinafter referred as "**IA Regulations**"), having SEBI Registration No. INA1000008075, since July 14, 2017 (hereinafter referred to as "**Ayushi/Noticee/IA**") with the registered address at "Shop no. 111, Ground Floor, Raghu Leela Mega Mall, Kandivali West, Behind Poisar Bus Depot, Mumbai, Maharashtra, 400067" and having a website with the address https://www.investmentbulls.com. The said inspection was done for the period from April 1, 2018 to March 31, 2019 (hereinafter referred as "**Inspection Period/IP**") in terms of Regulation 23 of SEBI (Investment Advisers) Regulations, 2013 and Section 11(2)(i) of SEBI Act, 1992. The focus of the inspection was to ensure compliance with respect to concerned regulations and circulars including investor service/complaints, Know Your Client (KYC) compliance, on-boarding of clients,

fees/charges, conditions of grant of registration, risk evaluation and dealing with clients and Anti Money Laundering (AML) guidelines issued from time to time.

2. The aforesaid inspection prima facie alleged the irregularities with respect to conditions of certificate, failure on the part of the Noticee to comply with general responsibility of being an IA, failure to make disclosure to clients, failure to maintain records, failure to display the mandatory information and failure to comply with provisions in respect of Anti Money Laundering Policy, thereby violating the various provisions of IA Regulations and SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as the "**PFUTP Regulations**"), SEBI Circulars CIR/MIRSD/3/2014 dated August 28, 2014, ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06/ dated March 20, 2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018.

3. Accordingly, the findings of the inspection were communicated to the Noticee vide email dated September 22, 2020, pursuant to which the Noticee, vide email dated October 12, 2020 submitted her reply.

4. Based on the submitted replies, following alleged violations were observed in the Inspection Report (IR):

   a) Regulations 13 (b) of IA Regulations.

   b) Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and (13) of IA Regulations.

   c) 15 (8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure;

   d) Regulation 18 (1), (4), (5), (6) and (7) of IA Regulations read with Clause 5 of Code of

Conduct for Investment Adviser;

e) Regulation 19 (1) and 19 (3) of IA Regulations;

f) Provisions of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014.

g) Provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January8,2006 and ISD/CIR/AML/2/06/ dated March 20,2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04,2018.

h) Regulations 3 (d) and 4 (2) (s) of PFUTP Regulations

5. In view of the above, SEBI initiated adjudication proceedings under Section 15HA and Section 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter.

APPOINTMENT OF ADJUDICATING OFFICER

6. In this regard, the undersigned has been appointed as the Adjudicating Officer **("AO")** by SEBI, vide order dated June 18, 2021, under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge under Section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Show Cause Notice No. SEBI /HO/EAD/EAD-4/P/OW/2022/0000025232/1 dated June 21, 2022 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4

of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty be not imposed under section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter for the aforesaid alleged violations.

8. The said SCN was served on the Noticee vide email dated June 22, 2022. The proof of service is on record. Further, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on August 01, 2022 vide Hearing Notice dated July 19, 2022 served through email on the same day. In response, the Noticee attended the said hearing and reiterated the submissions made vide her reply dated July 06, 2022. The submissions made by the Noticee are reproduced hereunder:

   a) *The Noticee submits herein that there existed no branch of the Noticee in Indore, M.P. Mr. Ved Sharma is an NISM certified professional (Research Analyst) who was working from his own workspace on contractual basis for the Noticee.*

   b) *It is submitted that the address of the Noticee as mentioned on the website were Dalal Street, Fort Mumbai and Shop No. 111, Raghu Leela Mega Mall, Near Poisar Bus Depot, Kandivali West, Mumbai. It is pertinent to mention that the Dalal Street address was only for educational training purpose and no investment advisory operations were ever undertaken on the said address and was thereafter closed within a very short span of time. Whereas, "Shop No. 111, Raghu Leela Mega Mall, Near Poisar Bus Depot, Kandivali West, Mumbai" address was duly mentioned on the website since the commencement of the operations by the Noticee.*

c) *Having regard to the alleged branch in Goa, it is submitted that the address of Goa was only for a proposed training institute which was eventually not setup. On conducting a demand analysis for such institutions in Goa, the Noticee found there was an extreme lack of demand and hence the proposal to setup a branch at the said address was dropped and the details were removed.*

d) *The clause(s) pertaining to conflict of interest has been duly incorporated in the disclaimer statement given by the Noticee to her clients.*

e) *It is submitted in this regard that no trading, whatsoever, has been done by the Noticee from her Demat account, till date, having regards to any client concerning the advisory. It is further submitted that the Noticee opened an account with Zerodha in 2017 but did not procure any shares.*

f) *It is humbly submitted in this regard that the Noticee had a total 4 employees working in Operation Research.*

g) *It is submitted that the Noticee was unclear as to the compliance with respect to KRA and CKYC being same and was informed at the time of inspection that both are different and are to be complied with differently.*

h) *The Noticee humbly submits in this regard that the KYC of all clients was initially done manually by the Noticee. The CKYC portal could not be accessed by the notice at the time of inspection due to some technical difficulty with the portal for which the notice had duly raised the ticket and the same was also shown to the inspecting authorities/officer(s). the Noticee was successfully registered with the CKYC portal before the inspection and thereafter on successful registration of the Noticee on the CKYC portal, the Noticee has been meticulously using the CKYC portal to extract the customer KYC and keeping records. It is further submitted that during the time of inspection as well, the Noticee was registered on the CKYC portal from 19.06.2019 onwards.*

i) The Noticee humbly submits that the disclaimers with respect to products and services provided by the Noticee have been displayed on their website at all times and the same is also mentioned as disclosure statements with the e-mails sent to the clients. The relevant documents have already been duly supplied by the Noticee to the inspecting team.

j) The disciplinary history was not provided at that point of time as there was no disciplinary history whatsoever of the Noticee.

k) It is further submitted that the Noticee has not availed any affiliations whatsoever with respect to the investment advisory services and hence the same has not been mentioned.

l) The Noticee humbly submits that Noticee has preserved all the records. However, the said data, along with the supporting emails, was subject to a system/server crash due to which the same were lost. It is relevant to mention herein that the number of clients of Noticee was 283, but the data regarding the same was lost owing to the server crash.

m) It is submitted herein that initially the website of the Noticee categorically mentioned an email address which could be availed in case of any grievance. Currently, the website of the Noticee displays complete details of the grievance handling mechanism including name, email ID, phone number, address and the link to access SCORES Portal.

n) It is humbly submitted in this regard that the AML clause has already been duly incorporated and correctly placed by the Noticee.

9. Taking into account the aforesaid facts, I am of the view that principles of natural justice have been duly followed in the matter by granting the Noticee, an opportunity for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS: -

10. I have carefully perused the written submissions made, the documents available on record, and the issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the following provisions of IA Regulations, PFUTP Regulations and SEBI Circulars?

a) Regulations 13 (b) of SEBI IA Regulations.

b) Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and 15 (13) of IA Regulations.

c) 15 (8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure;

d) Regulation 18 (1), (4), (5), (6) and (7) of IA Regulations read with Clause 5 of Code of Conduct for Investment Adviser;

e) Regulation 19 (1) and 19 (3) of IA Regulations;

f) Provisions of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014.

g) Provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18,2006 and ISD/CIR/AML/2/06/ dated March 20,2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04,2018.

h) Regulations 3 (d) and 4 (2) (s) of PFUTP Regulations

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HA and Section 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

11. Before proceeding further, I would like to refer to the relevant provisions of law:

Relevant provisions of SEBI (Investment Advisors) Regulations, 2013

Conditions of Certificate

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

13(b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted.

General responsibility

15(1) An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.

(2) …

(3) …

(4) …

(5) …

(6) …

(7) An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.

Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a transaction on its own account after giving such revised assessment to the client at least 24 hours in advance of entering into such transaction.

(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.

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

(10) An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.

(11) …

(12) ….

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

Disclosure

An investment adviser is required to make following disclosures to its clients:

18(1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.

(2) …

(3) …

(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.

(5) An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.

(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client.

Maintenance of records

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

- *(a) Know Your Client records of the client;*
- *(b) Risk profiling and risk assessment of the client;*
- *(c) Suitability assessment of the advice being provided;*

(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.

(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and submit a report of the same as may be specified by the Board.

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

1. ***Honesty and fairness***

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

2. ***Diligence***

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

3. ***Capabilities***

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

4. ***Information about clients***

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

5. ***Information to its clients***

   An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

6. ***Conflicts of interest***

An investment adviser shall try to avoid conflicts of interest as far as possible and when they cannot be avoided, it shall ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.

7. ***Compliance***

An investment adviser including its 85[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.

8. ***Responsibility of senior management***

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

Relevant Provisions of SEBI PFUTP (Prohibition of Fraudulent and Unfair Trade Practices Regulation 2003)

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(2) Dealing in securities shall be deemed to be a 7 [manipulative] fraudulent or an unfair trade practice if it involves 8 [any of the following]:—

(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}];

Relevant provisions of SEBI Act, 1992

Power to adjudicate.

15-I.

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G,15H, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Issue No. I: Whether Noticee is in violation of following provisions of IA Regulations, SEBI Circulars and PFUTP Regulations?

a) Regulations 13 (b) of IA Regulations.

b) Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and 15 (13) of IA Regulations.

c) 15 (8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure;

d) Regulation 18 (1), (4), (5), (6) and (7) of IA Regulations read with Clause 5 of Code of Conduct for Investment Adviser;

e) Regulation 19 (1) and 19 (3) of IA Regulations;

f) Provisions of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014.

g) Provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18,2006 and ISD/CIR/AML/2/06/ dated March 20,2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04,2018.

h) Regulations 3 (d) and 4 (2) (s) of PFUTP Regulations

a) <u>Irregularities with respect to Conditions of Certificate</u>:

12. In respect of the aforesaid alleged violation against the Noticee, I note from the IR and reply of the Noticee to the SCN that the Noticee failed to inform SEBI in writing about the material change in the information already submitted which is mandatory as per IA Regulations viz information regarding its branch office in Indore and discrepancy with respect to the addresses of its offices mentioned on its website.

13. In this regard, I note that Noticee has submitted that there existed no branch in Indore and that appointment of Mr Ved Sharma (posted at Indore) was on contractual basis wherein he was working from home since he was a resident of Indore. However, in post inspection submission, I note that she has submitted that Mr Ved Sharma was working on salary basis whereas other employees were working on commission/freelance basis. In this connection, I note from IR that the appointment letter of the aforesaid employee finds mention of terms such as *"you will under no circumstance carry work home"*, *"reporting manager"*, "*research department*", "*shift timings*" etc. which aptly indicates that he was not working from home rather Noticee had a full-fledged office in Indore. Further I note from the

submission of the Noticee that on the website, her addresses were mentioned as Dalal Street, Fort Mumbai and Shop No. 111, Raghu Leela Mega Mall, Near Poisar Bus Depot, Kandivali West, Mumbai. She also submitted that the Dalal Street address was only for educational training purpose and no investment advisory operations were ever undertaken on the said address and was closed thereafter. She further submitted that "Shop No. 111, Raghu Leela Mega Mall, Near Poisar Bus Depot, Kandivali West, Mumbai" address was duly mentioned on the website since the commencement of the operations by the Noticee.

As regards to the allegation of having office in Goa, Noticee has submitted that the address of Goa mentioned on its website was only for a proposed training institute which was eventually not setup because after conducting a demand analysis of the said institute, the Noticee didn't get satisfactory response. In this regard, I note from the IR and aforesaid submissions of the Noticee that the website of the Noticee, www.investmentbulIs.com, had listed the head office as 'Dalal Street, Fort, Mumbai', which is different from the information submitted to SEBI about the registered address which is 'Shop No. 111, Ground floor, Raghu Leela Mega mall, Kandivali West, Behind Poisar bus depot, Mumbai, Maharashtra — 400067'. It is pertinent to note that there is a contradiction in the response submitted by the Noticee to post Inspection questionnaire and in her submission in response to the SCN stated above. In this regard, I note that the Noticee in her post inspection questionnaire submitted that Dalal Street address was only for a limited span since her Raghu Leela Mall, Kandivali office was closed and that she was in dire need of place to work from which is contradictory to her earlier submission that the said address was only used for training purpose. Further, with regards to the branch office at Goa, I note that without due intimation to the Board, the Noticee should not have mentioned the branch address as Goa on her website. In view of the above, the submissions of the Noticee are devoid of merits.

14. In this regard, Regulation clearly specifies that any change in material information must be brought into the notice of the board, however, I note that Noticee failed to comply with the same. Accordingly, I note that it is established that the Noticee has violated the provisions of Regulation 13(b) of the IA Regulations and Regulation 3(d) and 4(2)(s) of PFUTP Regulations.

b) <u>Failure to comply with General Responsibility of being an IA</u>

15. I note from the IR that the Noticee failed to cooperate with the inspecting team by not providing documentary evidence/proof with respect to disclosure of conflict of interest to the clients, as and when they arose; details of her demat account statements sought to verify whether she entered into transactions in her own account contrary to the advice tendered to the clients and also to ascertain whether she acted on her own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client and certification/qualification details of all employees. In this regard, Noticee has submitted that clause pertaining to conflict of interest has been duly incorporated in the disclaimer statement given by the Noticee to her clients and has added a different section wherein detailed terms and conditions have been mentioned on the website as well as on the product proposed to her clients. Further, with regard to non-submission of demat account statement, Noticee has submitted that she had opened an account with Zerodha in 2017 but did not procure any shares.

16. In this regard, I note from the IR and reply of the Noticee that she failed to provide the aforesaid documents sought during the course of inspection by the inspecting team which was not denied by the Noticee as well. Further, though she has claimed that she had not

procured any shares, I note that no statement (nil statement) in support of this was submitted to the inspection team. In view of the above, it is established that Noticee has not cooperated during the inspection and thereby has violated the provisions of Regulation 3(d) and 4(2)(s) of PFUTP Regulations and Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and 15 (13) of IA Regulations.

17. Besides above, I further note from IR and submission of the Noticee that she was not registered with any of the KYC Registration Agencies ('**KRA**') and therefore Noticee did not perform the initial KYC of its clients and neither uploaded nor downloaded the details of the clients from the system of KRA. I also note that the Noticee did not obtain registration with Central KYC Registry (CKYCR) and that Noticee used to capture the KYC related documents from clients through emails only and did not verify the authenticity of such documents submitted by clients. In this regard, Noticee has submitted that KYC of her clients was done manually. The Noticee has further submitted that she was unclear with regards to the compliance of KRA and CKYC considering both being same and was informed at the time of inspection that both are different and are to be complied with differently. After which, the Noticee duly registered herself with the KRA agency.

    Noticee also made a submission that CKYC portal could not be accessed by the Noticee at the time of inspection due to some technical difficulty with the portal for which the Noticee had duly raised the ticket and that the Noticee was successfully registered with the CKYC portal before the inspection and thereafter on successful registration of the Noticee on the CKYC portal, the Noticee has been meticulously using the CKYC portal to extract the customer KYC and keeping records.

In this regard, I note from the IR and email communication submitted by the Noticee to substantiate her claim regarding Registration with KRA and CKYC that the Noticee submitted request for registration with KRA and CKYC on dated Feb 18, 2021 and June 17, 2019 respectively i.e. after the IP. This clearly establishes that during the IP, the Noticee was not registered with KRA and CKYC which is in violation of the provisions of Regulation 15(8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure including the provisions of Regulation 3(d) and 4(2)(s) of PFUTP Regulations.

c) Failure to make disclosure to clients

18. I note that the Noticee was alleged to have failed to make disclosure to prospective clients of all material facts / information about the business, disciplinary history, affiliation with other intermediaries, and such other information as is necessary to take an informed decision on whether or not to avail Noticee's services. It was also alleged that the Noticee did not provide any evidence w.r.t. disclosure to the clients regarding any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might have compromised the Noticee's objectivity or independence while rendering service to clients. Further, the Noticee was alleged to have failed to provide evidence to show that client's attention was drawn to the warnings, disclaimers in documents, advertising materials related to an investment product which was recommended to the clients.

19. In this regard, Noticee has submitted that she displayed disclaimers with respect to the products and services on her website at all times and the same is also mentioned as disclosure statements in the e-mails sent to the clients. Noticee further submitted that the disciplinary history was not provided at that point of time as there was no disciplinary

history of hers. Noticee also submitted that she did not avail any affiliation whatsoever with respect to the investment advisory services and hence the same has not been mentioned. In this regard, I note from the submissions made to the charges that they are general in nature and are not in specific compliance of Regulation 18 of IA Regulations which is part and parcel in taking informed decision by clients thereby fettering the ability of the clients to take proper decision. In view of the above, it stands established that the Noticee has violated the provisions of Regulation 18 (1), (4), (5), (6) & (7) of IA Regulations read with clause 5 of Code of Conduct for Investment Adviser and Regulation 3(d) and 4(2)(s) of PFUTP Regulations.

d) <u>Failure to maintain Records</u>

20. I note from IR that the Noticee failed to provide complete data in respect of compliance of IA Regulations to the inspecting team. Further, I note that the Noticee also did not have a backup of the data and hence she was alleged to have not preserved the records for a minimum period of at least five years. I also note that out of the total 283 clients, the Noticee could not provide complete data for any client like their KYC related documents, PAN details, risk profiling data, suitability assessment report, SMS tips etc. The Noticee also did not maintain any record of the duly signed and dated rationale for arriving at an investment advice. The Noticee even failed to provide a copy of audit report in respect of compliance with SEBI IA Regulations, 2013 from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and a copy of the yearly audit conducted in respect of compliance with IA Regulations since obtaining registration. Further, it was also observed that none of the records, which were provided to the inspection team in electronic format, were digitally signed.

21. With regards to the allegation of not preserving the records and not providing complete data for her clients, the Noticee has submitted that there was a server crash, which was inadvertent error and beyond the control of the Noticee. In this regard, I note from the observation of the inspection that the supporting document produced with respect to the server crash was related to deletion of certain emails and not the server crash as claimed by the Noticee. Accordingly, I find no merit in the aforesaid submission of the Noticee.

    Further, with regards to the allegation of not maintaining any record of the duly signed and dated rationale for arriving at an investment advice, the Noticee has submitted that the rationales for the advices given to the clients were duly dated and maintained but not signed and has been rectified as on date. In this regard, I note that the Noticee has not submitted any supporting documents to substantiate her claims. Therefore, the aforesaid contentions cannot be accepted.

    Further, with regards to the allegation of the Noticee failing to provide a copy of audit report, the Noticee has accepted that the audit was not conducted as the project was only in its initial phase.

    With regards to the allegation of records in electronic format not digitally signed, I note that Noticee has accepted the same.

22. In view of the aforementioned facts, it is established that the Noticee has violated the provisions of Regulation 19 (1) and Regulation19(3) of IA Regulations and Regulation 3(d) and 4(2)(s) of PFUTP Regulations.

e) **Failure to display the mandatory information**

23. I note from IR and the reply of the Noticee that she didn't display the name and contact details of the compliance officer to whom complaint may be made in the event of any investor grievance at her office. In this regard, Noticee submitted that initially the website of the Noticee mentioned an email address which could be availed in case of any grievance and that currently, the website of the Noticee displays complete details of the grievance handling mechanism including name, email ID, phone number, address and the link to access SCORES Portal. In this regard, I note that she has admitted to the inspection team that the above error might have been committed inadvertently. Further, she has not produced any documentary evidence in support of her claim to show her compliance during the inspection period. In view of the above, I find no merit in the submission of the Noticee. The above facts establish that Noticee has violated the terms of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014 and Regulation 3(d) and 4(2)(s) of PFUTP Regulations

f) **Failure to comply with provisions in respect of Anti Money Laundering Policy (AML Policy)**

24. I note from IR that there was no AML policy in place at the time of inspection. In this regard, Noticee in her reply to the SCN has submitted that AML policy has already been duly incorporated by her however, I note that no supporting documents w.r.t. compliance of the same has been produced. Therefore, I am of the view that the Noticee has failed to comply with SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18, 2006 and ISD/CIR/AML/2/06 dated March 20, 2006 read with SEBI Master circular SEBI/ HO/ MIRSD/ DOS3/ CIR/ P/ 2018/ 104 dated July 04, 2018 read with Regulation 3(d) and 4(2)(s) of PFUTP Regulations by not having an AML policy in place during the period of inspection.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter?

25. As it has been established that the Noticee has violated following provisions of the IA Regulations, PFUTP Regulations and SEBI Circulars

    a) Regulations 13 (b) of SEBI IA Regulations.
    b) Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and 15 (13) of IA Regulations.
    c) 15 (8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure;
    d) Regulation 18 (1), (4), (5), (6) and (7) of IA Regulations read with Clause 5 of Code of Conduct for Investment Adviser;
    e) Regulation 19 (1) and 19 (3) of IA Regulations;
    f) Provisions of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014.
    g) Provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18,2006 and ISD/CIR/AML/2/06/ dated March 20,2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04,2018.
    h) Regulations 3 (d) and 4 (2) (s) of PFUTP Regulations

    I am of the view that Noticee is liable for imposition of monetary penalty under Section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and under Section 15EB of the SEBI Act for violations thereafter, which are reproduced hereunder:

    SEBI Act, 1992:

    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 contravention where no separate penalty has been provided*.*

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

<u>Penalty for default in case of investment adviser and research analyst</u>*.*

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.

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

26. While determining the quantum of penalty under Section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and Section 15EB of the SEBI Act for violations thereafter, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:

<u>SEBI Act, 1992</u>

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.

27. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee. From the document available on record, it is not ascertainable whether the acts of the Noticee are repetitive in nature. However, it is pertinent to that the role of an investment advisor 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 applicable to them. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that she has failed in her fiduciary duties owed to her clients.

ORDER

28. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under Section 15HA and 15HB of the SEBI Act for violations before March 08, 2019 and under Section 15EB of the SEBI Act for violations thereafter on Noticee i.e. Ayushi Chauksey for violation of the following provisions of the SEBI IA Regulations, PFUTP Regulations and provisions of SEBI Circulars:

a) Regulations 13 (b) of IA Regulations.

b) Regulation 15 (1), (7) and (9) read with Clauses 1 and 7 of Code of Conduct, Regulation 15 (10) and 15 (13) of IA Regulations.

c) 15 (8) of IA Regulations and SEBI Circulars issued in regard to KYC and CKYC procedure;

d) Regulation 18 (1), (4), (5), (6) and (7) of IA Regulations read with Clause 5 of Code of Conduct for Investment Adviser;

e) Regulation 19 (1) and 19 (3) of IA Regulations;

f) Provisions of SEBI Circular CIR/MIRSD/3/2014 dated August 28,2014.

g) Provisions of SEBI Circular ISD/CIR/RR/AML/1/06 dated January 18,2006 and ISD/CIR/AML/2/06/ dated March 20,2006 read with SEBI Master circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04,2018.

Read with

h) Regulations 3 (d) and 4 (2) (s) of PFUTP Regulations

Name of Noticee	**Penal provisions**	**Penalty**
Ayushi Chauksey, “Investment Adviser”	Under Section 15HA	Rs 5,00,000/- (Rupees Five lakhs Only)
	Under Section 15HB of the SEBI Act for violations before March 08, 2019 and	Rs 1,00,000/- (Rupeess One Lakh Only)

	Under Section 15EB of the SEBI Act for violations thereafter.	Rs 1,00,000/- (Rupees One Lakh Only)

29. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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

30. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

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

32. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: October 21, 2022	**G RAMAR**
Place: Mumbai	**ADJUDICATING OFFICER**