

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

In respect of:

Mr. Hariom Sharan Patel

(Proprietor of BIS Capital Investment Advisor)

PAN: BFLPP9443M

SEBI Registration No.: INA000003346

In the matter of BIS Capital Investment Advisor (Proprietor Hariom Sharan Patel)

A. BACKGROUND

1. Hariom Sharan Patel, Proprietor of BIS Capital Investment Advisor ("**Noticee**") is registered as an Investment Adviser ("**IA**") with Securities and Exchange Board of India ("**SEBI**") since August 18, 2015. In this case, the Noticee (a registered IA) is accused of concealing previous unregistered investment advisory services provided by him through the firm "Bourse India Investment Advisor" from SEBI, and continuing to engage in such services in the name of the said firm even after obtaining registration from SEBI as an IA in the capacity of Proprietor of BIS Capital Investment Advisor.
2. SEBI received a SCORES complaint no. SEBI/KN16/0000244/1 dated June 03, 2016 against the Noticee wherein Mr. Shashidhara N. ("**Complainant**") *inter alia* alleged that he had been cheated by a company called "Bourse India Advisory". Complainant further alleged that he had paid a fee of Rs. 1,50,000 to the said company for investment advice and later lost Rs. 1,20,000. In light of the above, SEBI conducted an examination into the activities of the Noticee.

3. After examination, action was approved by the competent authority to initiate proceedings under: (i) sections 11, 11B read with sections 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"); and (ii) Chapter V of the SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**") against the Noticee. The present order pertains to the enquiry proceedings initiated under the Intermediaries Regulations against the Noticee. Consequent to the approval of enquiry proceedings, a designated authority ("**DA**") was appointed. Thereafter, the DA issued a show cause notice ("**SCN**") dated July 29, 2022 to the Noticee. Hearing opportunities were given to the Noticee *vide* hearing notice sent by email dated October 02, 2022 and October 06, 2022. However, the Noticee did not appear before the DA. Since sufficient opportunities were granted to the Noticee, the DA proceeded based on the material available before it. In the report dated October 19, 2022 ("**DA Report**"), the DA has observed that the Noticee while applying to SEBI for certification of registration as an IA deliberately concealed the fact that it was engaged in unregistered investment advisory services prior to applying to SEBI for registration. Consequently, the DA observed that the Noticee has committed the following violations and has recommended cancellation of his registration:

- (i) Regulation 6(f), 13(a), 13(b), Clause 1 (Honesty and Fairness) and Clause 8 (Compliance) of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of SEBI (Investment Advisers) Regulations, 2013 ("**IA Regulations**").
- (ii) Regulation 3(a), (b), (c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations**") read with Section 12A(a), (b) and (c) of SEBI Act.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

4. The present matter emanates from SCN dated November 02, 2022 issued by SEBI calling upon the Noticee to show cause as to why the action recommended by the DA should not be taken against him in terms of regulation 27 of Intermediaries Regulations. A copy of the DA Report was enclosed with the said letter.

5. I note that the DA has relied on the following information/documents as evidence to arrive at a conclusion that Noticee has violated provisions of SEBI Act, IA Regulations and PFUTP Regulations as stated in paragraph 3(i) and (ii) above:
- (i) Letter submitted by Noticee to SEBI dated July 09, 2015;
 - (ii) SCORES Complaint;
 - (iii) Website of Bourse India Investment Advisor (www.bourseindia.com);
 - (iv) Information received from EBS Payment Gateway;
 - (v) KYC details obtained from ICICI Bank Ltd. with respect to account no. ending with 0399 and 0424;
 - (vi) Bank details obtained from State Bank of India (SBI) with respect to account no. ending with 2040.

Each of the above information/evidences are discussed in detail below.

5.1 Letter submitted by Noticee to SEBI dated July 09, 2015

A letter dated July 09, 2015 was submitted by the Noticee to SEBI along with his application for registration. The letter *inter alia* states that the Noticee is not involved in investment advisory business and he is applying for registration as a new IA.

5.2 SCORES Complaint

SEBI had received a SCORES complaint no. SEBIE/KN16/0000244/1 dated June 03, 2016 against Noticee wherein *inter alia* the Complainant had alleged that he has been cheated by a company called as "Bourse India Advisory". Complainant further alleged that he paid a fee of Rs. 1,50,000 to the company and later lost Rs.1,20,000. The Complainant mentioned the website of Bourse India Advisory as www.bourseindia.com.

5.3 Website of Bourse India Investment Advisor (www.bourseindia.com)

- 5.3.1 The website of the Bourse India Advisory as mentioned in the complaint (www.bourseindia.com) was browsed for information but the same was found to be inactive.

5.3.2 As per “Whois” report retrieved from the website www.domainbigdata.com, the creation date for www.bourseindia.com was March 09, 2014. The archived pages of the website were downloaded from www.webarchive.org to gather information regarding the website. The website *inter alia* stated the following:

Welcome To Bourseindia.Com - Stock Advisory Company In Indore- BourseIndia Financial Services is newly incorporated Indian Trading Analysis Providing Company with an investment philosophy Focused on delivering superior performance through strong ethics of professionalism and productivity. We always strive for professional excellence in the execution of all our Activities by having a updated view of customer's requirements. we believe in integrity which gives us a notion and Enthusiasm to conduct our business by providing high return to our investors. As we have a deep-rooted understanding of Indian Capital markets it is our core responsibility to provide the institutionalize trade pattern to our clients.

Why Choose Us?-As a company we have been providing services for long-time for longtime.

We Reach Global-we are committed to strengthen our competitiveness through a focus on Global economic growth.

OUR MISSION-Our goal is to become the preferred company to all of our traders and investors.

We Follow “Know your Client” Principle. Along with Analysis we believe that we need to synchronize the Dreams of Our Clients with their Financial Situation by presenting the optimized Investment Services

We understand very well about the complexities a trader faces right from receiving the expert advice till the execution of the trade. We very well understand the importance of Speed, Accuracy and consistency at which message is to be passed to the trader in order to maximize the benefits.

Bourse India provides experts Recommendations for Stock Cash, Stock Futures, Stock Option and traded in both NSE and BSE. Our Expertise also lies in Trading in all form of Commodities (MCX & NCDEX) and FOREX Segments.

- 5.3.3 It was observed that various services were listed on the website catering to various segments like Equity, Equity Derivative, Index Derivative, Commodity, Currency Derivative and Boursiers 360. Description of one of the service “Equity Derivative-Stock Future” as shown on the website is reproduced below:

EQUITY DERIVATIVE - STOCK FUTURE

Basic Stock Future- Derivatives are specifically and relatively new and advanced financial instruments in the Indian stock market. Besides the fact that it needs more risk management, this product generates the highest number of trades, its being the solemn instrument, in which the financial institutions trade. In this service BourseIndia provides intraday Basic stock futures trading tips to traders. Our research team works extensively in identifying the movement in future market on intraday basis and provides traders with intraday trading recommendations to enable them to earn maximum returns with nominal risk tolerance. The service features of this package follows:

Service Features

- Intraday tips in Equity Future traded in NSE/BSE*
 - We provide you around 3-4 Intraday Future Market call*
 - Recommended Investment of up to Rs >=50 ,000 as margin money*
 - Updates on important news & information*
- Live market tips-Via SMS, Yahoo Messenger.*

Sample Call-Basic Future: BUY PNB IN NSE FUTURE ABOVE 740 TGT 744, 750 SL 736

Updates- Basic Future: BUY PNB IN NSE FUTURE DID OUR FIRST TGT OF 744. BOOK PARTIAL PROFIT

- 5.3.4 Pricing details were mentioned for these packages on the website. The pricing for these packages ranged from Rs. 6,500 for forex services per month to Rs. 1,75,000 for Boursiers360 platinum package.

5.4 **Information received from EBS Payment Gateway**

- 5.4.1 Along with the account details available on the website for making payments, online payments could also be made *via* payment gateway Ingenico ePayments India Pvt. Ltd. (formerly known as *E-Billing Solutions Pvt. Ltd.*) (“**EBS Payment Gateway**”). Accordingly, SEBI sought information from EBS Payment Gateway to provide copies of account opening forms, KYC details and account statements of all the accounts available with them and any other relevant information. EBS Payment Gateway *vide* email dated July 03, 2020, submitted merchant application form, KYC, transaction statement and other details. From the details submitted, it was observed that the company name is Bourse India Investment Advisor, the date of incorporation is April 16, 2014, the contact person is Hariom Sharan Patel and the services intended to sell online by the website are equity, derivatives, *etc.*
- 5.4.2 EBS Payment Gateway also submitted a copy of amendatory agreement dated September 10, 2015 wherein amendments were made to the existing Master Merchant Service Agreement dated May 21, 2014. The following amendments were made to the existing contract*:

Table 1

Sr. No.	Amendment Field	From	To
1	Domain Change	No Changes	
2	Company name Change	Bourse India Investment Advisor	BIS Capital Investment Advisor
3	Change in Constitution	Partnership	Proprietor
4	Bank Details Changes	A/c Name- Bourse India Investment Advisor Bank Name: ICICI Bank A/c no- xxxxxxxx0399 IFSC Code- ICIC0000916 Branch- Ratlam Kothi Indore	A/c Name- BIS Capital Investment Advisor Bank Name: ICICI Bank A/c no- xxxxxxxx0424 IFSC Code- ICIC0006573 Branch- Saket Nagar Indore
5	Address Change	307, Navneet Plaza, Third Floor, 5/2, Old Palasia, Indore, Madhya Pradesh-452018.	504, The Mark Building, Saket Square, Old Palasia, Indore, Madhya Pradesh.

*Amendments to come into effect from the date of agreement.

- 5.4.3 From the transaction statements provided by EBS Payment Gateway for Bourse India Investment Advisor, the payments made by the Complainant to Bourse India Investment Advisor were traced as shown in the table below:

Table 2

Payment ID	Date	Payment Method	Bank Reference	Customer	Amt. (in Rs.)
33598637	14-Feb-15	EBS-SBI PG VISA	025771/504505350724/1150 21436489468	Shashidhara N.	12,499.90
33971024	25-Feb-15	EBS-SBI PG MasterCard	981905/022510379160/1150 22541214027	Shashidhara N.	16,905.00
34965540	23-Mar-15	EBS-SBI PG VISA	021935/508211374392/1150 32350975518	Shashidhara N.	33,600.00
35245571	31-Mar-15	EBS-SBI PG MasterCard	692537/033111706706/1150 33153546415	Shashidhara N.	30,030.00
38039516	11-Jun-15	EBS-SBI PG VISA	068922/516215337643/1150 61185401868	Shashidhara N.	15,620.00

The DA observed from the above table that the payments made by the Complainant to Bourse India Investment Advisor via EBS Payment Gateway were during the period from February, 2015 to June, 2015 accumulating to Rs. 1,08,654 in 5 instalments.

5.5 **KYC details obtained from ICICI Bank Ltd. with respect to account no. ending with 0399 and 0424**

SEBI vide email dated July 15, 2020, sought account opening forms and account statements from ICICI Bank Ltd. with respect to account nos. ending with 0399 and 0424 (i.e, details for accounts which were mentioned in the amendatory agreement dated September 10, 2015). Following was observed from the details provided by the ICICI Bank Ltd. vide email dated July 21, 2020:

Table 3: Account details for account ending with no. 0399:

Particulars	Details
A/c Name	M/s Bourse India Investment Advisor
A/c Type	Current Account
PAN no	AANFB7695P
Constitution	Partnership
Communication address	Scheme no.94, In front of Bombay Hospital, Indore-452001, Madhya Pradesh.
Mobile no.	xxxxxx5770
Email id	shenkey06@gmail.com
Date of Incorporation	16/04/2014
Authorized Signatory	Shenkey Chaurasia (Partner)
Type of Industry	Consultancy in Shares & Commodity Market
Nature of Business	Services
Ownership details	1) Shenkey Chaurasia (Partner) PAN no: ATJPC5720H Residential Address: Hirdenagar (Part-1), Gram-Hiradenagar, Tehsil-Mandal, Madhya Pradesh-481661. 2) Aakash Joshi (Partner) PAN no: AINPJ4355Q Residential Address: Trimurti Nagar, Subhas Chandra Bose Statue, Dhar, Madhya Pradesh-454001. 3) <u>Hariom Sharan Patel (Partner)</u> PAN no: BFLPP9443M Residential Address: Village- Malaigawan, PO-Pateha, Rewa, Madhya Pradesh-486001. 4) Gaurav Kumar (Partner) Passport no: K8868419 Residential Address: Ram Nagar Extension, Loni Road, Shahdara, Delhi-110032.
Bank statement	<u>Period of statement</u> -10/05/2014 to 12/01/2016 <u>Credits received during the period</u> -Rs. 83,94,221.70/- <u>Account closure date</u> - 12/01/2016

Table 4: Account details for bank account ending with no. 0424:

Particulars	Details
A/c Name	M/s BIS Capital Investment Advisor
A/c Type	Current Account
PAN no	BFLPP9443M
Constitution	Sole Proprietorship
Communication address	The Mark Building, Saket Square, Indore, Madhya Pradesh-452001
Residence address	Village- Malaigawan, PO-Pateha, Rewa, Madhya Pradesh-486001
Mobile no.	xxxxxx0109
Email id	info@biscapital.com
Date of Incorporation	15/06/2015
Authorized Signatory	<u>Hariom Sharan Patel (Proprietor)</u>
Type of Industry	Financial Advisory Services
Nature of Business	Services
Type of profession	Advisory
Bank statement	Period of statement-10/09/2015 to 27/02/2017 Credits received during the period-Rs. 72,61,982.72/- Last transaction date- 27/02/2017

From Table 3 above, it was observed that Hariom Sharan Patel was a partner in Bourse India Investment Advisor. Further, from Table 4 above, it was observed that Hariom Sharan Patel was also a Proprietor of BIS Capital Investment Advisor

5.6 **Bank details obtained from State Bank of India (SBI) with respect to account no. ending with 2040**

The aforesaid bank account was mentioned on the website www.bourseindia.com. Following details were provided by SBI:

Table 5

Particulars	Details
A/c Name	M/s Bourse India Investment Advisor
A/c Type	Current Account
PAN no	AANFB7695P
Constitution	Partnership
Communication address	Shop no-15, EB-303, Scheme no.94, Infront of Bombay Hospital, Indore-452001, Madhya Pradesh
Mobile no.	xxxxxx5770
Email id	shenkey06@gmail.com
Date of Incorporation	16/04/2014
Mode of operation	Any one
Nature of Business	Stock Market Advisor
Authorized Signatory	Hariom Sharan Patel and Aakash Joshi (any one)
Ownership details	1) Shenkey Chaurasia (Partner) PAN: ATJPC5720H Residential Address: Hirdenagar (Part-1), Gram-Hiradenagar, Tehsil-Mandal, Madhya Pradesh-481661 2) Aakash Joshi (Partner) PAN: AINPJ4355Q Residential Address: Trimurti Nagar, Subhas Chandra Bose Statue, Dhar, Madhya Pradesh-454001. 3) Hariom Sharan Patel (Partner) PAN: BFLPP9443M Residential Address: Village- Malaigawan, PO-Pateha, Rewa, Madhya Pradesh-486001 4) Gaurav Kumar (Partner) PAN: CSTPK6551R Residential Address: Ram Nagar Extension, Loni Road, Shahdara, Delhi-110032

Particulars	Details
Bank statement	<u>Period of statement</u> -15/07/2014 to 02/12/2015 <u>Credits received during the period</u> -Rs. 22,85,265/- <u>Account closure date</u> - 02/12/2015

5.7 **DA Report Conclusions**

- (i) In addition to being proprietor of BIS Capital Investment Advisor for which Noticee was granted registration from SEBI, Noticee is also a partner of Bourse India Investment Advisor which was providing investment advisory services and for which a website was created on March 09, 2014 (*i.e*, prior to obtaining registration from SEBI with effect from August 18, 2015).
 - (ii) Noticee while applying to SEBI for registration as an IA through proprietorship firm BIS Capital Investment Advisor did not reveal that he was involved in investment advisory services prior to applying to SEBI. Thus, Noticee submitted wrong information and concealed the fact that he was involved in investment advisory service prior to applying to SEBI for registration as an IA. He also continued to carry on unauthorized investment advisory activities through Bourse India Investment Advisor even after obtaining SEBI registration number for BIS Capital Investment Advisor as he was receiving payment in the ICICI bank account no. ending with 0399 and SBI account no. ending with 2040 till December 2015 when he obtained the registration from SEBI as an IA on August 18, 2015.
 - (iii) By concealing important and relevant facts Noticee acted dishonestly, unfairly and not in the best interest of his clients and interest of the securities market. In view of the above, DA found the Noticee liable for violation of provisions of SEBI Act, IA Regulations and PFUTP Regulations as stated in paragraph 3(i) and (ii) above.
6. Pursuant to the SCN, *vide* email dated March 14, 2023, an opportunity for personal hearing was granted to the Noticee to appear before me on March 23, 2023. On the scheduled date and time, the authorized representative ("**AR**") of the Noticee appeared before me wherein AR was informed that pursuant to SEBI

circular bearing no. SEBI/HO/EFD1/EFD1_DRA4/P/CIR/2022/104 dated July 29, 2022, attempts were made to serve the SCN on the Noticee through Market Infrastructure Institutions (MIIs), however, the SCN could not be delivered. AR of the Noticee stated that the aforesaid would be addressed in the reply to be filed before the WTM. WTM asked the AR the reasons for not submitting the reply till date. The AR submitted that the Noticee was/is not using the email ID (i.e, hariompatel31@gmail.com) to which the SCN and other communications have been sent by SEBI. The AR requested for time till April 07, 2023 for submitting a reply, which was acceded to. AR admitted that Noticee has acted in violation of the provisions of IA Regulations, however, he claimed that provisions of PFUTP Regulations as it existed at the time of violation are not applicable to the Noticee. The AR informed the WTM that the Noticee has not engaged in investment advisory services since 2018.

7. *Vide* email dated April 10, 2023, AR of Noticee submitted a reply *inter alia* stating that the unregistered investment advice given by him as a partner of Bourse India Investment Advisor was an honest mistake, and upon discovering that rendering such services requires registration, he applied for one. The relevant portions of the said reply are reproduced below:

- 1. Before advertizing to the facts as stated in the SCN in detail, it is submitted that Our Client has not violated any of the provisions as alleged in the SCN dated 02.11.2023 and the provisions of the SEBI Act, 1992.*

- 3. It is pertinent to point here that Our Client started BIS Capital Investment Advisor, a sole proprietorship which had obtained a valid SEBI Investor Adviser Registration in due course. In this regard reference is drawn to the fact that Mr. Hari Om Patel had duly cleared the examination conducted by NISM and thereafter was allotted the Registration No. IN000003346 by SEBI.*

- 4.a. That the 21st century saw a sudden boom of multiple advisory services being operated from the city of Indore vis a vis the securities market. Our Client /Noticee was always interested in the securities market and had been carefully monitoring it for some time. He had always been advising his family and friends, who made good gains on many occasions. Around this time, and on the*

insistence of his friends and family the Noticee, who was merely 25 years old explored the field of Investment Advisory.

4.b. Pertinently, during that time not much information was available in the public domain on the prior requirements of registration with SEBI, before providing such services. Being unaware of the requirements and under the honest mistake of fact on account of the prevailing circumstances, and in good faith Our Client/the Noticee believing it to be a legitimate business activity, permissible by law, started Bourse India alongwith his friends.

4.c. That Our Client/the Noticee, came across the SEBI IA Regulations and realized the requirements of registration as an Investment Advisor. As Our Client/the Noticee immediately registered for the NISM examination and successfully completed the same and thereafter, obtained the necessary certification. Accordingly, the Investment Advisor Registration was obtained on 18.08.2015 and thereafter, all the activities of Investment Advisory were carried out by BIS Capital Investment Adviser, as has also been noted in the Enquiry Report dated 19.10.2022/ SCN.

4.d. It not out of place to state that BIS Capital Investment Advisor applied to SEBI on 09.07.2015 for grant of Investment Advisor Registration. As such, the violations of the IA Regulation ought to treated as non-compliance, and accordingly a lenient view of Our Client/the Noticee's action should be taken by your good office considering his young age during the alleged period of the violation.

4.e. Pertinently, the advice given through BIS to its clients was purely on the basis of technical analysis with the bona fide intention to optimize their gains in the securities market. The advice given to the clients were at arm's length and Our Client/Noticee did not have any direct or indirect relation/involvement/collusion with anyone related with the companies of which the securities were recommended for investment.

4.f. Furthermore, the Clients of BIS were mostly their friends and relatives of and were happy and willing to avail the services. Notably, majority of the Clients

served by BIS were content with the services and had made profits. In respect of those who were dissatisfied with the services, BIS promptly acted on their concerns and in most cases refunded the amount as well.

4.g. That in so far as the complaint filed by Mr. N Shashidhara is concerned, which has led to the initiation of the present proceedings, it is respectfully stated that the Noticee is willing to refund the amount so received from him as has been done by them in the past in respect of all their dissatisfied Clients.

4.h. That the proprietor of BIS has stopped all activities pertaining to the securities market and has not acted as an Investment Advisor. Pertinently, the Noticee already surrendered his SEBI registration on 22.12.2016.

6. In respect of the aforesaid findings it is respectfully submitted that Our Client/ Noticee acted in good faith and under a bona fide mistake of fact that Investment Advisory services could be legitimately given, and there was no such requirement to obtain any certification from SEBI. It may be apposite to state here that at the relevant time, the Noticee had approached a few existing Investment Advisors operating out of Indore, Madhya Pradesh and were informed that there was no prior requirements/compliance which are to be undertaking for commencing Investment Advisory business. Furthermore, in so far as the non-supply of the said information to SEBI is concerned the same was neither deliberate nor intentional. It is submitted that as stated during the course of oral submissions the Noticee acknowledges that there has been an infraction to this effect on his part. However, it is not out of place to state that such default, if any, was in the nature of non-compliance and there was no fraudulent intention of the Noticee to cheat or to act in a deceptive manner or to cause any loss to investors or group of investors or to the securities market. Accordingly, it is requested that the Hon'ble WTM may take a lenient view in so far as the same is concerned.

7. In so far as the alleged violation of the SEBI (Prevention of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulation, 2003 ("PFUTP Regulations") are concerned, it is respectfully submitted that even assuming *arguendo*, that Our Client/Noticee had acted as an Investment Adviser

through BIS without obtaining the necessary registration, the same can by no stretch of imagination be construed to amount to violation of the PFUTP Regulations and/or any other SEBI Regulations. Admittedly, Our Client had carried out the alleged Investment Advisory Service through Bourse India between 10.05.2014 to 16.08.2015. Notably a reading of the relevant provisions of the PFUTP Regulation as applicable at the time make it amply evident that providing Investment Advisory was never considered to be falling within the scope of the definition of “dealing in securities” as defined at Regulation 2 (1) (b) and consequently would not fall within the scope of “fraud” as defined at Regulation 2 (1) (c). The said understanding flows from a bare reading of the 2018 Amendments to the PFUTP Regulations which make clear as day that the addition of Regulation 2 (1) (b) (ii) thereby introducing the words “acts which may be knowingly designed to influence the decisions of investors” were done specifically to bring Investment advisory services within the scope of the definition of dealing with securities and consequently bringing the same within the definition of fraud.

8. Furthermore, in so far as the alleged violation of Regulation 3 of PFUTP is concerned as alleged in the Enquiry Report dated 19.10.2022 it is submitted that the act of providing Investment Advisory prior to the amendment could not fall within the definition of fraud as defined at Regulation 2 (1) (c) and as such there could be no question of Our Clients action falling with the ambit of the activities prohibited by Regulation 3.

9. Notably, the amendment was introduced w.e.f. 01.02.2019 and as such cannot be made retrospectively applicable to the period when Our Client was allegedly providing Investment Advisory service. To that extent it is submitted that the alleged violation of the PFUTP Regulations is grossly misplaced and not reflective of the legislative intent introduced post the 2018 Amendments.

C. CONSIDERATION OF ISSUES AND FINDINGS

8. Based on the conclusions arrived in the DA Report, the following issues are to be decided upon:

- (i) Whether Noticee had acted in violation of Regulation 6(f), 13(a), 13(b), Clause 1 (Honesty and Fairness) and Clause 8 (Compliance) of Code of Conduct for IA as specified in Third Schedule read with Regulation 15(9) of IA Regulations?
 - (ii) Whether Noticee had acted in violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with Section 12A(a), (b) and (c) of SEBI Act?
 - (iii) Whether the recommendations made by the DA in DA Report must be accepted or whether any other order needs to be passed against the Noticee?
9. I have examined the charges against the Noticee, the DA Report, the reply of the Noticee and other material available on record. Before proceeding, I find it appropriate to reproduce below the provisions alleged to have been violated by the Noticee:

9.1 IA REGULATIONS

Consideration of application and eligibility criteria.

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 representatives and partners, 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;**

...

**The provision has been substituted in 2020.*

Conditions of certificate.

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

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

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

General responsibility

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

THIRD SCHEDULE

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.

8. Compliance: An investment adviser including its representatives 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.

9.2 PFUTP REGULATIONS

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 there under.

9.3 SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. 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;

....

10. In addition to the aforesaid provisions, certain other provisions of IA Regulations which are important to be delved into are definitions of “investment advice” and “investment adviser”. Regulation 2(1)(l) defines “investment advice” as follows:

(l) "investment advice" means advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning.

Regulation 2(1)(m) states:

(m) "investment adviser" means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called;

Further, regulation 3(1) of IA Regulations states that on and from the commencement of the said regulations, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from SEBI. Similarly, section 12(1) of SEBI Act reads as follows:

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

It is to be noted that regulation 3(2) of IA Regulations *inter alia* provides that an application for grant of registration certificate shall be made in Form A as specified in First Schedule of IA Regulations. The said Form A specifically requires the applicant to answer the question *"Whether the applicant is engaged in investment advisory services prior to making application under these regulations."*

11. I note from the Noticee's reply that he has admitted that he was carrying out unregistered investment advisory services as a partner of Bourse India Investment Advisor from May 10, 2014 to August 16, 2015. The allegation in the present case is whether the Noticee had concealed the above information from

SEBI while applying for registration as an IA and whether he continued to engage in such services through Bourse India Investment Advisor even after obtaining registration as a Proprietor of BIS Capital Investment Advisor. I note that *vide* letter dated July 09, 2015 submitted along with his application for registration as an IA, the Noticee has explicitly declared that he was not involved in investment advisory business, he was not advising clients on stock and commodity markets and that he is applying for registration as a new IA. However, as found during the examination, a SCORES complaint was made against the Noticee, and the website mentioned in the complaint was www.bourseindia.com, the archived website www.bourseindia.com offered “*experts Recommendations for Stock Cash, Stock Futures, Stock Option and traded in both NSE and BSE. Our Expertise also lies in Trading in all form of Commodities (MCX & NCDEX) and FOREX Segments*”. Further, the price of the packages ranged from Rs 6500 to Rs 1,75,000. From the bank account statements of Bourse India Investment Advisor (*i.e*, bank accounts held with ICICI Bank Ltd. ending with no. 0399 and SBI ending with no. 2040), the credits received in the said accounts from May 10, 2014 to January 12, 2016 was Rs. 1,06,79,486. I note from the DA Report, that credits were received in both the accounts till December, 2015. I find that the services and packages offered on the website www.bourseindia.com and the credits received in the bank accounts of Bourse India Investment Advisor clearly indicate that Noticee was providing “investment advice” under IA Regulations, which triggered requirement for him to obtain registration from SEBI under the said regulations.

12. After perusal of the said website, the payment partner on the website was contacted for information (*i.e*, EBS Payment Gateway). From the information submitted by EBS Payment Gateway with respect to www.bourseindia.com, it is clear that the name of the contact person for the website and the Noticee are the same, and the website has been created for selling equity, equity derivatives etc. Further, I note that after obtaining SEBI registration with effect from August 18, 2015, the Noticee entered into the amendatory agreement dated September 10, 2015, with EBS Payment Gateway wherein the name of the company was changed from Bourse India Investment Advisor to BIS Capital Investment Advisor. The said agreement also records change in bank account held with ICICI Bank Ltd. from account no. ending with 0399 to 0424. Thus, I conclude that

Noticee was providing investment advisory services under the name of Bourse India Investment Advisor prior to obtaining registration from SEBI. Further, I also conclude that Noticee has submitted wrong information to SEBI *vide* his letter dated July 09, 2015.

13. A defense advanced by the Noticee is that he did not have knowledge that a registration certificate is required from SEBI to provide investment advisory services. It is a cardinal principle of law that ignorance of the law is not an excuse and the same cannot be taken as a defense in any proceedings to avoid liability in case of any violation. The IA Regulations were notified by SEBI in the year 2013 and it came into force with effect from April 21, 2013. From such date, it was imperative for any person carrying out investment advisory activity to get registered with SEBI. It is noted from the records that the website www.bourseindia.com was created on March 09, 2014 i.e, nearly 1 year after the IA Regulations came into effect. It is implausible that Noticee was not aware of the requirements of IA Regulations prior to creating this website, and if he was actually not aware, then it points to lack of due diligence on his part which is expected from an IA. In view of the above, I do not find any merit in this contention. While the Noticee has put forth lack of knowledge as an argument for not obtaining registration at the time of offering unregistered investment advisory services, he has not furnished any reason for concealing such material information from SEBI while applying for registration as Proprietor of BIS Capital Investment Advisor.
14. I note that regulation 13(a) and (b) of IA Regulations which deals with “Conditions of certificate” provides that the IA shall abide by the provisions of the SEBI Act and IA Regulations and that it shall forthwith inform in writing, if any information submitted earlier is found to be false or misleading or there is any material change. Taking the aforesaid paragraphs into account, I find that the Noticee was not in compliance of the provisions of the SEBI Act and the IA Regulations as he did not obtain registration at the time of giving investment advice under the name of Bourse India Investment Advisor. Further, after obtaining registration, Noticee also did not intimate SEBI that the letter dated July 09, 2015 submitted by it at the time of registration is false and misleading. By the aforesaid acts, Noticee has also violated regulation 6(f), Clause 1 (Honesty and Fairness) and Clause 8

(Compliance) read with regulation 15(9) of IA Regulations which *inter alia* requires an IA to act honestly, with due skill, care and diligence and in the best interests of its clients and integrity of the securities market.

15. Another argument of Noticee is that at the time unregistered investment advice was provided (*i.e.*, between May 10, 2014 to December, 2015), the said activity was not under the ambit of definition of “dealing in securities” as defined in regulation 2(1)(b) of PFUTP Regulations, and consequently, the said activity cannot fall under the scope of “fraud” under regulation 2(1)(c) of PFUTP Regulations. According to the Noticee, unregistered investment advice came within the ambit of “dealing in securities” by virtue of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2018. w.e.f. from February 1, 2019 when the following was inserted “*such acts which may be knowingly designed to influence the decision of investors in securities*”. In this regard, the DA Report records the following:

“As per the definition of “fraud” as provided in regulation 2(1)(c) of PFUTP Regulations, 2003 “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in Securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss by a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment and by an active concealment of a fact by a person having knowledge or brief of the fact.

As already established above Noticee by knowingly misrepresented / concealed the fact from SEBI that it was involved in Investment advisor services prior to applying to SEBI for registration, acted dishonestly and not in the best interest of his clients. Noticee has thus acted fraudulently. Hence, I conclude that Noticee has violated regulation 3(a), (b), (c) and (d) of PFUTP regulations by engaging in dealing of securities in a fraudulent manner.”

16. With respect to the aforesaid contention of the Noticee, it is important to look at the definition of “dealing in securities” under the PFUTP Regulations prior to its substitution (*i.e.*, before February 01, 2019). The earlier definition read as follows:

“dealing in securities” includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in section 12 of the Act.”

(emphasis supplied)

The definition above contains the word “includes” which *prima facie* indicates that the definition is broad. It is also noted that the said definition was substituted pursuant to the Report submitted by the Committee on Fair Market Conduct under the Chairmanship of Shri T.K. Viswanathan. The said report *inter alia* stated:

“...That being said, the Committee was of the opinion that it would be beneficial to have the PFUTP Regulations further strengthened to specifically enable SEBI to have the power to restrict such ‘dealings in securities’ instead of having to rely on interpretation of the PFUTP Regulations to protect the market....”

Thus, from the above, it can be concluded that SEBI was already taking necessary actions for protection of investors and market with respect to entities not covered by the earlier definition of “dealing in securities”. However, on the recommendation of the Committee, it was deemed appropriate to explicitly include certain acts in the definition of “dealing in securities”, and hence, the definition was accordingly substituted. The substitution was merely a clarification of the law.

17. What is left to be determined is whether the acts of Noticee constituted “fraud” under PFUTP Regulations. The term “fraud” under PFUTP Regulations, *inter alia*, has the following elements: (i) an act, expression, omission or concealment; (ii) in a deceitful manner or not; (iii) by a person or by any other person with his connivance or by his agent; (iv) while dealing in securities; (v) to induce another

person or his agent to deal in securities; (vi) whether or not there is wrongful gain or avoidance of loss. Further, the said definition includes a list of nine specific fraudulent items. Out of the nine specific fraudulent items, two are particularly important in the present case, clause (1) and (3), reproduced below:

“(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2)...

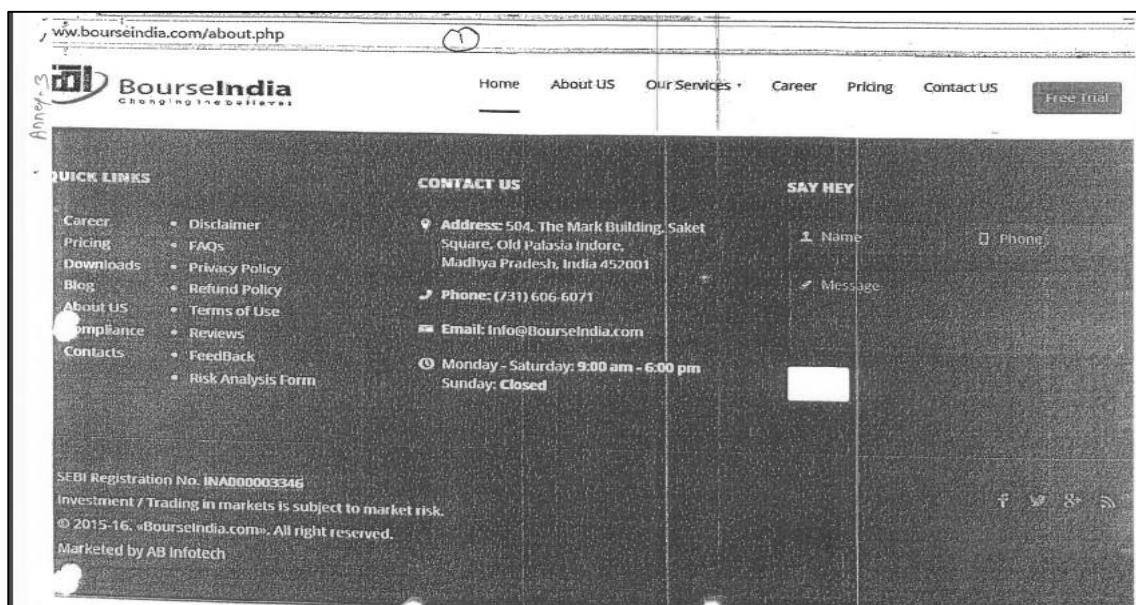
(3) an active concealment of a fact by a person having knowledge or belief of the fact;”

In the present case, apart from dealing in securities, Noticee’s conduct would amount to fraud if there is any “concealment” which has the effect of “inducing” any person to deal in securities.

18. In relation to the above, I note that the Noticee had submitted a declaration to SEBI by way of letter dated July 09, 2015 *inter alia* stating that he was not involved in investment advisory business and that he was applying for registration as a new IA. The Noticee has admitted in his reply that he was unaware of the requirement to obtain registration as an IA, and hence, he did not register himself with SEBI at the time of providing unregistered investment advice through Bourse India Investment Advisor. According to the Noticee, he subsequently became aware of the need to register and sought registration with SEBI. Despite this, he concealed the fact that he was providing unregistered investment advisory services prior to his registration. In view of the above, I find that the act of Noticee submitting a wrong declaration to SEBI squarely falls under the ambit of “concealment”.
19. As per the DA Report, the Noticee continued to provide investment advice through Bourse India Investment Advisor even after SEBI granting him registration as an IA as a Proprietor of BIS Capital Investment Advisor. As reproduced in paragraph 5.3.2 above, the website of Bourse India Investment Advisor (www.bourseindia.com) *inter alia* stated that it/they provide expert recommendations for stock cash etc. Further, I note from Annexure 3 of DA SCN,

that it contains a screenshot of website of www.bourseindia.com. The screenshot of the website is provided below.

Image 1



20. From the screenshot above, it is clear that the website displays the name “Bourse India” and has the domain name registered of Bourse India Investment Advisor, however, the IA registration no. displayed is the one that was granted to the Noticee by SEBI with effect from August 18, 2015 (i.e, INA000003346). I find that displaying the IA registration no. granted to the Noticee (Proprietor of BIS Capital Investment Advisor), on the website of Bourse India Investment Advisor amounts to misrepresentation that Bourse India Investment Advisor was registered as an IA, when infact, it was not. It seems that the above was a ploy to induce investors to deal in securities by availing unregistered investment advisory services offered by Bourse India Investment Advisor. It is reasonable to conclude that investors may carry a *bona fide* belief that any entity which on its website portrays itself as an expert in providing stock market recommendations and has a IA registration no. from SEBI would be actually registered in terms of IA Regulations, however, the same was not the case with respect to Bourse India Investment Advisor. Taking into account the aforesaid paragraphs, I find that SEBI granted registration to the Noticee basis his letter dated July 09, 2015, which, as brought out before, is false and misleading and concealed material information regarding providing unregistered investment advisory services. Further, the website of Bourse India Investment Advisor and the descriptions therein suggests that there

was an attempt to convey that the said firm is a registered IA, thereby, inducing investors. Thus, I find that Noticee's acts constituted violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations read with section 12A(a), (b) and (c) of SEBI Act.

21. In conclusion, I find that the Noticee has violated the provisions of SEBI Act, PFUTP Regulations and IA Regulations as stated in paragraph 3 above. I find it important to mention here that unregistered investment advisory services pose a significant threat to securities market. Permitting the investors to receive an investment advisory service from an unregistered entity in effect, means that the same is received from an unqualified person without adhering to the safeguards prescribed in the IA Regulations. By providing false declaration regarding not providing unregistered investment advisory services before registration, Noticee has concealed material information from SEBI that was a relevant factor to be considered for granting registration to the Noticee. The said registration allowed the Noticee to induce investors basis his advice. Allowing a registered intermediary to blatantly mislead SEBI and investors at large without consequence sets a dangerous precedent. Given the above, I find it necessary to take an action commensurate with the violation committed by the Noticee to deter such activities, protect interest of investors and foster an environment that encourages transparency and trust. I note that the DA in his report has recommended cancellation of registration certificate of Noticee. Further, I note that the Noticee has already applied for surrendering his SEBI registration in December, 2016.

DIRECTION

22. In view of the foregoing, I, in exercise of the powers conferred upon me under sections 12(3) and 19 of SEBI Act read with regulation 27(5) of Intermediaries Regulations, hereby cancel the certificate of registration granted to Mr. Hariom Sharan Patel, Proprietor of BIS Capital Investment Advisor having registration no. INA000003346.
23. Irrespective of the cancellation the certificate of registration, Mr. Hariom Sharan Patel, Proprietor of BIS Capital Investment Advisor shall continue to be liable for

anything done or omitted to be done as an IA and continue to be responsible for payment of outstanding fees and dues if any, payable to SEBI.

24. This order shall come into force with the immediate effect.
25. A copy of this order shall be forwarded to Mr. Hariom Sharan Patel, Proprietor of BIS Capital Investment Advisor and BSE Administration & Supervision Ltd. (BASL).

DATE: JUNE 30, 2023

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA