

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/BS/2023-24/28689-28691)**

**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 R/W RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING
INQUIRY AND IMPOSING PENALTIES) RULES, 1995 IN RESPECT OF**

Noticee No. 1: Money Capital Height Research Investment Advisers Pvt. Ltd. SEBI Registration No. INA000001423, PAN No: AAHCM2437R
Noticee No. 2: Sunil Singh Bhadauriya, PAN No: BGSPB9657F
Noticee No. 3: Ajay Kumar, PAN No: CQPPK1770G

In the matter of Money Capital Height Research Investment Advisers Pvt. Ltd.

BACKGROUND OF THE CASE

- 1 Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an inspection of M/s. Money Capital Height Research Investment Advisers Pvt. Ltd. (hereinafter referred to as ‘**Noticee 1 / IA**’), registered with SEBI as Investment Adviser, bearing registration no. INA000001423. The inspection was conducted during October 25, 2021 to October 27, 2021 at the office of Noticee 1 located at Indore. It was found that Noticee 1 and its directors viz. Sunil Singh Bhadauriya (**Noticee 2**) and Ajay Kumar (**Noticee 3**), prima facie, violated various provisions of SEBI Act, 1992 (hereinafter referred to as ‘**SEBI Act**’), SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as ‘**IA Regulations**’), SEBI (Investment Advisers) (Amendment) Regulations, 2020 (hereinafter referred to as ‘**Amended IA Regulations**’), SEBI (Prohibition of fraudulent and unfair trade practices relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”) and circulars & guidelines issued thereunder. Noticee Nos. 1 to 3 shall hereinafter, be collectively referred to as Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

- 2 Upon being satisfied that there are sufficient grounds to inquire into and adjudicate the alleged violations of provisions stated above by the Noticees, SEBI, in exercise of powers u/s 19 r/w sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**Adjudication Rules**”) appointed me as Adjudicating Officer (**AO**), vide order dated January 13, 2023 to inquire into and adjudge u/s Section 15A(a), Section 15EB and 15HA of SEBI Act, the alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

- 3 Show Cause Notice Ref. No. EAD-6/AK/VV/20140/1/2023 dated May 19, 2023 (hereinafter referred to as “**SCN**”) was issued to the Noticees in terms of the provisions of rule 4(1) of the Adjudication Rules r/w Section 15-I of SEBI Act requiring the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed under the provisions of Section 15A(a), Section 15EB and 15HA of SEBI Act, as applicable, for the alleged violations stated in the SCN.
- 4 The brief of observations and alleged violations by the Noticees as per the SCN is given hereunder;
 - 4.1 Non-Compliance with qualification and certification requirements
 - 4.2 Non-Submission of documents sought by SEBI, with respect to Qualification requirement
 - 4.3 Disproportionate fee structure
 - 4.4 Format of Agreement
 - 4.5 Maintenance of Records
 - 4.6 Observations in Client Samples
 - 4.7 Compliance in respect of AML Guidelines
 - 4.8 Promise of assured returns to investors, offering trial to prospective clients and seeking part payment for providing services.

5 In view of the above, it was alleged in the SCN that:

5.1 For the observations stated at para 4.1 above, Noticees have violated the provisions of Regulation 15(13) r/w Regulation 7 of IA Regulations and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule r/w Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

5.2 For the observations stated at para 4.2 above, Noticees have violated the provisions of Regulation 15(12) of IA Regulations.

5.3 For the observations stated at para 4.3 above, Noticees have violated the provisions of Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations.

5.4 For the observations stated at para 4.4 above, Noticees have violated the provisions specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 and Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

5.5 For the observations stated at para 4.5 above, Noticees have violated the provisions of Regulation 19(2), 25(1) and 25(2) of IA Regulations and Paragraph 2(vi) of SEBI circular dated September 23, 2020.

5.6 For the observations stated at para 4.6 above, Noticees have violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations r/w section 12A (a), (b) and (c) of SEBI Act and provisions specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

5.7 For the observations stated at para 4.7 above, Noticees have violated the provisions of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

5.8 For the observations stated at para 4.8 above, Noticees have violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations r/w section 12A (a), (b) and (c) of SEBI Act, Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule

III r/w Regulation 15(9) of IA Regulations, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019.

- 6 The Noticees, vide common letter dated May 29, 2023, requested for inspection of documents. An opportunity of inspection of documents was provided to Noticees on June 12, 2023 and same was conveyed to Noticees, vide email dated June 02, 2023. Noticees vide letter dated June 06, 2023, appointed Mr. Kushal Shah (Prakash Shah & Associates) to carry out inspection of documents and collect copies thereof. Noticees inspected the documents through their authorized representatives (AR) on June 12, 2023. As requested during the course of inspection of documents, copy of inspection report along with annexures (including 2 CDs) thereof, was provided to Noticees vide letter dated June 15, 2023. Thereafter, vide letter dated June 15, 2023, Noticees acknowledged the receipt of documents provided to them and requested for certain clarification including legible copies of documents as mentioned in their letter. Noticees' request was acceded to and copies of documents, as requested by Noticees, were provided vide letter dated July 04, 2023. Clarifications on certain points, wherever needed, was also provided in the same letter and Noticees were advised to file written submission on or before July 18, 2023.
- 7 I note that no reply was received from Noticees till July 18, 2023. In the interest of justice, vide hearing notice dated July 21, 2023, an opportunity of personal hearing was granted to Noticees on July 31, 2023. Vide letter dated July 27, 2023, Noticees requested for adjournment of personal hearing scheduled on July 31, 2023 and also requested for extension of time to file reply to SCN. Request of Noticees was acceded to and fresh opportunity of personal hearing was granted to Noticees. Personal hearing was scheduled on August 11, 2023 and same was conveyed to the Noticees vide email dated July 27, 2023. Noticees were also advised to file reply within extended timeline i.e. August 03, 2023. Noticees vide letter dated July 31, 2023 filed written submissions to SCN. AR of the Noticees, Mr. Kushal Shah (Prakash Shah & Associates) availed the opportunity of hearing on August 11, 2023

and reiterated the submissions made in reply dated July 31, 2023. Further, Noticees made post hearing submissions, vide letter dated August 14, 2023.

CONSIDERATION OF ISSUES

- 8 I have taken into consideration the submissions of the Noticees, facts, and material available on record. The issues that arise for consideration in the present case are as follows:

ISSUE No. I: Whether the Noticees violated provisions of SEBI Act, PFUTP Regulations, IA Regulations and other provisions as alleged in the SCN and mentioned at Paragraph 5 of this order?

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s Section 15A(a), 15EB and 15HA of SEBI Act, as applicable?

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticees, after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

- 9 Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticees. The said provisions are reproduced hereunder:

<i>Regulation / Clause of Circular</i>	<i>Provision specified in the SEBI Act / SEBI Regulation / SEBI Circular</i>
<i>SEBI Act</i>	
<i>Section 12A</i>	<i>Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.</i> <i>12A. No person shall directly or indirectly—</i> <i>(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;</i>

	<i>(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;</i> <i>(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;</i>
PFUTP Regulations	
Regulation 3	<i>3. Prohibition of certain dealings in securities No person shall directly or indirectly—</i> <i>(a) buy, sell or otherwise deal in securities in a fraudulent manner;</i> <i>(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;</i> <i>(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;</i> <i>(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.</i>
Regulation 4	<i>4(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.</i> <i>Explanation.— For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.</i>

	4(2)(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; 4(2)(s) mis-selling of securities or services relating to securities market; <i>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> <i>knowingly making a false or misleading statement, or</i> <i>knowingly concealing or omitting material facts, or</i> <i>knowingly concealing the associated risk, or</i> <i>not taking reasonable care to ensure suitability of the securities or service to the buyer;</i>
IA Regulations	
Regulation 2(1)(r)	<i>"persons associated with investment advice" shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser;</i> <i>Explanation. — All client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called shall be deemed to be persons associated with investment advice, but do not include persons who discharge clerical or office administrative functions where there is no client interface.</i>
Regulation 7	Qualification and certification requirement 7. (1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times - (a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute;

	(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management; (c) Persons associated with investment advice shall meet the following minimum qualifications, at all times - (i) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and (ii) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management: Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and experience requirements within three years: Provided further that the requirements at clauses (a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board. (2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services - (a) from NISM; or (b) from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM: Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements: Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.
Regulation 8	Networth 8. (1) Investment advisers who are non-individuals shall have a net worth of not less than fifty lakh rupees. Explanation. — For the purposes of this regulation, "networth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses, deferred

	expenditure not written off, including miscellaneous expenses not written off, and networth requirement for other services offered by the advisers in accordance with the applicable rules and regulations. (2) Investment advisers who are individuals shall have net tangible assets of value not less than five lakh rupees: Provided that existing investment advisers shall comply with the networth requirement within three years from the date of commencement of the SEBI (Investment Advisers) (Amendment) Regulations, 2020.
Regulation 13(a)	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;
Regulation 15(9)	An investment adviser shall abide by Code of Conduct as specified in Third Schedule.
Regulation 15(12)	Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.
Regulation 15(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 15A	Fees : 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	Investment adviser shall ensure that,- (a) All investments on which investment advice is provided is appropriate to the risk profile of the client; (b) It has a documented process for selecting investments based on client's investment objectives and financial situation; (c) It understands the nature and risks of products or assets selected for clients; (d) It has a reasonable basis for believing that a recommendation or transaction entered into: (i) meets the client's investment objectives; (ii) is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;

	(iii) is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction. (e) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.
Regulation 19	19. (1) An investment adviser shall maintain the following records,- (a) Know Your Client records of the client; (b) Risk profiling and risk assessment of the client; (c) Suitability assessment of the advice being provided; (d) Copies of agreements with clients, incorporating the terms and conditions as may be specified by the Board;] (e) Investment advice provided, whether written or oral; (f) Rationale for arriving at investment advice, duly signed and dated; (g) A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice. (2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years: Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed. (3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India and submit a report of the same as may be specified by the Board.
Regulation 25	(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 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) <i>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.</i> (3) <i>The inspecting authority shall, for the purposes of inspection, have power to examine on oath and record the statement of any employees, directors, partners, principal officer and persons associated with investment advice] or person responsible for or connected with the activities of investment adviser or any other associate person having relevant information pertaining to such investment adviser.</i> (4) <i>The inspecting authority shall, for the purposes of inspection, have power to obtain authenticated copies of documents, books, accounts of investment adviser, from any person having control or custody of such documents, books or accounts.</i>
Clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule	1. Honesty and fairness <i>An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.</i> 2. Diligence <i>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.</i> 6. Fair and reasonable charges <i>An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.</i> 8. Compliance <i>An investment adviser including its partners, principal officer and persons associated with investment advice shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.</i>
SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 on Guidelines for Investment Advisers	

Paragraph 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. b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder. c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client. d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.
Paragraph 2(iii)	Fees: Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes: (A) Assets under Advice (AUA) mode a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA. b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client. c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA. (B) Fixed fee mode The maximum fees that may be charged under this mode shall not exceed INR 1,25,000/- per annum per client across all services offered by IA. General conditions under both modes a. In case “family of client” is reckoned as a single client, the fee as referred above shall be charged per “family of client”. b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.

	c. <i>If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.</i> d. <i>In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.</i>
Paragraph 2(iv)	Qualification and certification requirement <i>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.</i>
Paragraph 2(vi)	<i>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:</i> a. <i>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> i. <i>Physical record written & signed by client,</i> ii. <i>Telephone recording,</i> iii. <i>Email from registered email id,</i> iv. <i>Record of SMS messages,</i> v. <i>Any other legally verifiable record.</i> b. <i>Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.</i> c. <i>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.</i>
Paragraph 2(vii)	a. <i>As per regulation 19 (3) of the amended IA Regulations, IA shall ensure that annual audit in respect of compliance of SEBI (Investment Advisers) Regulations,</i>

	2013 and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year. b. The adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA, shall be reported to respective SEBI office (based on the registered address of IA) within a period of one month from the date of the audit report but not later than October 31st of each year for the previous financial year starting with the financial year ending March 31, 2021.
Paragraph 2(viii)	Risk profiling and suitability for non-individual clients a. Regulation 16 and 17 of SEBI (Investment Advisers) Regulations, 2013 mandates risk profiling and suitability for all categories of clients. b. In order to further enhance the risk profiling and encompass suitable factors in case of non-individual clients, IA shall use the investment policy as approved by board/management team of such non-individual clients for risk profiling and suitability analysis. c. The discretion to share the investment policy/relevant excerpts of the policy shall lie with the non-individual client. However, IA shall have discretion not to onboard non-individual clients if they are unable to do risk profiling of the non-individual client in the absence of investment policy.
SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 on Measures to strengthen the conduct of Investment Advisers (IA)	
Paragraph 1(i)	As per SEBI (Investment Advisers) regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products / services to prospective clients. Further, IA shall not accept part payments (where some part of the fee is paid in advance) for any product / service.

Penalty for failure to furnish information, return, etc.

15A (a) If any person, who is required under this Act or any rules or regulations made thereunder, to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one

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

Penalty for fraudulent and unfair trade practices.

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

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

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

ISSUE No. I: Whether the Noticees violated provisions of SEBI Act, PFUTP Regulations, IA Regulations and other provisions as alleged in the SCN?

- 10 Noticees have submitted that they have served around 18,500 clients during years 2014-2023, the total number of complaints as per SEBI scores as on 27.07.2023 are 61 i.e. 0.32% out of which 58 are unique complaints. Noticees have also placed reliance on Orders passed by Hon'ble Securities Appellate Tribunal in the matter of *Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011)*, *UPSE Securities Limited Vs. SEBI (Appeal No. 109 of 2011)*, *DSE Financial Services Limited Vs. SEBI (Appeal No. 153 of 2012)*, *Piramal Enterprises Limited Vs. SEBI (Appeal No. 466 of 2016)* and other connected Appeals, Adjudication Orders in the matter of *IFCI Financial Services Ltd and Marfatia Stock Broking Pvt. Ltd.* Additionally, in respect of the allegation of violation of Regulation 3(a), (b), (c), (d), 4 (1), 4(2)(k) and (s) of PFUTP Regulations r/w Section 12A(a), (b) and (c) of the SEBI Act, Noticees have relied upon the order dated 28.05.2021 passed by the Ld. WTM, SEBI in the matter of *Tatia Global Venture Limited* wherein it is, *inter alia*, mentioned that

Section 12A(a), (b), (c) of the SEBI Act and Regulations 3(b), (c) & (d), 4(1) and 4(2)(f) & (r) of PFUTP Regulations deals with fraud/ manipulation/unfair trade practices while dealing in securities and in relation to securities market. Noticee have also submitted that Section 12A (a), (b) & (c) of the SEBI Act may be invoked in cases in connection with the issue, purchase or sale of any securities and that in their case there is no purchase/sale and/or dealing of securities, that their role is merely of providing Investment advice and hence the allegations of PFUTP Regulations are not applicable to them in respect of the facts of the case. I have carefully gone through the submissions made by the Noticees and now proceed to deal with the allegations made in the SCN on merits as under;

10.1 Non-Compliance with qualification and certification requirements

10.1.1 The following was alleged in the SCN:

10.1.1.1 On the basis of qualification details and business model submitted by IA, it was observed that though executives working in sales / support and compliance department were acting as persons associated with investment advice, however such executives were not in compliance with the qualification and certification requirements as per the provisions of Regulation 7(1) and 7(2) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

10.1.1.2 From the list of employees/ persons associated with investment advice along with qualification details submitted by IA, it was noted there are 2 directors and 1 compliance officer of which only one director has a post graduate degree. One of the directors, Mr. Ajay Kumar, who is also the Principal Officer and the compliance officer Ms. Nikita Navlani have a graduate degree. Further, out of 17 employees, it was observed that 12 employees do not have a professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or

association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute. Further, out of these 17 employees, only 1 employee has qualified NISM Level 1 and Level 2 certification. It was also noted that there are 8 employees who have not qualified any level of NISM certification.

10.1.1.3 It was also observed that the Compliance Officer Ms. Nikita Navlani is only a Graduate and doesn't possess a professional or post graduate qualification as specified in Regulation 7(1)(a) r/w Regulation 2(1)(r) of IA Regulations. Further, it was observed that 8 out of 9 employees in compliance also work in sales / HR department which has a different function from that of compliance and indicated conflict of interest as the roles of sales and compliance are different.

10.1.1.4 Based on the above, it was alleged that Noticees have violated Regulation 15(13) r/w Regulation 7 of IA Regulations and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule r/w Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

10.1.2 Noticees submitted the following in reply dated July 31, 2023;

10.1.2.1 *"During the course of inspection, we had clarified to the Ld. Inspection Team, SEBI that eight (8) employees as referred were serving as management trainees and do not have direct contact with the company's clients. We also provided the Ld. SEBI officials with their offer letters as supporting documentation during the course of inspection. It is submitted that these trainees will be considered full-time employees once they fulfill the company's requirements, such as completing SEBI NISM certifications and meeting regulatory authority standards. Hence, it is submitted that the 8 Employees as referred SEBI are actually management trainees. Further, these trainees were specifically told even in their offer letter that once the NISM certifications are done only then they will be provided with appropriate role in the company.*

- 10.1.2.2 *The 8 management trainees as referred in the SCN did not have any direct contact with the company's clients. Hence, they were not persons associated with investment advice. In view thereof, we humbly submit that said qualification requirement is not applicable to them.*
- 10.1.2.3 *Further, we submit that the Mr. Sunil Bhadauriya (“Sunil”) and Ms. Anshita Kandari (“Anshita”) were responsible for giving advice to the clients. The role of Ms. Anshita was to select the stocks and that of Mr. Sunil was to finally select the calls to be sent to clients. Both of them had Level 1 and 2 certifications.*
- 10.1.2.4 *We humbly submit that in September 2020 we retained a few employees within the company and provided training to our existing employees to ensure compliance with the Amended IA Regulations and various SEBI Circulars. It is pertinent to mention that some of our employees successfully completed the NISM Level 1 exam and were preparing for the NISM Level 2 exam. However, due to unforeseen circumstances, they were unable to take the Level 2 exam. Unfortunately, in June 2022, we ceased our operations entirely.*
- 10.1.2.5 *During the company audit, there were a total of 17 employees. In the Financial year 2020-21, due to frequent lockdowns in Indore, the company operated with a limited staff of 13 employees including the directors and compliance officer. In 2021, the company had a total of 24 employees, encompassing various roles such as sales, support, management trainees, and research. Summarily, we submit that in line with the SEBI Regulations, six members of our support team successfully completed their NISM Level 1 examination and obtained the necessary certification from SEBI.*
- 10.1.2.6 *It is submitted as that as per the old Regulation 7, our Compliance Officer Ms. Nikita was in compliance of Regulation 7(1)(b) as she was a graduate and has an experience of approximately 7 years. Further, in terms of the Regulation 7(1)(a) of the SEBI (Investment Advisers) (Amendment) Regulations, 2020, it is mentioned that in case of non-individual investment adviser registered as an investment adviser, the principal officer should have the requisite qualification as mentioned therein. In our case the principal officer was Mr. Ajay Kumar and not Ms. Nikita, hence there was not specific requirement in respect of the said qualification requirement for Ms. Nikita.”*

10.1.3 I note that as per Regulation 7(1) (a) of IA Regulations, partners and representatives of registered investment adviser shall have at all times a professional qualification or post-graduate degree or post graduate diploma or a graduation in any discipline with an experience of at least five years in activities relating to advice in financial products. Further, as per Regulation 7(1) (a) of amended IA Regulations, which came into effect on 30/09/2020, a principal officer of a non-individual investment adviser shall have, at all times, a professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration). I note that Mr. Ajay Kumar, who is the principal officer, did not meet the above criterion as he was only a graduate. I also note that the Compliance Officer Ms. Nikita Navlani was also required to comply with Regulation 7(1)(a) of amended IA Regulations as she comes under the definition of “*Persons associated with investment advice*”, as given under Regulation 2(1)(r) of IA Regulations, but failed to comply with the same as she was also only a Graduate and did not possess a professional or post graduate qualification. I note that with regard to remaining employees, the Noticees have not provided any clear response and indirectly admitted to non-compliance with the provisions of IA Regulations and amended IA Regulations.

10.1.4 In light of the above, it is established that Noticees have not complied with Regulation 15(13) r/w Regulation 7 of IA Regulations and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule r/w Regulation 15(9) of IA Regulations.

10.2 Non-Submission of documents sought by SEBI, with respect to Qualification requirement

10.2.1 The following was alleged in the SCN:

10.2.1.1 SEBI vide letter dated April 07, 2021, *inter-alia*, sought information with regard to application of Noticee No. 1 for prior approval for Change in Control with respect to the current directors cum shareholders viz. Ajay Kumar and Sunil Singh Bhadauriya. Further, they were asked to provide

how they met the requisite qualification, experience, certification requirements mentioned in the amended Regulation 7(1) and 7(2) of IA Regulations, along with supporting documents.

10.2.1.2 With regard to the above query, Noticee No. 1, vide letter dated April 12, 2021, *inter-alia*, submitted that Mr. Sunil Singh Bhadauriya possess a post graduate degree in Business Management and has more than 5 years of experience in finance industry. Further, it stated that he is associated with the company from the very first day of Noticee No. 1 came into existence (from 2011) and that he is also a NISM certified person with NISM-Series-X-A: Investment Adviser (Level 1) and NISM – Series – X – B: Investment Adviser (Level2).

10.2.1.3 The IA stated that Mr. Ajay Kumar possess more than 5 years of experience in finance industry and is also associated with the company for around 7 years. Mr. Ajay Kumar is also NISM certified with NISM-Series-X-A: Investment Adviser (Level 1) and NISM – Series – X – B: Investment Adviser (Level2). Along with the letter dated April 12, 2021, Noticee No. 1 also submitted a copy of the NISM certificates of Mr. Sunil Singh Bhadauriya and Mr. Ajay Kumar and Marksheet of MBA (IB) SEM-4 of Mr. Sunil Singh Bhadauriya.

10.2.1.4 Further, through SI Portal, Noticee No. 1 on September 28, 2021, was, *inter-alia*, advised to submit documents with regard to application for prior approval for change in control. Among other documents, Noticee No. 1 was advised to submit a copy of the Degree certificate, Appointment Letter and Experience Certificates pertaining to the individual designated as Principal Officer. However, the IA failed to submit the aforementioned documents within the stipulated time period.

10.2.1.5 The IA did not submit copy of the Degree certificate, appointment letter and experience certificates pertaining to the individual designated as Principal Officer i.e. Mr Ajay Kumar, as sought by SEBI with respect to the qualification requirement as prescribed by SEBI. Further, IA also did not submit degree certificate of one of the Directors i.e. Mr Sunil Singh Bhadauriya.

10.2.1.6 Based on the above, it was alleged that Noticees have violated Regulation 15(12) of IA Regulations.

10.2.2 Noticees submitted the following in reply dated July 31, 2023;

10.2.2.1 *The requisite documents i.e. Degree Certificate, Appointment Letter and experience certificates pertaining to individual designated as Principal Officer i.e. Ajay as required by SEBI w.r.t. our request for prior approval of change in control did not materialize i.e. no change of control took place. In fact, in the SI Portal history and Audit Trail it is mentioned that the application was rejected. Hence, we humbly submit that there is no alleged violation of Regulation 15 (12) of the IA Regulations since there was no change in control which is the basis for which documents are required.”*

10.2.3 In light of the submissions of the Noticees, since there was no change in control, I am inclined to take a lenient view on the non-compliance by the Noticees on this issue, as alleged in the SCN.

10.3 Disproportionate fee structure

10.3.1 The following was alleged in the SCN:

10.3.1.1 As stipulated in the IA regulations, an IA is entitled to charge fees from client which shall not exceed Rs. 1,25,000/- per annum per client under fixed fee mode or 2.5 percent of Asset Under Advice per annum per client for all the offered services. Further, it is provided that an IA shall charge fees from any of the above mode on ‘annual basis’. However, SEBI observed that the Fees charged by the IA was not in accordance with the provisions specified by SEBI for charging of fees from its clients. Fees for all the subscription packages offered by the IA for the period April 01, 2021 - September 30, 2021, and fees charged to the certain clients, was more than Rs 1,25,000/- on annual basis.

10.3.1.2 On perusal of the fees structure, it was noted that:

- There are 12 services offered for which different fee was charged by the IA i.e fees are charged for 7 days, 15 days, monthly, quarterly and on half yearly subscription basis.
- The IA charges fees from the client through fixed fee mode by offering various price packages.
- Fees charged by IA for 7 days (weekly) for a product named super value service was Rs. 8,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 4,16,000/- (52 weeks*8,000).
- Fees charged by IA for 15 days (half month) for a product named intraday service was Rs. 7,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,68,000/- (24 half months*7,000).
- Fees charged by IA for 15 days (half month) for a product named super value service was Rs. 16,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 3,84,000/- (24 half months*16,000).
- Fees charged by IA for monthly for a product named intraday service was Rs. 11,800/- and fees charged by IA for monthly for a product named super value service was Rs. 29,500/- for Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs. 1,41,600/- (12*11,800) and minimum advisory fees for super value service amounts to a sum of Rs. 3,54,000/- (12*29500).
- Fees charged by IA for a quarter for a product named intraday service was Rs. 35,400/- and fees charged by IA for a quarter for a product named super value service was Rs. 70,800/- Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs. 1,41,600/- (4*35,400) and minimum advisory fees for super value service amounts to a sum of Rs. 2,83,200/- (4*70800).
- Fees charged by IA for a half year for a product named intraday service was Rs. 70,800/- Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs. 1,41,600/- (2*70,800).

10.3.1.3 It was observed that minimum amount of subscription packages offered by the IA for 7 days, 15 days, monthly, quarterly and half yearly duration exceeds the fees amount of Rs. 1,25,000/- if such advisory product fees were charged on an annual basis.

10.3.1.4 With respect to the fees charged by IA to its clients, the client master of FY 2021-22 (till September 30, 2021) providing details of fees charged to the clients, as submitted by the IA vide email dated October 25, 2021, were analyzed.

10.3.1.5 The Guidelines prescribed with regard to the fees specified in SEBI circular dated September 23, 2020, was applicable with effect from April 01, 2021. From the analysis of client master of FY 2021-22 (April 01, 2021 to September 30, 2021), it was observed that:

- IA received 103 payments from multiple clients amounting to total of Rs. 23,31,590/-.
- Out of 103 payments, there are 99 payments in which it was observed that the fees charged by the IA amounts to more than Rs. 1,25,000/- on annual basis. The total of excess fee charged for 99 payments was Rs. 11,55,902/-.
- From the samples taken for inspection, observation with regard to excess fee charged from the clients during the FY 2021-22 (till September 2021) was as under:

Client Name	Invoice date	Service Name	Duration of service as per invoice (A)	Amount (Rs) Paid (incl GST) (B)	Max Service charge per day (Rs) (C)	Max charges allowed per service duration (D) = (A)*(C)	Extra fees as charged by the IA (Rs) (E) = (B) – (D)
Tunuguntla Soma Sekhar	06/04/2021	Super Value Future Package	90	70,800/-	342/-	30,780/-	40,020/-
	17/08/2021	Super Value	90	70,800/-	342/-	30,780/-	40,020/-
Sugnana Murthy K	19/04/2021	Option Package	90	70,800/-	342/-	30,780/-	40,020/-
	30/07/2021		30	29,500/-	342/-	10,260/-	19,240/-
	31/08/2021		30	29,500/-	342/-	10,260/-	19,240/-
Sanghvi Deep Jayantilal	08/04/2021	Stock Option Package	15	7,000/-	342/-	5,130/-	1,870/-
	04/05/2021		15	7,000/-	342/-	5,130/-	1,870/-
	31/05/2021		15	7,000/-	342/-	5,130/-	1,870/-
	30/06/2021		15	7,000/-	342/-	5,130/-	1,870/-

	03/08/2021		15	7,000/-	342/-	5,130/-	1,870/-
Ganesh V Kolkar	09/07/2021	Super Value Cash Package	90	59,000/-	342/-	30,780/-	28,220/-
Alok Kumar Mohanty	10/09/2021	Super Value Option Package	30	29,500/-	342/-	10,260/-	19,240/-
Ramakrishna Rao G Bapat	13/08/2021	Super Value Option Package	90	70,800/-	342/-	30,780/-	40,020/-
Kamal P Gupta	08/04/2021	Super Value Cash Package	7	8,000/-	342/-	2,394/-	5,606/-
Shubham Patil	14/09/2021	Cash Package	15	7,000/-	342/-	5,130/-	1,870/-
Ayush Jain	24/09/2021	Super Value Option Package	7	6,400/-	342/-	2,394/-	4,006/-

10.3.1.6 Based on the above, it was alleged that Noticees have violated Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations.

10.3.2 Noticees submitted the following in reply dated July 31, 2023;

10.3.2.1 *We humbly submit that the as per our fees structure the services provided by us ranges into 5 categories i.e. 7 days, 15 days, monthly, quarterly and half yearly. On perusal of Annexure – 4 of the SCN which has the details of the service name and fees structure, it is submitted that fees of none of the services exceeds Rs 1,25,000/-.*

10.3.2.2 *Further, as a policy decision, we had decided not to provide the services for a period more than 6 months. In fact, even in terms of the fees of Rs 70,800 of Half Yearly basis is actually Rs 60,000 + GST @ 18%. In fact, even the said is considered for a year the total amount comes to Rs 1,20,000 + GST @ 18% for the entire year which is less than the annual maximum fees of Rs 1,25,000/-.*

10.3.2.3 *On perusal of the amount of fees collected from 01.04.2021 to 30.09.2021, it is submitted that none of the fees taken from the clients exceeds Rs 1.25 Lakhs. A summary of fees collected from 01.04.2021 to 30.09.2021/ Annexure – 5 of the SCN is enclosed hereto marked as **Annexure – “15”**. In view thereof, we humbly submit that we had always adhered to SEBI’s policy of fees collection.*

10.3.2.4 *It is humbly submitted that the allegation as alleged against us are not tenable in the facts and circumstances of the present case. For Instance, under Para No. 3.3.2, Sub Para No. 3 on Page No. 6 of the SCN it is inter alia mentioned that for a 7-day period for a product namely Super Value Services we have charged Rs 8,000/- and it is mentioned that a minimum advisory fee would have been the of Rs 4,16,000/- annual basis (INR 8,000 * 52 weeks). However, we have never charged any client any amount more than Rs 1.25 Lakhs w.e.f 01.04.2021.*”

10.3.3 I note that maximum fees that can be charged from a client as per the provisions is 1,25,000/- per annum per client across all services offered by IA. In absence of any detailed methodology under the provisions to calculate the fees, I am not inclined to agree with the manner in which the fees charged for shorter duration has been extrapolated and hence do not find that the Noticees have violated Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations.

10.4 Format of Agreement

10.4.1 The following was alleged in the SCN:

10.4.1.1 SEBI observed that the format of the agreement with which the IA had to enter into an agreement with its client, was not in accordance with the provision specified in Annexure A of the SEBI circular dated September 23, 2020.

10.4.1.2 Regulation 19(1)(d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. Further, SEBI vide Circular dated September 23, 2020, *inter-alia*, specified that the said agreement shall mandatorily cover the terms and conditions provided in Annexure-A of the SEBI Circular.

10.4.1.3 It was observed that the first page of the agreement does not specify the clauses as specified in Annexure A of the SEBI Circular including fees charged to the client.

10.4.1.4 Based on the above, it was alleged that Noticees have violated the provisions specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 and Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

10.4.2 Noticees submitted the following in reply dated July 31, 2023;

10.4.2.1 *“It is humbly submitted that we have followed the SEBI-prescribed format while making the agreements with the clients. However, due to a manual inadvertent mistake, we submitted the wrong agreement format which we have prepared immediately/instantaneously being informed about the circular.*

10.4.2.2 *Once we realized that there is some issue in the Format of the Agreement, we immediately rectified it by applying the new agreement format. Unfortunately, we were unable to submit it to SEBI. The format submitted to SEBI is merely a specimen copy and not the original client agreement. We humbly submit that in our view, any agreement should include the client's name and the first party's name, which is Money Capital, along with their complete address, SEBI registration number, and date of the agreement. Following that, we have mentioned the purpose of the agreement, mutual consent with the client, etc.*

10.4.2.3 *We humbly submit that we have followed the same format provided by SEBI. However, due to the font size of the agreement and the details of the company/client, the fees structure moved to the second page. We have clearly highlighted the fees in the agreement, so we want to clarify that our intention was not to hide anything from the client.”*

10.4.3 I note that SEBI vide Circular dated September 23, 2020, *inter-alia*, specified that the said agreement shall mandatorily cover the terms and conditions provided in Annexure-A of the SEBI Circular. As per the said circular the declaration from IA, fees as per the provisions and fee actually charged from the client is supposed to be mentioned on the first page of the agreement. However, I note that the first page of the agreement in the instant case did not mention any of these requirements on the first page and the same were

mentioned on the second page and hence the format was not according to Annexure A of the said SEBI Circular.

10.4.4 In light of the above, it is established that Noticees have violated the provisions specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 r/w Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

10.5 Maintenance of Records

10.5.1 The following was alleged in the SCN:

10.5.1.1 SEBI observed that the email ID of IA (i.e. support@capitalheight.com) was used to communicate with the clients and to deal with complaints of the client. During the inspection, the said email ID was checked but it was found that there were no emails available and hence the number of direct complaints that were received by the IA could not be ascertained. A clarification was sought from the IA with regard to the same and the IA vide a letter (not dated), submitted to SEBI, that there was a virus attack on the mail server of the company, due to which the “Inbox” and “Sent” items were deleted frequently. The IA stated that due to this reason few of the mails were in physical form to avoid loss of client data. However, it was observed that IA did not have possession of all the mail communication from clients. As per SEBI circular, an IA has to maintain email records of the client. In this case, the IA does not have email records of its clients.

10.5.1.2 Further, SEBI sent an email dated October 28, 2021 to the IA, stating that the IA had provided call recording of 22 clients during inspection, however additional information was sought on the call recordings. The email sent to the IA in verbatim is given below:

During the said inspection, you have submitted the call recordings for 22 sample clients. The call recordings have been submitted client wise and for each sample clients recording number has been mentioned. With respect to the said call records, kindly provide the following details:

Client name, Call recording no., Capital height Phone no., Clients Phone no., Date of Call, Time of call, Person on behalf of Capital height dealing with the client

On listening to the recordings of few of the clients (eg- Mr. Alok kumar Mohanty), it was observed that the person dealing with the client was Mr. Mukul Vij but used the name of Sandeep Singh. The said finding was also presented before the directors of the Capital height. The Director has confirmed that the person dealing with the client is Mr. Mukul Vij and not Mr. Sandeep Singh. With respect to the said finding kindly provide your remark.

During the inspection, the email data of emails of the Capital height were not provided. In this regard you were advised to provide the email data of the email ids of the Capital height.

10.5.1.3 The IA Vide email dated November 02, 2021, submitted the following response given in verbatim below:

In reference to this point LA wants to state that the hard disk of the company in which relevant data was saved has got corrupted and that has been mentioned in front of SEBI officials during the inspection also. LA further wants to state that we tried hard to recover the hard disk before the inspection but we could not do that hence, the hard disk has been disposed off. The LA has kept the recordings of the clients but to provide the data in the format asked by SEBI is not available with us. We knew that the recordings of the clients were to be maintained but we did not know that the recordings were to be saved in this format. If this is the prescribed format decided by SEBI in which the recording data of a registered intermediary should be kept then LA will maintain its data in the same format from now onwards.

In this regard LA wants to state that the recording that was presented in front of the directors during the course of inspection was made for the training purpose where Mr. Mukul Vij was pretending to be Mr. Sandeep Singh and some other person was pretending to be the client. The other person with whom discussions were made on call recording of Mr. Mukul Vij were not the clients. Hence, Mr. Mukul Vij was not dealing with the clients of LA. The directors of LA gave the confirmation on Mr. Mukul Vij voice but not that he's dealing with clients. The directors of the company clarified this thing that the recordings found was purely made during the course of training and it is included in the training module of LA. Mr. Mukul Vij used the name of Mr. Sandeep Singh to give the proper training to our supporting staff and sales representatives to make them understand about how to talk with clients. The person on the other side was not the client but the third person to guide them about the questions raises in the mind of client while speaking with them. Hence, the recording was not between Mr. Mukul Vij and the client but with the third

party. The folder of clients in which the recordings mistakenly got replaced with the training recordings are available with LA and can be submitted if needed.

During the inspection, the email data of the emails of the Capitalheight was presented in hard copies. The LA follows the procedure of printing the e-mail data of clients as LA has faced the issue of virus attack and mail spamming several times due to which the emails gets deleted automatically from the server of capitalheight. However, the email data of clients is maintained in physical mode. Also, a misunderstanding happened about the mail communication that we maintained that we kept the sent email data with us in physical copy and only kept the attachments of incoming mails in electronic form which includes signed Agreement and Risk Profile of client. However, LA did not take the prints of clients' incoming mails. During the course of inspections we got to know that an LA should maintain clients' mail too.

Hence, we will keep the copy of incoming mails of clients from now onwards.

On the other hand the email data for the month of October is already recovered and that got possible just because of the antivirus that has been installed on 28th September 2021. The LA is ready to present the email data of October month in front of SEBI if needed.

The LA will be closed from 3rd November - 7th November due to Diwali holidays. The next working day of the LA will be 8th November 2021

10.5.1.4 The IA, vide email dated January 07, 2022, was advised to submit call recordings for 23 sample clients. Vide emails dated January 07, 2022, the IA submitted the call recordings for clients. SEBI vide email dated January 11, 2022, communicated to the IA that call recording of 4 clients were not available in the data provided. The IA replied vide email dated January 11, 2022, that call recording of 4 clients were not available and that they have maintained call recordings of clients from January 01, 2022.

10.5.1.5 Further, SEBI observed that with regard to maintenance of call recordings and emails of investors during inspection, upon listening to the call records, the same appeared to be fake. Also, reply of the IA that call recordings given to the inspecting officials were the recordings made for training purpose showed that IA misled the inspecting officials of the Board during inspection. SEBI observed from the call records provided for one client viz. Alok Kumar Mohanty that the IA was informing this client that he falls in high risk category (Recording no. 6, CRC32 - 0464663C).

However, as per the risk profile of the client provided by the IA during inspection, the risk category of this client is medium. Further, this client has been given high risk category product despite being categorized under medium risk category.

10.5.1.6 Based on the above, it was alleged that Noticees have violated Regulation 19(2), 25(1) and 25(2) of IA Regulations and Paragraph 2(vi) of SEBI circular dated September 23, 2020.

10.5.2 Noticees submitted the following in reply dated July 31, 2023;

10.5.2.1 *“During the Inspection, we clarified to the Ld. SEBI officials that our compliance server was affected by a virus attack, resulting in data corruption. Despite our efforts to recover the data and submitting the hard drive to a vendor, they informed us that the data could not be recovered as the hard disk was completely destroyed. To prevent data loss, we had saved emails in physical format, which we had provided the same to the Ld. SEBI officials when they asked for them on sample basis.*

10.5.2.2 *However, we submit that we have a daily practice of saving data such as client agreements and approved risk profiles, which are submitted to us by the clients. In fact, by our Email dated 02.11.2021 to SEBI, we had inter alia stated that we have recovered the Email data of October 2020 and ready to present the same as and when required.*

10.5.2.3 *In response to the observation that the direct complaints could not be ascertained since the Email data was unavailable, we submit that we have not received any direct complaints from clients related to other issues in any manner whatsoever. We have diligently followed SEBI's rules and regulations regarding agreements, fees and transparency with clients and as a result, we have not received any direct complaints.*

10.5.2.4 *In respect of the observation that call records appeared to be fake, it is humbly submitted as under:*

(a) *During the course of Inspection, we had provided the Ld. Inspection Team, SEBI with call recordings of 18 clients. Pertinently, by email dated 07.01.2022 we were informed that call recording of 23 clients are required in response to which*

we provided the available call records by Email dated 07.01.2022. However, by email dated 11.01.2022 we clarified that recordings of 4 clients as mentioned in SEBI's Email dated 07.01.2022 was not available with us since, they were not covered under SEBI Circular dated 23.09.2020 which was w.e.f 01.01.2021.

- (b) After provided the 18 call recordings, we found out that mistakenly/ inadvertently we had included 2 training purpose recordings in the call records with clients as given to SEBI. However, when Ld. SEBI officials directed us to submit the original client recordings again, we initially tried sent them via email, but the email failed. Hence, we submitted a pen drive to the Ld. SEBI's office.*
- (c) In the recording for training purpose there is a conversation where one Mr. Mukul Vij ("**Mukul**") whose name was changed to Mr. Sandeep Singh for training and some other person was pretending to be the client. The other person with whom discussions were made on call recording of Mr. Mukul were not the clients. Hence, Mr. Mukul was not dealing with the clients of IA. The directors of IA gave the confirmation on Mr. Mukul voice but not that he was dealing with clients. We humbly submit that the recordings found were purely made during the course of training and it is included in our training module. Mr. Mukul used the name of Mr. Sandeep Singh to give the proper training to our supporting staff and sales representatives to make them understand about how to talk with clients.*
- (d) The person on the other side was not the client but the third person to guide them about the questions raises in the mind of client while speaking with them. Hence, the recording was not between Mr. Mukul and the clients but with the third party. The folder of clients in which the recordings mistakenly got replaced with the training recordings.*
- (e) Mr. Mukul is one of the shareholders of the company and possesses 17 years of experience in the securities and commodities market. Previously, he served as a director of the company but resigned in April 2017. During his tenure and even after his resignation, he has been providing guidance to us regarding SEBI laws. Additionally, he conducts mock call sessions to train us on how to interact with clients and the essential questions to ask at the beginning of client acquisition.*

- (f) *However, we submit that if properties of the attached recordings are checked, your kindsleves will find that they are all the same as we mentioned during the audit.*

10.5.2.5 *In respect of High-Risk Category Product provided to Mr. Alok, a client belonging to Medium Risk Category it is submitted as under:*

- (a) *We conducted a risk profiling of the client and determined that his risk capability was medium. We by Email dated 07.09.2021 communicated this finding to the client clearly, stating that we would not provide him with high-risk products such as stock options. A copy of our Email dated 07.09.2021 to Mr. Alok Kumar Mohanty is enclosed. Relevant extract of the Email is mentioned herein under:*

Quote *“According to the telephonic conversation, we have informed you that we have made your final Risk Profile after assessing the answers given by you and on the basis of the questions we have asked from you. We have noticed that your Risk taking capacity belongs to Medium Category and you seems interested in taking Stock Option service form our side which is not possible for us to provide you as Stock Option service belongs to High Risk Category.”***Unquote**

- (b) *Further, we submit that since he had insisted a lot to avail the services, in the said Email we also mentioned that “In any case you still want to take the Stock Option service from the company, it will purely be your responsibility and the company will not be responsible for any claim or refund in this case.” and further requested his acceptance. He accepted the same and sent us the said signed copy of the Email wherein he was stated that he accepted the service. A copy of signed Email of acceptance of Mr. Alok is enclosed. Hence, we submit that it is only on the clients insistence we provided him the said service.”*

10.5.3 On the basis of response of the Noticees and the evidence regarding communication with Alok Kumar Mohanty, I am inclined to take a lenient view in this matter.

10.6 Observations in Client Samples

10.6.1 The following was alleged in the SCN:

10.6.1.1 From the samples of 23 clients' documents viz. risk profile, copy of agreement executed, call recording, invoice of fees charged, copy of KYC documents, email communication, taken from the IA to verify whether the same were in accordance with provisions of Regulations / Guidelines / Circulars issued by SEBI, the following observations were made:

S. No.	Client's Name	Observation	Evidence
i.	Umesh Singh HAAPS9340L	An agreement was made on April 17, 2021 for which invoice no. 190 was generated on April 19, 2021. However, two dates are mentioned on the agreement executed by the client for invoice no. 190. Dates mentioned against client's signature on the agreement is April 17, 2021, whereas the date mentioned in the same agreement against IA name is January 08, 2021. Further, different signature was observed on the agreement executed by the client on April 17, 2021. Signature of the client on PAN, KYC and agreement dated January 08, 2021 and signature on the agreement dated April 17, 2021, appear to be different. The agreement dated January 08, 2021, has been made for 1 month for Stock Option, for a fee of Rs 29,500/- whereas invoice no. 108 generated on January 09, 2021, mentions Stock Option for 60 days for Rs 20,000/-.	Copy of agreements, copy of invoice, copy of PAN, copy of KYC form.
ii.	Parth Trivedi AVJPT2739B	The agreement dated December 24, 2020, has been made for 1 month for Stock Cash and Stock Option, for a fee of Rs 8,000/- whereas invoice no. 97 generated on December 24, 2020, mentions Stock Option for 8 days for Rs 8,000/-.	Copy of agreement and copy of invoice.
iii.	Ashish Kumar Tiwari ADOPT6503C	Signature flow of the client on KYC, PAN and that on the signed risk profile appears to be mismatching.	Copy of PAN, copy of KYC

		A call was made to the client on his mobile number 7869956436 by the inspection team and was asked whether he submitted signed Risk Profile sheet. The client denied signing any sheet.	form, copy of risk profile.
iv.	Sanghvi Deep Jayantilal AVJPJ4841N	The agreement dated December 31, 2020, has been made for 30 days for Stock Option + Stock Cash, for a fee of Rs 8,000/- whereas invoice no. 103 generated on December 31, 2020, mentions Stock Option Package for 15 days for Rs 8,000/-	Copy of agreement, copy of invoice.
v.	Alok Kumar Mohanty ARFPM4642Q	As per the risk profile signed by the client on 06/09/2021, the client falls in medium risk category but has been given high risk category product i.e. super value option.	Copy of signed risk profile, copy of agreement, copy of invoice.
vi.	Mousumi Jena BAMPJ5369N	Signature on risk profile of this client is of another person. Date against the client signature is not mentioned on the agreement.	Copy of risk profile, copy of agreement.
vii.	Kamal Prakash Gupta ACSPG3999E	The agreement dated 07/04/2021, has been made for 8 days for Super Value Cash, for a fee of Rs 8,000/- whereas invoice no. 181 generated on 08/04/2021, mentions Super Value Cash for 7 days for Rs 8,000/-.	Copy of agreement, copy of invoice.
viii.	Anurag Jain AIAPJ6137H	Flow and angle of signature observed on the agreement executed by the client on 29/06/2021 and that on agreement dated 19/03/2021, appear to be different.	Copy of agreements.

10.6.1.2 It was observed that IA was engaged in forgery of signature, mis-selling of products i.e. providing products / services which are not in accordance

with the risk profile of the client, not obtaining signature of the concerned client on documents, not charging and not providing services / products in accordance with the agreement executed. It was observed from the supporting documents that the Directors Sunil Singh Bhadauriya and Mr. Ajay Kumar (who is also the Principal Officer) and Compliance Officer Ms. Nikita Navlani, are involved in day to day operations of the company as they are signing Invoices, Agreements, Risk Profile etc. The abovementioned activities of IA are covered under the definition of “fraud” as defined under regulation 2(1)(c) of PFUTP Regulations.

10.6.1.3 Based on the above, it was alleged that Noticees have violated Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations r/w section 12A (a), (b) and (c) of SEBI Act and provisions specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

10.6.2 Noticees submitted the following in reply dated July 31, 2023;

10.6.2.1 *At the outset, client wise response in respect of the alleged violation is mentioned herein under:*

S.No	Client Name	Particulars
i.	Umesh Singh (“Umesh”)	Mr. Umesh was our old client, and he made three payments from 2020 to 2021. Whenever a client makes a payment to us we have a process in place to verify whether they are an existing client or not. In the case of Mr. Umesh, he was identified as our old client and he had also made previous payments to us prior to the implementation of the SEBI Circular dated 23.09.2020. After the SEBI Circular dated 23.09.2020, Mr. Umesh took our service from in January 2021, making a payment of 20000. At that time, the company's pricing was 10,000 Rs

		per month + GST, so the company provided him with two months of service. (Invoice No. 108 dated 09.01.2021). Further, Mr. Umesh paid 11,800 for duration of 30 days (10,000 + 1800 GST) in April 2021 (Invoice No. 190 dated 19.04.2021). Although the agreement was applicable from 01.04.2021 as stated in SEBI Circular dated 23.09.2020, we had started aligning with the regulations earlier to the said Applicability. Hence, Mr. Umesh signed both agreements i.e. January 2021 and April 2021. We humbly submit that inadvertently on the agreement of 17.04.2021 the date is mentioned as 08.01.2021. The agreement is of 17.04.2021 with Mr. Umesh and it is just a typographical mistake of mentioning date as 08.01.2021 in one of the place. During the audit, we observed a slight change in Mr. Umesh signature and upon inquiry it was found that he tends to use two different types of signatures in other documents. It is pertinent to mention that we cannot forge a client's signature because we depend on KRA's for KYC verification. We would like to clarify that this mistake was a result of various factors, including changes in regulations, the ongoing pandemic situation, and limited resources available to the compliance team.
ii.	Parth Trivedi ("Parth")	In the case of Mr. Parth, we clarify that he is our old client who has been consistently availing services from our company. Since we have a long standing relation wherever he requires/avails service, he expects a discount on the service charges. Pertinently, as per the pricing at the relevant time Stock Cash and Stock Future was Rs 25,000 (+ GST) each for one month. However, in view of our long

		<i>standing relation with Mr. Parth and on his request we offered the services to him for Rs 8,000 (Including GST) and the Invoice dated 24.12.2020 bearing Invoice No. 97 was raised accordingly. Pertinently, even in the Product description of Invoice it is mentioned as Stock Option Package per Month 25,000.</i>
iii.	<i>Ashish Kumar Tiwari (“Ashish”)</i>	<i>In Ashish’s case, we submit that we obtained the documents from a registered KRA (KYC Registration Agency). Further, we submit that signature is a matter of variation and it can change with time. Additionally, since there was no major variation it is submitted that the same signed by the same person since we had no intervention in the same. Pertinently, we are totally unaware as to why Mr. Ashish conveyed that he did not sign the said sheet as the services were duly provided to him based on the Risk Profiling forms signed by him.</i>
iv.	<i>Sanghvi Deep Jayantilal (“Sanghvi”)</i>	<i>We humbly submit that in order to stay competitive in the market, we provide discounts on pricing or offer additional services to clients. In the case of Mr. Deep, we followed a similar approach by providing extra services to the client. The client preferred everything to be documented. Hence, we mentioned a one-month service duration in writing to the client but we have not over charged to client in respect of the same</i>
v.	<i>Alok</i>	<i>We humbly submit that by Email dated 07.09.2021 to Mr. Alok, we has inter alia mentioned that “According to the telephonic conversation, we have informed you that we have made your final Risk Profile after assessing the answers given by you and on the basis of the questions we have asked from you. We have noticed that your Risk taking capacity belongs to Medium Category and you</i>

		seems interested in taking Stock Option service form our side which is not possible for us to provide you as Stock Option service belongs to High Risk Category.” Further, we submit that since he had insisted a lot to avail the services, in the said Email we also mentioned that “In any case you still want to take the Stock Option service from the company, it will purely be your responsibility and the company will not be responsible for any claim or refund in this case.” and further requested his acceptance. He accepted the same and sent us the said signed copy of the Email wherein he was stated that he accepted the type of service.
vi.	Mousumi Jena (“ Mousumi ”)	In the case of Mousumi, on perusal of the Risk Profiling form it is understood that the same has been signed by Mr. R.K. Swain is Mrs. Mousumi’s husband. We received an email dated 14.01.2021 from Mousumi stating that her husband will trade on her trading account as he is managing her funds When we sent an email regarding the Risk Profile, Mr. R.K. Swain signed the Risk Profile on behalf of Mousumi and informed the compliance officer of our company. We clarified to the client that we will not be able to provide services until we receive an email from their registered mail ID. Although Mousumi did not personally sign the agreement, we received an agreement email from the registered mail ID on the same date Pursuant thereto, Mousumi made three more payments to the company, and in each of the three agreements, she properly signed them with the respective dates, rectifying

		<i>the previous mistakes. On perusal of the same, it is submitted that it is signed by Mousumi.</i>
vii.	<i>Kamal Prakash Gupta ("Kamal")</i>	<i>We clarify that we are not overcharging the client; instead, we are providing extra services to meet the client's needs. Mr. Kamal requested that we include an additional day in the agreement because the service tenure period coincided with a Saturday and Sunday. We agreed to his request and added one more day to the agreement to satisfy our customer.</i>
viii.	<i>Anurag Jain ("Anurag")</i>	<i>Mr. Anurag was a valued client of ours, and he made a payment to us on 19.03.2021, prior to the implementation of the SEBI Circular of September 2020. However, we still requested him to go through the agreement process, which he complied with. It is common for many clients to have a consistent signature that matches their KYC registered with KRA's. However, there are instances where due to urgency or lack of awareness about SEBI regulations, clients may have slightly mismatched signatures. The same has happened in the case of Mr. Anurag. However, it is a fact that the client has itself provided the said documents</i>

10.6.3 I note that the Noticees have accepted error in the matter of Umesh Singh, I am inclined to accept the submissions of the Noticees in respect of Parth Trivedi, Sanghvi Deep Jayantilal and Kamal Prakash Gupta. The submissions of the Noticees in respect of Mousumi Jena cannot be accepted as the agreement must be signed by the client itself. I note that Noticees have submitted proof of communication with Alok Kumar Mohanty and hence I am inclined to accept their submissions. In case of Anurag Jain, I note from the agreement executed on 29/06/2021 and 19/03/2021, that the signature are totally different. I also note that in case of Ashish Kumar Tiwari the signature on the Risk Profile sheet do not match with KYC. However, in absence of any forensic report the same cannot be conclusively established that they are

forged. Moreover, forgery of signature is not covered under the definition of “fraud” as defined under regulation 2(1)(c) of PFUTP Regulations.

10.6.4 In light of the above, it is established that Noticees have violated provisions specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

10.7 Compliance in respect of AML Guidelines

10.7.1 The following was alleged in the SCN:

10.7.1.1 It was observed that Clause 2.1.1 r/w clause 2.11.1.1 of SEBI Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, requires that the intermediaries have an AML policy in place and also appoint Principal Officer and intimate the same to Financial Intelligence Unit (FIU), New Delhi. Noticee No. 1 has put AML policy in place and has appointed Mr Ajay Arya as its Principal Officer.

10.7.1.2 Further, Clause 2.12.2.1 of SEBI Circular No. SEBI/HO/MIRSD/DOP/ CIR/P/2019/113 dated October 15, 2019 requires that the intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures.

10.7.1.3 With respect to providing training to the employees, the IA submitted a declaration that during the inspection period no training related to PMLA was provided to employees and accordingly no training record for the same was available.

10.7.1.4 Based on the above, it was alleged that Noticees have violated the provisions of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

10.7.2 Noticees submitted the following in reply dated July 31, 2023;

10.7.2.1 *We humbly submit that we have been diligently following the AML policy guidelines since 2016. It is important to note that we do not accept cash payments from clients, and we do not engage in large financial transactions with clients.*

10.7.2.2 *We conduct thorough KYC procedures for our clients through registered KRA's (KYC Registration Agencies). Additionally, most of our employees are long-time members of our company, and they have received training on AML guidelines as part of their professional development.*

10.7.2.3 *During the mentioned period, we have not come across any suspicious fees or transactions within the company. Moreover, we have submitted our client sheet to SEBI, which includes details of client transactions, and no significant transactions have been identified.*

10.7.2.4 *Hence, we submit that we have taken compliance with AML Regulations seriously and we maintain strict adherence to these guidelines in our operations.*

10.7.3 I note that Noticee No. 1 has put AML policy in place and has appointed Mr Ajay Arya as its Principal Officer. In light of response of the Noticees and considering that the situation of pandemic during the inspection period. I am inclined to take lenient view on the non-compliance by the Noticees, as alleged in the SCN.

10.8 Promise of assured returns to investors, offering trial to prospective clients and seeking part payment for providing services

10.8.1 The following was alleged in the SCN:

10.8.1.1 It was observed from a complaint lodged in SCORES on August 03, 2020 by Shri Vijit Bumb that the complainant, *inter-alia*, submitted that the employees of the IA promised him assured returns and took Rs 6,25,000/- as fees towards advisory services. From the chat record submitted by the complainant, it was noted that he was given profit commitment by the employees of the IA.

10.8.1.2 SEBI observed that with regard to the complaint, the IA refunded the complainant Rs 5,00,000/-. The said matter was closed in SCORES in view of the matter being taken up in District and Sessions Court, Jaipur. However, in view of the chat records submitted by the complainant, it was observed that the IA promised assured returns to the complainant.

10.8.1.3 Further, during a site visit of the IA by SEBI officials for verification of change in address, an application for which was submitted by the IA, it

was found that one of the employees was talking to a prospective client on phone and was promising assured returns to him. To place the matter on record, call recordings of the incident was sought by SEBI officials from the IA and IA vide email dated January 15, 2021, submitted the call recording.

10.8.1.4 From the transcript of the call recording between the IA and the prospective clients, it was noted that the IA was promising assured returns to the investor. It was also noted that IA was offering trial to the client and was also seeking part payment from the client.

10.8.1.5 SEBI observed from a complaint along with which the complainant submitted chat records and the call recordings provided of conversation between executive of the IA and a prospective client that the IA tried to deceive the investor by making / promising assured profits to the investor. Thus by making / promising assured profits to the investor, the IA has tried to deceive the investor. Neither there exist any grounds for belief for such assured returns nor can the assured profits be achieved. Further, knowing fully well that assured profits / guaranteed returns in securities market is practically impossible, IA has knowingly misrepresenting the truth. Such misrepresentation is therefore, *prima facie*, fraudulent and is covered within the definition of “fraud” as defined under regulation 2(1)(c) of PFUTP Regulations.

10.8.1.6 Based on the above, it was alleged that Noticees have violated Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations r/w section 12A (a), (b) and (c) of SEBI Act, Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III r/w Regulation 15(9) of IA Regulations, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019.

10.1.1 The Noticees did not give any response about the allegation in respect of Mr. Vijit on merits. Noticees submitted the following in reply dated July 31, 2023;

10.1.1.1 *“In the recording, it has come to our attention that one of our Executives discussed various aspects of our company's services, including details about the services, prospect earnings based on past performance, and specific information about intraday trading, margin trading, and FNO trading. However, it is important to clarify that our company does not provide trial services to clients. We have discontinued the practice of offering trial services as per the Regulations. We have robust communication and training programs in place for our employees to ensure they understand the business processes and Regulations. However, there are instances where an employee may inadvertently use words or phrases that they have learned or used in other companies. If an employee uses prohibited words or discusses services that are not offered by Capital Height, we take immediate and strict action against them. In this particular case, both employees involved in the recording have been terminated as a result of their actions.*

10.1.1.2 *We have clearly mention on our website to our clients if anybody is providing those service which are not provided by Money Capital, client can directly report to us. We want to emphasize that we maintain a strong commitment to compliance and always prioritize the best interests of our clients. We continue to follow all SEBI Regulations to ensure that our services are provided in a compliant and ethical manner.*

10.1.2 I note that inspection has not brought out any systemic issue involving large number of clients and I am of the considered view that a one off instance is not sufficient to prove beyond doubt that the Noticees have violated the provisions as alleged in the SCN on this issue.

ISSUE No. II: Do the violations, if any, attract monetary penalty u/s Section 15A(a), 15EB and 15HA of SEBI Act, as applicable?

11 I note that amended IA Regulations came into effect on 30/09/2020 whereby Mr. Ajay Kumar, principal officer and the Compliance Officer Ms. Nikita Navlani were supposed to have professional qualification. However, I note that Mr. Ajay Kumar

and Ms. Nikita Navlani were associated with the Noticees for a long time and professional qualification cannot be obtained overnight. So far as compliance with SEBI Circular dated September 23, 2020 is concerned, I note that although the information, which should have come on first page of the agreement, was there on the second page, no requisite information was missing from the agreement. In case of Mousumi Jena, although the agreement should have been signed by the client itself, I find that the inspection has brought out only one such case and did not bring out any systemic issue involving the operations of the Noticees.

- 12 In note from the submissions of the Noticees that vide Order dated 16.06.2011, Hon'ble Tribunal in the matter of Religare Securities Limited Vs. SEBI (Appeal No. 23 of 2011) held that *"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every minor discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/ deficiencies to the intermediary at the time of inspection and making it compliant. This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent. For the reasons recorded above, the appeal is allowed and the impugned order set aside with no order as to costs."*

ISSUE No. III: If so, what should be the monetary penalty that should be imposed upon the Noticees, after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

- 13 In view of the foregoing, I am convinced that the number of violations brought out in the inspection, considering that the Noticees served around 18,500 clients, are not sufficient in numbers and are more or less technical/ procedural in nature and do not establish *mens rea* on the part of Noticees to gain undue advantage or

destabilize the securities market and hence I am of the view that the same do not deserve to be penalized.

ORDER

- 14 After taking into consideration the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act r/w Rule 5 of the Adjudication Rules, I hereby dispose of the show cause notice Ref. No. EAD-6/AK/VV/20140/1/2023 dated May 19, 2023.
- 15 In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

PLACE: MUMBAI

DATE: AUGUST 17, 2023

AMIT KAPOOR

ADJUDICATING OFFICER