

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

UNDER SECTION 12(3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AND REGULATION 28 OF THE SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013.

In respect of:

Capital Ways Investment Adviser Proprietor : Mr. Deepak Ostwal

SEBI Registration No. : INA000008862

PAN: AAPPO6194C

1. Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal) (*hereinafter also referred as 'Noticee'*) is an investment adviser registered with SEBI having registration number INA000008862.
2. Pursuant to an inspection conducted by SEBI for the period 01.04.2020 to 14.10.2021, Securities and Exchange Board of India ('SEBI') initiated two proceedings against the Noticee. One, the Adjudication Proceedings under section 15I of the SEBI Act, and the other, the proceedings under section 12(3) of the SEBI Act read with the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations'). The officer so appointed by SEBI, acting as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 ('SEBI Act'), passed an Order dated 26.12.2024 levying a penalty of Rupees Ten (10) Lakhs on the Noticee and on the same date, acting as the Designated Authority ('DA') under the Intermediaries Regulations, submitted a Report ("Report") to SEBI in accordance with the provisions of the Intermediaries Regulations.

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3. The instant proceedings have commenced pursuant to the above Report and consequent Show Cause Notice (“SCN”) dated 03.01.2025 as required under the Intermediaries Regulations. The Noticee replied to the SCN, vide email dated 27.01.2025 *inter alia* making the following submissions: -

- 3.1 With regard to non-compliance with the qualification / certification requirement, the Noticee has submitted that all the employees involved in client interaction and termed as person associated with investment advice, were duly holding NISM certifications. Apart from them, none of the employees were in contact with clients, which SEBI has also failed to establish.
- 3.2 SEBI has accepted the Noticee’s contentions regarding the compliance with fee structure and hence no reply is warranted.
- 3.3 With respect to the allegation that the Noticee entered into the agreement with the client ‘MD Mahmood’ after charging of fees is unfounded and false as the Noticee had entered in the agreement with the client on 04.08.2021 and has charged fees thereafter.
- 3.4 With reference to the contentions with respect to the clients ‘Aryan Suman’ and ‘Chandra Sen Shrivastava’ the submissions made by the Noticee have been accepted by SEBI and hence no reply is warranted. Further, with respect to the client ‘Mallanagoud Basavantharay Kanikeri’, the Noticee has denied the observation and conclusion of SEBI as the Noticee has sold medium-risk service to the client viz : ‘CW-Super Trend Cash Service.’ The Noticee did not sell ‘CW-Equity Super Trend Combo’ as falsely claimed by SEBI. The same can be confirmed by reviewing the client’s agreement which is enclosed.
- 3.5 The Noticee has maintained all the requisite records, however due to heavy load on server, the hardware got crashed and hence the Noticee could not provide it to the inspection team.
- 3.6 The Noticee denies in entirety the findings in the Report regarding profit guarantee, forced and false risk profiling, forced payments, profit sharing etc. as the Noticee had upon its website included prominent disclaimers on various pages stating the investments in securities are subject to market fluctuations and no guarantee of achieving any specific objectives is provided such as: “*Capital Ways don’t provide any profit / loss sharing services, guaranteed profit services, & Services which are not*

mentioned in our website” “Investment in Stock / Commodity / Currency Markets is subject to market risk.” Moreover, in the welcome mail, sent to all the clients, it was clearly stated, *inter alia*, that investment is subject to market risks, there are no surety or assurance or accuracy of return is not guaranteed.

- 3.7 The call recordings unless coupled with a Certificate under Section 65B of Evidence Act and verified with a Forensic Science Laboratory Report cannot be relied upon and thus without verification of call details, the said recordings cannot be held against the Noticee. Furthermore, the SEBI in the matter of Star World Research, Winway Research and other matters has held such recordings to be unreliable and dropped such charges.
- 3.8 The complaint of Rimpi Rani is not a valid complaint as she had earlier also filed a complaint on similar grounds which was duly resolved and was closed by SEBI as well. The Noticee had entered into a settlement agreement with the complainant which was duly executed as well. However, the complainant did not perform her obligations and had again filed the complaint against the Noticee despite the Noticee fulfilling all the obligations on his part and hence the subsequent complaint filed by the complainant shall not be treated as a valid complaint and the Noticee shall not be charged with the said violation as he had duly resolved the complaint in a timely manner.
- 3.9 The training to the employees with respect to AML guidelines was not required as the Noticee does not accept cash payments from clients and is also not engaged in large financial transactions with the clients. Additionally, the Noticee has implemented an AML policy and has duly registered with the FIU in line with the AML guidelines.
- 3.10 The conduct of the Noticee during the business has been *bona fide* and in the best interest of its clients. The Noticee has served thousands of clients out of which only a few were dissatisfied for having grievances, which were duly resolved in a timely manner. Further, for similar violations, the Adjudicating Officer has already imposed a huge penalty of Rs.10 lakhs and hence the certificate of registration of the Noticee should not be suspended for a period of six months
4. The Noticee also availed the opportunity of personal hearing on 07.03.2025, when Mr. Abhishek Mishra, Company Secretary, the Authorised Representative (‘AR’) for the Noticee, attended the hearing online *via* Webex. The Ld. AR reiterated the submissions

made by the Noticee vide reply dated 27.01.2025. However, he fairly admitted the allegations in the Report dated 26.12.2024 and requested for reduction in recommended penalty in view of the following mitigating factor that for same violations, the same Adjudicating Officer who is also the DA in the instant proceedings has already imposed the monetary penalty and also the following:

- a) The Adjudicating Officer has accepted the submissions made regarding the allegation of exorbitant fees being charged by the Noticee; and
 - b) The allegation of assured returns made to the clients is admitted but this happened because there were ‘some lapses’ of staff and that the entire team handling the work has been removed.
5. I have considered the allegations in the Report and the submissions made by the Noticee in its written reply as well as during the personal hearing. I note that the charge against the Noticee in the instant proceedings is that the Noticee has violated various provisions of the SEBI Act, 1992, SEBI (Investment Advisers) Regulations, 2013 (**‘IA Regulations’**) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**‘PFTUP Regulations’**) and Circulars issued by SEBI. Such charges are with regard to the following alleged violations by the Noticee i.e.
- 5.1. Non-compliance with the qualification / certification requirements by the employees of the Noticee who have dealt with clients.
 - 5.2. The Noticee did not act in a diligent and honest manner with regard to the agreement between the Noticee and its clients. The details of the agreements do not match with the details of the invoices and invoices were generated prior to entering into agreement with the client.
 - 5.3. Noticee has failed to do proper suitability assessment and had sold products bearing higher risk than the risk categories defined in the risk profile of the clients thereby impairing the investment objective of the clients.
 - 5.4. The Noticee has failed to maintain the records of communication with clients during risk profiling and suitability assessment of advice / selection of advisory products /

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services. Further the Noticee has not complied with its duty as an investment adviser to produce to the inspecting authority such statements and information as required for the purposes of inspection.

- 5.5. The Noticee has coerced the clients to agree to the risk profiles, promised guaranteed return to the clients, forced the client to take additional advisory services and make additional payment, understated the advisory fees and made false commitments and has managed and handled the demat / trading accounts of the clients. The Noticee promised assured return and took details of the friend of the client to charge exorbitant fees. The Noticee has also provided assurance of loss recovery i.e. another way of providing assured returns.
- 5.6. The Noticee has not resolved the complaint pending in SCORES and has not provided call recordings sought by SEBI.
- 5.7. The Noticee has not provided training to its employees as required under the Anti-Money Laundering ('**AML**') and Combating the Financing of Terrorism ('**CFT**') Guidelines.
6. I note that the allegation with regard to charging exorbitant advisory fees from clients as observed during inspection are not the basis of allegation in the instant proceedings as the DA in his Report has given the benefit of doubt to the Noticee in that regard. The allegations and finding in the Report which are the subject matter in the instant proceedings have already been adjudicated by the same officer in his Order dated 26.12.2024. The Noticee has not paid the penalty as imposed upon it vide the order dated 26.12.2024 and has filed appeal before Hon'ble SAT against the said order. It is further noted that in said appeal filed by the Noticee, Hon'ble SAT has granted conditional stay on payment of penalty. Since the instant proceedings are independent proceedings and the Noticee has admitted the allegations I deem it appropriate to proceed to examine the case.
7. It is noted that taking into consideration the facts and circumstances of this case as found in the Report and having regard to orderly functioning of securities market and protection of investors, the DA has recommended that the Noticee be prohibited from taking up any

new assignment or contract for a period of six months. While in the reply to the instant SCN, Noticee has denied the charge and the findings of the DA, during personal hearing, its AR conceded and admitted the charge and findings and requested to reduce the period of prohibition. I have, thus, no reasons left with me to disagree with the findings of the DA in the Report. Nevertheless, I am tempted to independently deal with contentions of the Noticee in the interest of justice and to examine whether the recommendation of the DA is commensurate with contraventions or it should be changed if contraventions are serious or reduced as requested. For this purpose, it is deemed relevant to first refer to the provisions of the regulations alleged to have been contravened by the Noticee in this matter, which are reproduced as following: -

SEBI IA REGULATIONS, 2013

Regulation 7 – Qualification and certification requirement

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

....

Regulation 15 – General Responsibility

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

...

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

....

- (12) *Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.*

....

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

Regulation 15 A – Fees

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

Regulation 17 - Suitability

17. *Investment adviser shall ensure that,-*

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- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client;
- (b) It has a documented process for selecting investments based on client's investment objectives and financial situation;
- ..
- (d) It has a reasonable basis for believing that a recommendation or transaction entered into:
 - (i) meets the client's investment objectives;
 - (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;
 - (iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.
- (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.
- ...

Regulation 19 – Maintenance of Records

- (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 along with PAN, the date of advice, nature of the advice, the details of products/securities in which advice was rendered and fee/consideration, if any charged/received for such advice
 - (h) Records of communication including emails, call recording.

Regulation 21 – Redressal of client grievances

- (1) An investment adviser shall redress client grievance promptly.

Regulation 25 – Obligation of investment adviser on inspection

- (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including 79[partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his

custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.

- (2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.

CODE OF CONDUCT FOR INVESTMENT ADVISERS AS SPECIFIED UNDER THIRD SCHEDULE READ WITH REGULATION 15(9) OF IA REGULATIONS READS AS UNDER:

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.

...

8. Compliance

An investment adviser including its ⁹⁴[partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

...”

SEBI CIRCULAR SEBI /HO/IMD/DF1/CIR/P/2020/182 DATED 23.09.2020

2(ii) Agreement between IA and the client

a. Regulation 19(1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in **Annexure A**.

.....

Annexure A

....

Investment Adviser shall not, in the course of performing its services to the client, hold out any investment advice implying any assured returns or minimum returns or target return or percentage accuracy or service provision till achievement of target returns or any other nomenclature that gives the impression to the client that the investment advice is riskfree and/or not susceptible to market risks and or that it can generate returns with any level of assurance.

.....

c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client.

(iii) Fees

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

(A) Assets under Advice (AUA) mode

- a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.*
- b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.*
- c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.*

(B) Fixed fee mode

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

General conditions under both modes

a.....

- b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis.....*

....

(iv) Qualification and certification requirement

Regulation 7 of the amended IA Regulations specifies the minimum qualification and certification requirements for IAs. Further, in terms of second proviso of regulation 7 (1), existing individual IAs above fifty years of age (as on September 30,2020) shall not be

required to comply with the qualification and experience requirements specified under Regulation 7(1)(a) and 7(1)(b) of the amended IA Regulations. However, such IAs shall hold NISM accredited certifications and comply with other conditions as specified under Regulation 7 (2) of the amended IA Regulations at all times.

(vi) Maintenance of Records

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

- a. IA shall maintain records of interactions ,with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:
 - i. Physical record written & signed by client,
 - ii. Telephone recording,
 - iii. Email from registered email id,
 - iv. Record of SMS messages,
 - v. Any other legally verifiable record
- b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.
- c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.

SEBI CIRCULAR CIR/OIAE/2014 DATED 18.12.2014

Redressal of investor grievances through SEBI Complaints Redress System (SCORES) platform

SEBI CIRCULAR SEBI/HO/MIRSD/DOP/CIR/P/ 2019/113 DATED 15.10.2019.

2.12 Employees' Training

2.12.2.1 Intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures. Training requirements shall have specific focuses for frontline staff, back office staff, compliance staff, risk management staff and staff dealing with new clients. It is crucial that all those concerned fully understand the rationale behind these directives, obligations and requirements, implement them consistently and are sensitive to the risks of their systems being misused by unscrupulous elements.

SEBI (PFUTP) REGULATIONS, 2003

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.

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

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

- (i) knowingly making a false or misleading statement, or
 - (ii) knowingly concealing or omitting material facts, or
 - (iii) knowingly concealing the associated risk, or
 - (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer}};
- ...”

SEBI Act, 1992

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;

8. It is noted that in its written reply the Noticee has contested the charges on same or different grounds from that it had taken before the DA. But, during personal hearing the charges and allegations have been admitted on its behalf by its AR. Accordingly, I proceed to examine the case on merit and taking into account the admission of the Noticee as well.

A) NON-COMPLIANCE WITH THE QUALIFICATION / CERTIFICATION REQUIREMENT- Para 13.1 of the Report

9. Based on examination of facts and provisions of Regulations in para 13.1.1 to 13.1.13, the DA has held that the employees/the persons associated with the Noticee, who had dealt with the clients did not have the requisite certification which is in violation of Regulation 15(13) read with Regulation 7 of IA Regulations, 2013 and Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020. The Noticee in its reply dated 27.01.2025 claimed that all its employees involved in the client interaction and termed as persons associated with investment advice were duly holding NISM certification. The Noticee has enclosed copies of certificate given by NISM to certain individuals. It is noted that the validity of all those certificate expired on different dates till April 2024. Further, none of these certificates establish that the individuals mentioned therein are employees of the Noticee or they have been engaged by it for clients' interaction as claimed during the relevant periods.

10. From the observations of inspection and findings in Report of the DA it is noted that the Noticee had never produced these certificates to show that its employees have valid NISM certificates at the relevant times. Before the DA, the Notice did not make such claim. Instead it contended that SEBI itself has granted a three-year grace period for existing investment advisers to meet the qualification and experience requirements. As the

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amended Regulations took effect on 30.09.2020, the deadline for the employees to obtain the post graduate qualifications was 30.09.2023. Besides, the deadline was further extended by another two years vide SEBI Circular dated 10.10.2023. Hence the current deadline for compliance with enhanced qualification and experience requirements under Regulation 7(1) is 30.09.2025. Accordingly, the Noticee has time to meet the deadline for compliance as regards the qualification of the persons associated with investment advice. The DA had rejected these contentions and I do not have any material to hold otherwise. The claim now made in the reply to the instant SCN is just an afterthought. I do not have any reason to differ with findings of the DA in this regard. Moreover, during the personal hearing the AR of the Noticee fairly agreed to the allegation in this regard.

B) AGREEMENT BETWEEN THE IA AND THE CLIENT – Para 13.3 of the Report

11. As per regulations, the IA has to ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the agreement and provided copy of signed agreement to the client. It has been alleged that in case of its client MD. Mohamood the Noticee did not act in a diligent and honest manner with the said client. The details of the agreements did not match with the details of the invoice and the invoice has been generated prior to entering into an agreement with the client. The basis of this allegation as per the Report is that the fees mentioned in the agreement with this client as relied upon by the Noticee was different from the fees mentioned in the invoice issued to the said client. Further the agreement had been entered with the client on 21.08.2021, however, as per the invoice, the fees has been charged on 13.08.2021. Thus, the fees had been charged prior to the agreement date. Further, although the discrepancy has been observed in agreement dated 21.08.2021, the Noticee had submitted a copy of another agreement dated 04.08.2021 with the same client. However, the agreement under examination was dated 21.08.2021 for providing service “*CW-Super Trend Option*”, whereas the agreement dated 04.08.2021 submitted by the Noticee was for providing service “*CW-Stock Option Accurate*”. The Noticee had not made any submissions with regard to the allegation of differential fees as per the Agreement and the invoice. Hence, it has been found that the Noticee has admitted to the allegation in this regard. Even during the instant proceedings, the Noticee has provided a copy of an agreement dated 04.08.2021. The Noticee has not provided any defense to the allegation. I note that the Noticee was trying to mislead the

enquiry by providing the agreement dated 04.08.2021 whereas the Noticee has entered into agreement with its aforesaid client dated 21.08.2021 but charged fees on 13.08.2021. Even during personal hearing, the AR of the Noticee has fairly conceded to these findings and allegations. I , therefore, agree with the findings of the DA that the Noticee has violated Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Clause (2) (ii) (c) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 September 23, 2020.

C) SUITABILITY ASSESSMENT & INAPPROPRIATE PRODUCT SOLD TO CLIENTS - Para 13.4 of the Report

12. The IA Regulations mandate risk profiling and ensuring suitability of the product for all categories of clients by the investment adviser. It has been alleged that the Noticee has failed to do proper suitability assessment and had sold products bearing higher risk than the risk categories defined in the risk profile of the clients thereby impairing the investment objectives of the clients. It is noted that the Noticee had sold high risk products to the medium risk category clients and thus, had not ensured that investment advice rendered by it was appropriate to the risk profile and financial situation of clients. The inspection pointed out, as example, three instances (*Ref. para 13.4.7 of the Report*). While, DA gave benefit of doubt with regard to two such instances, he has found that as per the agreement dated 01.04.2024 between the Noticee and its client Mr. Mallanagoud Basavantharay Kanikeri, the Noticee had sold the high risk product viz. 'CW-Equity Super Trend Combo' to the said client who had a moderate risk score.

13. Before the DA, the Noticee had denied the allegation and had stated that it had sold only medium risk services to the said client as per an agreement dated 20.03.2024 wherein the "CW-Super Trend Cash" which is of moderate risk. This claim was rejected by the DA as from the agreement dated 01.04.2024, it is evident that the client who had a moderate risk score had been provided a high risk product. In its reply to the SCN, the Noticee has again denied this charge based on an agreement dated 22.03.2021 executed between Mr. Deepak Ostwal (proprietor of the Noticee) and its client Mr. Mallanagoud Basavantharay Kanikeri. I note that the Noticee is repeatedly trying to mislead the authorities in the proceedings by relying upon irrelevant agreement. The agreement dated 22.03.2021 is

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prior in date. Even if the claim of the Noticee is accepted that in the year 2021 it offered only medium risk services to the said clients, it is established that pursuant to later agreement dated 01.04.2024 it offered the high risk product viz. 'CW-Equity Super Trend Combo' to the said client who had a moderate risk score. I do not have reason to differ with findings of the DA that the Noticee has failed to do proper suitability assessment as regards the said client and had sold products bearing higher risk than the categories defined by the risk profile of the client thereby impairing the investment objectives of the client. During the personal hearing, the AR of the Noticee has fairly agreed with the findings in the Report and admitted all the allegations and requested for reduction of penalty. Thus, there remain no doubt for giving any allowance to the Noticee with regard to this allegation as claimed by it in its reply.

14. Regulation 15(1) of the IA Regulations, obligates an investment adviser to act in a fiduciary capacity towards its clients. Regulation 17(1)(a) mandates that investment adviser must ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client. Regulation 17(1)(b) casts duty on the investment adviser to have documented process for selecting investments based on client's investment objectives and financial positions. Regulations 17(1) (d) and (e) casts obligation on investment adviser based on the principles of reasonable basis and assessments based on objective considerations viz. the investment adviser should have reasonable basis for believing that a recommendation or transaction: -

(i)meets the client's investment objectives;

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

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

15. Further, whenever a recommendation is given to a client to purchase a particular complex financial product, such recommendation or advice should be based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. The factors laid down in these clauses of Regulation 17(1) are

sacrosanct and are intended to ensure that the investment adviser act with utmost fairness, honesty and to the best interest of its client instead of trying to serve his own interests at the cost of investor.

16. The certificate of registration granted to an investment adviser is always subject to compliance of code of conduct as specified in Third Schedule of the IA Regulations. As stated in Regulation 15(9) of the IA Regulations, Clause 1 of the said code of conduct expects honesty and fairness from the investment adviser and requires it to always act honestly, fairly and in the best interest of his clients and in the integrity of the market. Clause 2 expects diligence from the investment adviser and requires it to act with due skill, care and diligence in the best interests of its clients and to ensure that the advice is offered after thorough analysis and taking into account available alternatives. Clause 8 of the said code of conduct mandates the investment adviser to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and integrity of the market.
17. Such acts of the Noticee as found in the Report were in complete disregard to the responsibility entrusted upon him under the provisions of IA Regulations with regard to honesty, fairness diligence and compliance of obligation to act in fiduciary capacity and in the best interest of its clients in the integrity of the market. I therefore, agree with the findings of the DA that the Noticee has violated the provisions of Regulation 15(1) of the IA Regulations, Regulation 17(a), (b), (d) and (e) of the IA Regulations read with Clause 1, 2 and 8 of the Code of Conduct for IA as specified under Third Schedule read with Regulation 15(9) of IA Regulations.
18. Such acts of the Noticee are not only in complete disregard of its obligations under the IA Regulations but also fraudulent and unfair as it has element of deceit since the Noticee has made misrepresentation to the client. In my view, the principles of honesty, fairness, diligence and market integrity as envisaged in above Regulations become more significant when seen in light of client's interest having regard to his risk appetite, financial capability and inclination to invest based on the advice of the investment adviser. In this context lack of honesty and fairness on the part of investment adviser who recklessly and dishonestly misrepresents and misleads the client can indeed constitute fraud as it involves deceptive

practices to gain an unfair advantage. I therefore, agree with the findings of the DA that the Noticee has violated the provisions of Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act by his acts as found in this regard.

D) MAINTENANCE OF RECORDS AND NON COOPERATION- Para 13.5 of the Report

19. As required under Regulation 19 (1) of the IA Regulations read with Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, since January 2021, the Noticee is under obligation to maintain all records including call records of interactions with clients/prospective clients from start of interaction i.e. 1st interaction through any mode. These requirements are stipulated in order to address multiple complaints being filed in respect of dubious investment advisory activities in the market in the nature of fraud, profit commitment and deceit. The Regulations intend to bring in transparency in dealings with clients enabling investment advisors to act in a prudent manner while acting in fiduciary capacity.
20. As per Regulation 24(3) of IA Regulations, *“during the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.* Regulation 25 (1) of the IA Regulations obligate the Noticee to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority require. Further it is statutory duty under Regulation 25 (2) to give inspecting authority all such assistance and extend all such cooperation as may be required in connection with the inspection and to furnish such information as may be sought by the inspecting authority in connection with the inspection.
21. In this case, as observed during inspection, the Noticee deliberately avoided furnishing complete details of calls with 8 clients as mentioned in para 4.5.3 of the Report and did not cooperate with inspection creating hindrance in its inspection. It is gainsaying that despite giving clear undertaking in its email dated 13.10.2021 to SEBI, wherein the

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Noticee submitted that all the call recordings since the start of the conversation with the clients which were not made available to the inspection team would be made available by 15.11.2021 after consulting the vendor, he did not provide these recordings even during the proceedings before the DA. The claim of the Noticee that it attempted to recover the data, the Noticee from Data Recovery Center is not found satisfactory by the DA since the letter dated 24.11.2021 from Data Recovery Center stating that “*I have checked Seagate hard drive for data recovery purpose but drive in very bad condition some scratch on media, so that data is not possible*” is unclear as to whether the hard drive with respect to which the Noticee has provided the letter is the same hard drive that it claims to have used to store the call records data. Further, the Noticee has not demonstrated with relevant details and documents that the said letter is from an authorized service centre.

22. It is pertinent to mention that inspection of any registered intermediary is undertaken to ensure that the books of account, records and documents are maintained in compliance with the regulations and to ascertain that intermediary are in compliance with the Act, regulations, etc. During the validity of its registration with SEBI, the intermediary is required to abide by the rules, regulations, circulars, etc. Denying or avoiding information supply during inspection with dilly dally approach as shown in this case clearly indicates that the Noticee has not maintained the records as alleged.
23. I note that the Noticee has not shown any seriousness with respect to maintaining the call records data as required in the regulations and circulars and failed to produce the same to the inspecting authority when required by him. I also find that the Noticee gave evasive responses in its defence before the inspecting authority and the DA. I also find that the replies of the Noticee before inspecting authority and the DA are not with cogent *bona fide* and they clearly indicate lack of cooperation. The claim of the Noticee about attempt to retrieve the data is just an eye wash as the Noticee did not care to maintain any such data as required by law. The defence just seems to be an afterthought given during the proceedings.
24. I also note that the Noticee vide reply dated 27.01.2025 has admitted that it could not provide the information sought by the inspecting authority. During the personal hearing,

the AR of the Noticee has fairly agreed with the findings in the Report and admitted all the allegations and requested for reduction of penalty. The approach of the Noticee when seen holistically in the facts of this case clearly show contumacious conduct with design. I, therefore, agree with the findings of the DA that the Noticee has:

- (a) Failed to maintain records of communications with its clients during risk profiling and suitability assessment of advice/selection of advisory products/ services and thus violated the provisions of Clause 2(vi) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020, read with Regulation 19(1) of IA Regulations, Clause 8 of Code of Conduct specified in the Third Schedule of IA Regulations and Regulation 15(9) of the IA Regulations; and
- (b) Has not cooperated with the inspecting authority and has not complied with its duty to produce to the inspecting authority such statements and information as required for the purposes of the inspection and has, thus, violated the provisions of Regulation 15(12) and Regulation 25 (1) and (2) of the IA Regulations.

E) PROFIT GURANTEE, FORCED AND FALSE RISK PROFILING, FORCED PAYMENTS, ASSURED RETURN, PROFIT SHARING, ETC.- Para 13.6 of the Report

25. It was observed during inspection that the Noticee:-

- coerced the clients to agree to the risk profiles,
- promised guaranteed return to the clients,
- forced the client to take additional advisory services and make additional payment,
- understated the advisory fees and made false commitments and
- managed and handled the demat / trading accounts of the clients.

26. It is established that the Noticee did not provide the complete call recordings, therefore, the inspection team inspected its activities by analyzing the live calls of the Noticee through quality check team and other call recordings available with the Noticee. The call inscriptions as mentioned in para 13.6.1.2 of the Report clearly show that the Noticee had

coerced the client Mr. Gajjar Vaibhav Kamlesh Bhat to agree to the risk profile. Further, the Noticee had promised guaranteed return to the prospective client viz. Mr. Deepak as the representative of the Noticee had clearly said to the said client, “...aapko 60-70% ka profit jaroor hoga...” Also, when another prospective client asked the representative of the Noticee, “...ek mahine ka charges kya hai?...”, he responded by saying “5000”. However, the Noticee had not offered any product/ service whose monthly charge was Rs. 5000/-. Therefore, it is established that the Noticee had understated the advisory fees and made false commitments.

27. From the call detail between client Mr. Gajendra Batesar and the representative of the Noticee, it is noted that the client had said,

-“aapne bola ki thoda aapko denge, thoda hum rakhenge, aisi baat hui thi apni...”

In response, the representative of the Noticee said to the client-

“Hmmm” (and did not object to narration of the client).

Thereafter, the client had said-

“Maine jab 20000 ka payment kiya na toh main us din bhi bola ki Sir aapko maine 25000 rupay tak ka payment kardiya, toh atleast ab meri jeb mein bhi 25000-30000 rupay aana chahiye Sir. Ab 30000 rupay aaya hai toh ab aap 48000 rupay maang rahe ho”. ...”

(In response, the representative of the Noticee did not object to the above narration of the client.)

Later when the client said, “dil ki baat ye hai ki aage paisa dene ki himmat nahi ho rahi hai”. Further, the client had said, “ye jo profit hai mere ko rakhne do aap”.

28. In view of the above, the DA has found that the representative of the Noticee was having discussions regarding the profit sharing model with the client and that the representative of the Noticee was compelling the client to make additional payment for the advisory

services. Hence, the allegation that the Noticee forced the client to take additional advisory services and make additional payment stands established.

29. From the email IDs of the Noticee viz. cwenquiry@capitalway.com and info@capitalways.com it has been found that certain complainants had alleged that the Noticee had assured profits, handled demat accounts, forced payments, etc.

30. The DA has also examined the emails and call conversations between the Noticee and one of its clients as under:- (Ref. Para 13.6.1.8.1 to 13.6.1.8.4 of the Report)

i) Vide email dated 14.10.2021, the recording of the conversation of the said client with the Noticee and complaints of the client were procured from the Noticee.

a) The relevant transcript of such conversation is given below: -

Client Demat Handling:

Audio File: AUD-20210528-WA0012

Time Slot: 1:50 to 2:30

Client: usme mera 50000 tha to baad me usme 4000 hi reh gaya tha. Usme 46000 ki karib loss ho gaya tha.

Executive: usme 6000-7000 nukasan ho gaya tha, vo maine position kaat ke accha kiya Tabhi to mai hold karne ki soch raha tha us position ko to sir ne kaha hold mat kariye market correction kar raha hai. Aap 4000-5000 ka nukasan ho raha hai to vo thik hai. Agar ye nukasan 40000 se 45000 ka hoga to aapko bhi dukh hoga aur client bhi pareshan honge. To mai vahi usse kaat ke nikal gaya tha to uske baad maine phir haath hi nahi lagaya.

Audio File: AUD-20210528-WA0012

Time Slot: 08:10 to 08:45

Client: baat yahi hui thi ki mai d-mat handle nahi kar sakta aur ye mere bas ki baat nahi hai d-mat handle karna. To mai yahi bola tha ki mai handle nahi kar sakta karna hai aapne hi.....

Executive: sir kisiko pata nahi hai, naahi pata chalegi, nikaal ke muje dena hai bas yahi samajhiye, nikaal ke mai de dunga tension mat lijiye.

Assured returns:

Audio File: AUD-20210528-WA0012

Time Slot: 05:40 to 06:02

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Executive: *mai itana bol raha hun ki sabse pehle aapne mujhe 200000 rupaye bol rahe hai muje vo complete karna hai ki aap mujhe bole na ki maine 200000 rupaye diya tha. Pehle vo mai vaapis kar dunga uske baad jo bachega 500000 to 550000 vo mai nikalwake dunga. Aapko bhi tension nahi hogi ki maine kisise uthaya tha. Apan pehle usko vaapis karenge jisse liya hai.*

b) From the above call recording “AUD-20210528-WA0012” it is observed by the DA that the representative of the Noticee was handling the client’s demat account, as the representative of the Noticee had said, “*maine position kaat ke accha kiya... To mai vahi usse kaat ke nikal gaya...*”. Further, it is also evident that the representative of the Noticee was promising assured returns to the client as the representative of the Noticee had stated, “*...pehle aapne mujhe 200000 rupaye bol rahe hai muje vo complete karna hai ki aap mujhe bole na ki maine 200000 rupaye diya tha. Pehle vo mai vaapis kar dunga uske baad jo bachega 500000 to 550000 vo mai nikalwake dunga...*”

ii) Hence, the DA has found that it is evident that the Noticee had promised guaranteed return and has managed and handled the demat / trading account of the aforesaid client.

31. The DA has also examined another complaint (Ref: Para 13.6.1.8.5 to 13.6.1.8.8 of the Report). Vide email dated 15.09.2020, the complainant had submitted multiple call recordings to the Noticee with respect to their trading discussions. The said email alongwith the call recordings were procured from the Noticee.

i) The relevant transcripts of the call recordings are as following:

Assured returns:

Audio File: Dxxxxxxxx Sxxxxx -1910191208.amr

Time Slot: 3:03 to 3:30

Client: *Kya aapki commitment puri ho payegi aapse, aapne muje jo commitment kiye hain*

Executive: *dekho maine abhi jo aapko diya hai, abhi jo maine aapko samajhayi hai vo to mai kar ke de dunga ye to aap bhi jaante hai. Sir bola hai ki roj 15000 yahi se nikal jayega.*

Audio File: Dxxxxxxxx Sxxxxx -1910211432.amr

Time Slot: 1:20 to 2:23

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Executive: sir mai kya bol raha hoon jo maine jo aapko commitment diya tha 3000-4000 rupaye daily ka vo mai karwa deta hoon.

Client: kaha hai vo commitment abhi tak to pura hua nahi hai.

Audio File: Dxxxxxxxx Sxxxxx-1910211432.amr

Time Slot: 3:20 to 3:40

Client: sir mai jo chaah raha hoon is cheez se kaise nikalunga? Mere paas 236000 nahi hai to. Muje card ki payment bhi karni hai mujhe EMI bhi deni hai mai un cheezon se kaise nikalunga.

Executive: maine aapko bola na 50000 se 60000 mahine ke nikal jayenge EMI ke liye vo mai karwa dunga.

- ii) From the abovementioned call recordings “1910191208”, the DA has observed that the representative of the Noticee had repeatedly promised assured return to the client in as the representative of the Noticee had said, “Sir bola hai ki roj 15000 yahi se nikal jayega jo maine jo aapko commitment diya tha 3000-4000 rupaye daily ka...50000 se 60000 mahine ke nikal jayenge...” The Noticee’s submission, “...At 04:19, the client itself has acknowledged that the company has never assured any returns. Also, the Noticee categorically denies offering or guaranteeing any fixed or assured returns to its clients...” is devoid of merit as the client has clearly stated that the representative of the Noticee is promising the returns, however the company is not promising anything.
- iii) Hence, the allegation that that the Noticee had promised the guaranteed return to the client and managed and handled demat / trading account of the client, stands established.

32. Another allegation (*Ref. Para 13.6.3 of the Report*) against the Noticee is that the Noticee promised assured return and took details of friends of the client to charge exorbitant fees. The DA has noted that the complainant in his SCORES compliant registration number SEBIE/MP22/0000016/1 alleged the following and has provided the payment proof, including proofs of payment made by his friend: -

- Noticee charged Rs. 73,000/- by forcing and manipulating the client.
- Further, 3 days later, Noticee asked the client additional amount of Rs. 42,000/- and also asked for different documents for invoice generation, and the client provided his friend’s documents

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- Noticee also promised client to provide 4 times return, however, on the basis of service provided by Noticee, client incurred losses of Rs. 1,20,000/-

33. The transcripts of relevant call recordings are provided as under: -

Profit Commitment

Audio File: WhatsApp Audio 9

Time Slot: 3:25 to 3:58

Executive: 1.50 lac rupaye k liye unko maine ye commitment kia hai 1.5 Lac me jo bhi remaining amount bach rha hai 70k ya 80k ka usme ek hafte ya 15 days ka time legega, lekin maine ye bola hai ki ek hafte mein agar 2.5 to 3 Lac ka profit hota hai to uske baad aap krwa dena. 2.50 Lac k baad aap waise bhi 70 k karwa doge.

Complainant: Ha, to koi issue nahi hai.

Executive: Aaj apan 23k complete karte hai, baad mein maine inse 15 din ka time liya hai lekin 15 din mein maine 2.5 Lac ka amount bola hai. **Mai pura try karti hu ki 2.5 Lac rupaye amount apka Monday tak aa jaye 29 tarikh tak.**

Audio File: WhatsApp Audio 9

Time Slot: 6:10 to 6:28

Executive: Lekin unke taraf se 15 din ka time de rakkha hai **lekin monday tak apan kar hi lenge 2.50 lac tak ka.** Ek position to BTST ki lagegi hi lagegi. Lekin mai ye bhi bol rahi hu ki unki taraf se maine 15 din bola hai, **lekin mai ye pura commitment krti hu ki Monday taka apan kar hi lenge 2.5 Lac rupaye tak.**

Audio File: WhatsApp Audio 9

Time Slot: 7:15 to 7:32

Executive: Maine apko bola tha na ki 6 lac k liye 3 month baat hai, **lekin mai chahu to apko ek mahine me bhi ye return de sakti hu wo mere haath mein hai. Thik Hai**

Complainant: Ha

Audio File: WhatsApp Audio 9

Time Slot: 9:20 to 9:27

Executive: Mai itna commitment karti hu ki kal ke date pe aa hi jaega apka, atleast **minimum 40k to aa hi jaega.**

Complainant: Thik hai mai call back karta hu.

Audio File: WhatsApp Audio 11

Time Slot: 0:45 to 1:15

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Executive: *nahi nahi definitely I promise ki apka relation meri wajah se kabhi kharab nahi hoga. Mereko bas kal tak ka time de dijiye 10 baje tak ye sara amount apke pass aa jaega.*

Seeking Details of Friends:

Audio File: WhatsApp Audio 12

Time Slot: 0:32 to 2:10

Executive: *Abhi 30 thousand rupees karna hai, ho jaega kya?*

Complainant: *Utna account mein nahi hai mere.*

Executive: *Account mein nahi hai toh, matlab aap kya chah rahe ho sir, agar samne wala apke liye effort lga rha hai toh usme aap thoda bhi cooperate nahi krenge to kaise chalega.*

Complainant: *Mai dost se baat karke btata hu.*

Executive: *Thik hai, baki ap apne friend ka detail jo hai wo send karo, kam se kam mai uska KRA complete karti hu.*

Complainant: *Ha*

Executive: *Tabtak mai uska KRA complete karti hu. PAN, Email ID, Date of Birth ye sab send karo.*

Audio File: WhatsApp Audio 12

Time Slot: 1:55 to 2:10

Executive: *Aap abhi mereko unka detail abhi turant send karo and 10 minute mein mujhe batao kitna kya ho raha.*

Complainant: *Thik.*

Audio File: WhatsApp Audio 13

Time Slot: 0:01 to 0.43

Executive: *Kitna time lagega?*

Complainant: *Usme 15-20 min lagega, phone busy aa raha hai.*

Executive: *Itna time lgaga, 15-20 min yaha se?*

Complainant: *Ha maam, matlab payment toh maine usko bhej dia hai, par usko 15-20 min lgega, waha boss aya hua hai usko. Baki ADHAAR, KYC ke liye bol diya hai usko wo ready hai. Payment apko 15-20 min mein screenshot send kar dunga and KYC bhi kar dunga.*

Executive: *ha, batao.*

Audio File: WhatsApp Audio 14

Time Slot: 0: 05 to 0:52

Executive: *Sxxxxxx, email id open karo fatafat aur jaise pehle kiya tha na digital signature aur KYC waisa hi karna hai aur suno jab aap kroge na signature tab **aap ADHAAR no. us bande ka hi dalna. Aadhaar no. uska lgega and us bande ke mobile no. pe hi OTP aaega.***

Complainant: *Aree, abhi wo cooperate nahi krega itna, aisa banda hai wo.*

Executive: *Ab PAN No. de diya usne toh ADHAAR no. kya hai btao, usko bolo iske baad mai tereko jindagi mein kabhi call ni krunga, iske baad humko koi matlab nahi hai unse.*

34. I note that the Noticee has accepted the above in his reply before the DA as recorded in para 13.6.3.2 of the Report, since it has stated that the complaint was “promptly addressed”. The DA has found that the representative of the Noticee promised assured returns to the complainant as the said representative of the Noticee said to the complainant that “... **Mai pura try karti hu ki 2.5 Lac rupaye amount apka Monday tak aa jaye 29 tarikh tak.**” And “Maine apko bola tha na ki 6 lac k liye 3 month baat hai, **lekin mai chahu to apko ek mahine me bhi ye return de sakti hu wo mere haath mein hai....**” and “.... **atleast minimum 40k to aa hi jaega**”.

35. Further, the Noticee’s representative was coercing the client to pay additional fee of Rs.30,000/- and then sought details of his friend so as to extract exorbitant fees from him as the representative of the Notice had said to the complainant that:- . **“baki ap apne friend ka detail jo hai wo send karo”;... “aap ADHAAR no. us bande ka hi dalna. Aadhaar no. uska lgega and us bande ke mobile no. pe hi OTP aaega..” ; ..“Ab PAN No. de diya usne toh ADHAAR no. kya hai btao, usko bolo iske baad mai tereko jindagi mein kabhi call ni krunga, iske baad humko koi matlab nahi hai unse”.**

36. A complainant Ms. Rimpi Rani had raised a complaint in SCORES with Registration No.: SEBIE/MP21/0000904/1 on 03.08.2021 and the complaint was resolved on 07.10.2021 pursuant to an agreement dated 07.10.2021 executed between the Noticee and the complainant, wherein the Noticee paid settlement amount of Rs. 1,80,000/- to the

complainant and it was also stated on page 2 of the agreement that, “*CAPITAL WAYS INVESTMENT ADVISER will continue to provide services till the loss is recovered.*” In view of this arrangement it has been found by the DA (Ref. Para 13.6.4 of the Report) that the Noticee had provided assurances of loss recovery which is another way of providing assured return to the client, knowing fully well that assured profits/guaranteed returns in securities market is practically impossible. The Noticee was knowingly misrepresenting the truth to the client.

37. One of the contentions of the Noticee is that it had, on its website, included prominent disclaimers on various pages stating that investments in securities are subject to market fluctuations and no guarantee of achieving any specific objectives is provided, such as: “*Capital Ways don’t provide any profit/ loss sharing services, guaranteed profit services & Services which are not mentioned in our website*” “*Investment in Stock / Commodity/ Currency Markets is subject to market risk.*” Moreover, in the welcome mail, sent to all clients, clearly stated that: “*We do not provide profit guaranteed or committed returns. In case any person is trying to sell you such services do inform us at +0731-4971072. Also we do not sell any profit sharing services. We DO NOT PROVIDE any personal a/c details for Services Charges, Please pay our Services Charges only in Company A/c which are mentioned in our website or sent through our message server named if any our executives asks for payment in personal a/c, kindly inform us at: +91-0731-4971072. Investment in market is subject to market risk, please trade carefully with proper Stop loss, you may loss more than your actual Investment. Investment is stock or commodity markets is subject to market risk, though best attempts are made for predicting markets, but no surety or return or accuracy of any kind is guaranteed*”.
38. I note that the Noticee has made above disclaimers to public and clients, but when seen with above details from discussions between Noticee’s representative and its clients, it is obvious that its acts are clearly contrary to what it promised to public and its clients on its website. Such conduct is clearly in breach of promises made by it and, in my view, is also deceitful as such promises are made without intent to perform rather to mislead the public about truth of actual manner of conducting its activities by the Noticee.

39. Another contention of the Noticee is that there is no more a *Res-Integra* that call recordings cannot be relied upon less they are coupled with a certificate under Section 65B of Evidence Act. Further, their veracity must be verified by a government officer if not through Forensic Science Laboratory Report. Thus, any such call recordings cannot be relied upon. It is noted from the material available on record that the alleged violation pertains to 6 call recordings which have been submitted to SEBI by the Noticee itself. The inspection team analyzed the 4 calls at the time of onsite inspection, through the quality check team of the Noticee itself. Other 2 call recordings of the two complainants were provided by the Noticee itself vide email dated 14.10.2021. Thus, further verification, certification and corroboration as claimed is irrelevant. Be that as it may, I am also of the view that Section 1 of the Indian Evidence Act, 1872 applies to “*all judicial proceedings in or before any Court...*”. Further Section 1(2) of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) says that the BSA applies to all judicial proceedings in or before any Court, including Court-martial. Thus, the Indian Evidence Act, 1872 or the BSA do not apply to instant proceedings that are being quasi- judicial proceedings.
40. With regard to applying procedural intricacies of rules of evidence Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 (or S.65B of the Indian Evidence Act, 1872) or corroboration and certification corroboration as required certification under the Information Technology Act, 2000, I note that in the matter of *State of Haryana and Anr. v. Rattan Singh*, the Hon’ble Supreme Court held that: - “*It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.... The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond*

scrutiny.” Further, in the case of Union of India & Anr.v. P.K.Roy & Ors. it was held that “the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relating circumstances disclosed in a particular case”.

41. In *NSDL vs. SEBI and Other Connected Appeal*, Civil Appeal No.5173of2006 decided on March 7, 2017., Hon’ble Supreme Court held that “ *as such ,the provisions of the Indian Evidence Act, 1872 are not strictly applicable to the present matter*”. Also, in the matter of *Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd.* dated March 26, 2021 wherein it was held that: “*It is true that the rigors of CPC and the Evidence Act are not be applicable to Tribunals/Quasi-Judicial Authorities*”.
42. The third contention of the Noticee is that SEBI in matter of *Star World Research, Winway Research* and other matters has held such recordings to be unreliable and dropped such charges. I have perused these orders of SEBI. I observe that in both of these SEBI orders, the allegations were based on the call recordings which were provided by the complainants. Further, in the matter of *Star World Research*, vide order dated January 31, 2023, it was found, based on the material on record, that the emails addresses did not belong to the noticee and that the call recordings that were provided by the complainant were not supported by any evidence that the calls were with the noticee in that case. In the matter of *Winway Research*, vide order dated November 14, 2024, the Adjudicating Officer of SEBI noted that there was no material to show that the calls were made by Noticee in that case. On the contrary, in the instant case, the Noticee has not denied the contents or veracity thereof. It is admitted position that the said calls were made by the Noticee’s representatives. In fact, the Noticee has defended the call recording by saying “...At 04:19, the client itself has acknowledged that the company has never assured any returns. Also, the Noticee categorically denies offering or guaranteeing any fixed or

assured returns to its clients... ”. This only shows that the Noticee is acknowledging that the call recording pertains to it. In view of the above, I reject these contentions.

43. In view of the analysis as described in the foregoing paragraphs it is established that the Noticee :-

- (a) coerced its client to agree to the risk profile
- (b) promised guaranteed returns to the client
- (c) understated advisory fees and made false commitments to the client
- (d) forced the client to take additional advisory services and make additional payment
- (e) promised guaranteed return to the client and managed and handled demat/trading account of the client
- (f) promised assured return and took details of friends of the client to charge exorbitant fee
- (g) provided assurance of loss recovery which in fact amounts to providing assured return to the client knowing fully well that assured profits/returns in securities market is practically impossible.

44. All the activities and conduct of the Noticee were undertaken by him in connection with dealing in securities as the same was done in order to influence the decision of the clients/prospective clients with respect to doing trading based on the advice of the Noticee despite fully knowing that the investments in securities market are subject to market risks which are fraudulent in nature. The above act of the Noticee squarely falls within the ambit of ‘fraud’ defined under Regulation 2 (1)(c) of the PFTUP Regulations, 2003 as under:

(c) “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,...”

Regulation 2(1)(b) of the PFUTP Regulations 2003 provides the definition of ‘dealing in securities’ as follows:

2.(1) In these regulations, unless the context otherwise requires,—

(b) “dealing in securities” includes:

- (i) 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 persons including as principal, agent, or intermediary referred to in section 12 of the Act;
- (ii) such acts which may be knowingly designed to influence the decision of investors in securities; and
- (iii) any act of providing assistance to carry out the aforementioned acts.

45. I note from the aforesaid definition of fraud under Regulation 2 (1) (c) of PFUTP Regulations that fraud includes “any act, expression, omission or concealment committed... or by his agent.... while dealing in securities in order to induce another person... to deal in securities....”. Further, I note from sub-clause (ii) of Clause 2(1)(b) of the above definition of ‘dealing in securities’ of PFUTP Regulations which *inter alia* includes “such acts which may be knowingly designed to influence the decision of investors in securities”.

46. It is pertinent to refer to the following observations of the Hon’ble Supreme Court in the case of *SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1*,

“The definition of ‘fraud’, which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a ‘fraudulent act’ or a conduct amounting to ‘fraud’. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word “induce”.....to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient.”

.....

“...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person

the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did... ”.

47. It is also pertinent to rely upon the decision of the Hon’ble SAT in the matter of *MSS Trading System Centre and Anr. Vs. SEBI*, dated December 12, 2022, wherein the Hon’ble Tribunal has held that “*We are of the opinion that such assurance of profit given by the appellant was totally fraudulent and in violation of regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003*”

48. In this case, the Noticee had adopted tactics as trickery to induce the general public into availing its service by fraudulently inducing, coercing, making false promises, misrepresentations, etc. as found hereinabove. The act of guaranteeing assured returns /profits, etc. by the Noticee is nothing but indulgence in trick to lure customers in its device and thereby increasing its own income.

49. During the personal hearing, the AR of the Noticee has fairly agreed with the findings in the Report and admitted all the allegations and requested for reduction of penalty.

50. Considering the above, I find no reason to differ with the findings of the DA and find that its activities are squarely covered within the ambit of prohibitions under Regulations 3 and 4 of PFUTP Regulations read with Section 12A of the SEBI Act as found by the DA in the Report. I, therefore, agree that the Noticee has contravened the provisions of Regulations 3 (a), (b), (c) and (d), 4(1) and 4(2)(k),4(2)(o), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of the SEBI Act, 1992.

(c) SCORES COMPLAINTS AND DIRECT COMPLAINTS

Order in respect of Capital Ways Investment Adviser (Proprietor .:Deepak Ostwal)

51. The Noticee did not provide resolution of complaint bearing SCORES registration no. SEBIE/MP22/0000055/1 received on 18.01.2022. The Noticee also did not provide call recordings sought by SEBI which was in violation of SEBI Circular CIR/OIAE/2014 dated 18.12.2014; Regulation 21(1) of IA Regulations, 2013; Regulation 15(12) of IA Regulations and Regulation 25 (1) & (2) of IA Regulations.
52. Before the DA the Noticee submitted that it has already resolved another complaint received from the same complainant with SCORES registration No. SEBIE/MP21/0000904/1 received on 03.08.2021 based on similar grounds. This complaint was resolved through mutual understanding on 07.10.2021. Additionally, a settlement agreement was executed with the complainant wherein she agreed to waive and release all claims arising from this matter.
53. The DA has not accepted this claim though taken it on record that in the settlement agreement between the Noticee and the complainant dated 07.10.2021, it has been stated that “*CAPITAL WAYS INVESTMENT ADVISER will continue to provide services till the loss is recovered.*” However, the DA has further found that complaint bearing SCORES registration No. SEBIE/MP22/0000055/1 filed by the said complainant on 18.01.2022 has not been resolved by the Noticee as neither did he provide telephone call recordings beginning with the first interaction with the client till the completion of advisory services from the Noticee to the complainant nor has he denied or disputed the allegation that it has not provided the call recordings which were sought by SEBI.
54. In the instant proceedings, vide its reply dated 27.01.2025, the Noticee has taken an altogether different stand that the complainant did not perform her obligations inspite of the Noticee fulfilling all the obligations on his part. I find that the Noticee has not clearly demonstrated as to what part of the obligation was not fulfilled by the complainant as she was only asking for telephone call recordings beginning with the first interaction with the client till the completion of advisory services from the Noticee. The reply of the Noticee

is evasive. I also find that the arrangement claimed by the Noticee with the complainant with regard to her earlier complaint with SCORES registration No. SEBIE/MP21/0000904/1 filed on 03.08.2021 has not been found good as held in earlier part of this order. I, therefore, find that the Noticee is trying to mislead the proceedings.

55. During the personal hearing, the AR of the Noticee has fairly agreed with the findings in the Report and admitted all the allegations and requested for reduction of penalty.

56. I, therefore, agree with the findings of the DA and hold that the Noticee has violated SEBI Circular CIR/OIAE/2014 dated December 18, 2014; Regulation 21(1) of IA Regulations, 2013; Regulation 15(12) of IA Regulations and Regulation 25 (1) and (2) of IA Regulations.

(d) COMPLIANCE OF AML AND CFT GUIDELINES

57. SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2019/113 dated 15.10.2019 requires, *inter alia*, that the intermediaries must have an ongoing employee training programme so that their staff members are adequately trained in anti-money laundering (AML) and combating the financing of terrorism (CFT) procedures. The training requirements should have specific focus for frontline staff, back office staff, compliance staff, risk management staff and staff dealing with new clients. The DA had concluded that the Noticee has not provided the requisite training to its employees and has thus contravened the requirement provided in para 2.12.2 of the said circular. In its reply dated 27.01.2025, the Noticee has stated “*it is submitted that the training to the employees with respect to the AML guidelines was not required as the Noticee does not accept cash payments from clients and also is not engaged in large financial transactions with the clients. Additionally, the noticee has implemented an AML policy and has duly registered with the FIU in line with the AML guidelines.*”

58. The submissions of the Noticee before the DA and those in the current proceedings are apparently contradictory as in the statement before the DA, the Noticee had stated that many of the firm's long standing members have received the training on AML guidelines whereas vide its letter dated 27.01.2025 it has stated that training to the employees with respect to the AML was not required.
59. The reply of the Noticee is clearly evasive. The requirements in para 2.12.2 of the circular flow from requirements under PMLA and they strictly apply without any exception whether the intermediary accepts cash or not and whether it indulges in large transactions or not. Further, the submission that Noticee has implemented AML policy and has duly registered with the FIU in line with the AML guidelines is ambiguous, evasive and not supported by any evidence. During the personal hearing, the AR of the Noticee has fairly agreed with the findings in the Report and admitted all the allegations and requested for reduction of penalty.
60. I, therefore agree with the findings of the DA that the Noticee has not provided training related to PMLA to its employees which is in violation of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/ 2019/113 dated 15.10.2019.
61. I have considered the request of learned AR of the Noticee in respect of the reduction of penalty. According to him the recommended penalty should be reduced as the order dated 26.12.2024 has been passed against the Noticee with respect to identical allegations arising out of the same inspection, wherein a penalty of Rupees Ten Lakhs has been imposed on the Noticee. He has claimed that this fact coupled with the fact that the allegation of exorbitant fees being charged by the Noticee is dropped and the defaults are technical '*lapse*' on the part of the staff who have been removed. But the Noticee has not demonstrated this by any evidence. I note that in given case, where defaults are not serious, grave or merely relate to procedural requirements imposition of monetary penalty could be a mitigating factor in other proceedings. The Noticee, in this case, has not paid the penalty imposed by the Adjudicating Officer and has challenged the said order in appeal. Further, the charges as established against the Noticee are serious and, thus, multiple penalties as available under the SEBI Act are justifiable in the facts and circumstances of this case.

62. Regulation 4 (1), prohibits indulgence in “*fraudulent and unfair trade practices*” in securities market. The unfair trade practice has not been defined under the regulations. But, the concept of ‘*unfairness*’ is broader than and includes the concept of ‘*deception*’ or ‘*fraud*’. A clear cut generalized definition of the ‘*unfair trade practice*’ may not be possible to be culled out from the aforesaid definitions. It is also to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Broadly, trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the conduct.
63. Considering the dynamics of the market, the returns from the investment in the market are unpredictable, no matter how much and for how long the investment is made. Any information that puts out for the consumption of its existing and prospective clients has to be done with great responsibility and should be of such nature that it enables investors to take reasoned and unbiased decisions regarding their investment. The act of the Noticee is nothing but an act to induce the clients to subscribe to its advisory service by showing assured return/profit, which is an act to mislead the client as the act is totally contrary to what has been disclosed. The acts of the Noticee as found hereinabove, is certainly non-genuine, deceptive, fraudulent and unfair. Promising sure profit in securities market amounts to misrepresentation and misleading the investors.
64. This is a case involving breach of fiduciary duty, dishonesty, unfair practice, fraudulent act conduct, breach of promises, misrepresentation etc. as found in this case. It is seen that there are certain violations like promising assured profit / unrealistic returns to clients, not complying with the terms and conditions of agreement, faulty suitability assessment by selling high risk products / services to medium risk category clients, improper risk profiling of clients, coercing the clients to agree to the risk profile which are unbecoming

for a registered investment adviser and cannot be considered as technical or venial. The contravention though listed separately in the Report, when seen holistically show gravity and brazen recklessness on the part of the Noticee. Not maintaining data, noncooperation with inspecting authority, not complying with AML/CFT requirements, etc. when seen in isolation may seem technical but when seen in light of the fraudulent and unfair acts of the Noticee, they also acted with *mala fide*. The act and conduct of the Noticee are perfidious and do not deserve any leniency as pleaded.

65. I also note that the Notice has been taking shifting stands. It is settled position that the Noticee cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. I want to make it clear that quasi-judicial proceeding is not a game of chess and the Notice cannot prevaricate and take inconsistent positions. Taking inconsistent pleas by the Noticee in this case makes its conduct far from satisfactory. Also, the evasive submission has been made by the Noticee in order to mislead the authorities. I am constrained to say that more often than not quasi-judicial process is being used by such Noticee and their ARs as a convenient lever to drag the process by making irrelevant and evasive submissions.

66. In the scheme of IA Regulations, the expectation from the investment adviser is not merely to act in good faith and honestly fulfil its commitments. The Regulations have also bestowed the investment advisers with fiduciary duties elevating the expectation to a level of the principle known as *uberrima fides*, i.e. “*utmost good faith*.” This obligation in the IA Regulations holds the central position. In this case, the Noticee has brazenly defaulted the regulations and has breached its fiduciary duties. It is gainsaying that the fiduciary duty first demands avoidance of conflict of interest and duty of care and not to act negligently in against the interests of the clients. This is a case where the Noticee has clearly subjugated the interests of clients to his own benefits.

67. The prayers for leniency cannot be pressed to an extent of such an absurdity that it becomes an engine of fraud in the hands of unscrupulous intermediaries. One who claims such leniency should come with clean hands. There is essential distinction between a mistake/lapse and trickery. It is said that¹ –“...*fraud and justice can never dwell together (fraus et jus nunquam cohabitant) ; or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent) ..*” I have no hesitation to say that the Noticee whose case is based on grave contumacious conduct, fraud, misrepresentation, falsehood dishonesty, breach of fiduciary duty, etc. cannot be given any leniency.

68. Therefore, this is a fit case where the enforcement of regulations and powers given in that regard must be used with stern signals. In this regard, I rely upon the judgement of Hon’ble Supreme Court in *SEBI v. Kishore R. Ajmera*, (2016) 6 SCC 368 wherein it has been observed that: -

“the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conducive to increased participation and investment in the securities market which is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.”

69. However, having regard to the facts and circumstances of the instant proceedings, while, I concur with findings of the DA, in my view the penalty as recommended by the DA is

¹ Supreme Court in the matter of *Smriti Madan Kansagra Vs Perry Kansagra*

not commensurate and proportionate to the gravity of violations. This case is a clear case of not only compromising the interest of clients but also a case of undermining the integrity of the market. For his reckless, negligent and fraudulent activities, the Noticee must meet appropriate, proportionate and commensurate penalty. Merely imposition of monetary penalty that is under challenge and limited prohibition as recommended is not proportionate to the seriousness and gravity of contraventions by the Noticee.

70. In view of foregoing, I, in exercise of the powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act read with Regulation 27 of the SEBI (Intermediaries) Regulations, 2008 hereby suspend the certificate of registration of the Noticee viz. Capital Ways Investment Adviser (Proprietor: Mr. Deepak Ostwal) (SEBI Registration No. INA000008862) for period of six months from the date of this Order.

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

72. A copy of this order shall be served on the Noticee and the BSE Administration and Supervision Limited (BASL).

73. The Noticee shall prominently disclose, on its website, the fact of suspension of his certificate and shall not hold out, his certificate, to be valid to any person during the period of suspension of his certificate as above.

Date: May 23, 2025

Place: Mumbai

SANTOSH SHUKLA
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA

Order in respect of Capital Ways Investment Adviser (Proprietor :.Deepak Ostwal)