

**SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER**

ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulations 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of:

S. No.	Name of the intermediary	Registration No.
1.	M/s. Niveshicon Investment Advisory Prop. Mr. Veerendra Gupta PAN: BEDPG9199C	INA000009047

In the matter of Niveshicon Investment Advisory

1. The present matter emanates from a show cause notice dated August 02, 2022 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) to Niveshicon Investment Advisory (hereinafter referred to as “**Noticee**”), an investment adviser registered with SEBI, under Regulation 27(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations, 2008**”) calling upon it to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as “**DA**”) or any other direction/ penalty as deemed fit should not be issued/imposed on it. The SCN enclosed with it the Report of the Designated Authority dated June 30, 2022 (hereinafter referred to as “**Enquiry Report**” or “**ER**”).

2. The ER has concluded that the Noticee has violated:
 - a. Regulation 13(b) of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as “**IA Regulations, 2013**”)
 - b. Regulation 3 (a), (b), (c), (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as “**PFUTP Regulations, 2003**”) read with section 12A (a), (b) and (c) of SEBI Act, 1992.
 - c. Regulation 15(1), 15(8), 17(a), 17(d), 17(e) of IA Regulations, 2013
 - d. Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations, 2013
 - e. Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.
 - f. SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations, 2013
 - g. Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

3. The ER had made the following recommendation:

“In view of the same, in terms of Regulation 26 of SEBI (Intermediaries) Regulations, 2008 it is recommended that the certificate of Registration no INA00000904 of M/S Niveshicon Investment Advisory (Prop. Veerendra Gupta) be suspended for a period of six months and cannot take fresh clients for further three months.”

4. In response to the SCN, a letter dated August 23, 2022 and an email dated August 25, 2022 had been received from the Noticee stating that the documents submitted before the DA in the proceedings before the DA may be taken on record for the present proceedings also. The Noticee has also submitted that the proceedings be dropped since an FIR has already been filed in the matter.
5. The matter was placed before me on September 05, 2022 for conduct of proceeding. It was noted that an opportunity of hearing was granted to the Noticee by the DA which

was availed by it on May 11, 2022. In this regard, Regulation 27(4) of the Intermediaries Regulations, 2008 states as follows:

“Order

27.(1)

....

(4) The competent authority may grant an opportunity of personal hearing where the designated authority has recommended cancellation of certificate of registration or the competent authority is of the prima facie view that it is a fit case for cancellation of certificate of registration.”

In the present matter, the DA had recommended suspension of 6 months and prohibition on taking of new clients for 3 months and *prima facie* on perusal of the matter, I was of the view that the case did not call for cancellation of certificate of registration. Considering the facts of the case and the recommendation by the DA, no further opportunity of hearing was granted to the Noticee.

Consideration of evidence and findings:

6. I have considered the allegations in the SCN/ER and the material available on record.
7. The relevant extracts of the provisions of law allegedly violated by the Noticee are mentioned as under:

Extracts of the relevant provisions of SEBI Act, 1992

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

12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or

proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

Extracts of the relevant provisions of PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

Extracts of the relevant provisions of IA Regulations, 2013

Conditions of certificate.

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

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

General responsibility.

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

....

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

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

Suitability.

17. Investment adviser shall ensure that,

(a) All investments on which investment advice is provided is appropriate to the risk profile of the client;

....

(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.

....

Redressal of client grievances.

21.(1) An investment adviser shall redress client grievances promptly.

Liability for action in case of default.

28.An investment adviser who

...

(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

THIRD SCHEDULE

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

Code of Conduct for Investment Adviser

1.Honesty and fairness

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

2.Diligence

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

....

5.Information to its clients

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

6.Fair and reasonable charges

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

8. I note that the DA had issued a show cause notice dated February 15, 2022 (hereinafter referred to as “**DA SCN**”) to the Noticee and thereafter considering the reply of the Noticee, the submission made by the Noticee during the personal hearing and materials available on record, the DA had submitted her recommendation. Therefore, in this order, I would be examining the sustainability of the findings given in the ER on each of the allegation made in the DA SCN, in view of the reply submitted by the Noticee before DA.

Allegation related to Noticee not being a “Fit and Proper person”

9. It had been alleged in the DA SCN that FIR dated July 25, 2020 was registered against Mr. Veerendra Gupta under Section 154 of Cr.P.C. wherein charges under Section 420 (Cheating and dishonestly inducing delivery of property), 406 (Punishment for criminal breach of trust), 34 (Acts done by several persons in furtherance of common intention) of the Indian Penal Code, 1860 and Section 6(1) of the Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrakshan Adhiniyam, 2000 have been leveled against Mr. Veerendra Gupta (Proprietor of the Noticee), Mohd. Salauddin (Director of the Noticee), Ms. Priyank Shah (Compliance Officer Grievance Redressal and Data Support Manager of the Noticee), Mr. Sameer Shrivastava (Accountant of the Noticee). The said FIR *inter alia* alleges that:

- Niveshicon is doing investment advisory against the rules and deceiving gullible investors.
- Under the garb of giving service, Niveshicon collected lakhs of rupees and cheated the clients.
- Niveshicon is luring clients by giving assurance of guaranteed returns to gullible investors with an intention to make illegal gains.
- Apart from Mr. Veerendra Gupta, proprietor of Niveshicon, it has found that there are 82 working employees who are making call to public/investors through telephone/internet, etc., out of which 29 employees were found to have qualification of under graduate and Head of the Compliance Team of the Noticee does not have NISM certificate. Further, it was observed Noticee did not have quality Team.

The DA SCN also alleges that Indore Police had seized, signed and sealed instruments present in the office of Noticee such as computers, CPU, Gateway, I.T. Phones,

Gazettes, calling servers etc. and had arrested Noticee's Director, Mohd. Salauddin, Compliance Grievance Redressal and Data Support Manager, Ms. Priyank Shah. The DA SCN alleged that the Noticee had not informed about the FIR, arrest and sealing of premises which was material information about its ongoing business activities and therefore Noticee has been alleged to have violated Regulation 13(b) of IA Regulations, 2013. The DA SCN further stated that as the requirement of 'fit and proper' is an ongoing requirement, and taking into account the seriousness of charges made in the FIR and other findings of the examination, the Noticee and its Proprietor Mr. Veerendra Gupta no longer fulfil the criteria of 'fit and proper person', as specified in Schedule II of the Intermediaries Regulations, 2008.

10. In this regard, I note that the DA has concluded as follows:

"I note that primary issue before me is to decide whether information of FIR was given by the Noticee to SEBI. Noticee submitted that 5 days after registration of FIR i.e on 30.07.2020, he had informed SEBI regarding FIR. From the perusal of e-mail dated July 30, 2020 by the Noticee, I note that Noticee informed to SEBI that on July 25, 2020, Indore police crime branch had come to its office and arrested 4 people of its team on the complaints by some clients and also sealed its office. I find that Noticee did inform about FIR to SEBI and thus the alleged noncompliance of regulation 13 (b) of IA regulation does not stands. Further I note that only FIR was filed against the Noticee. It may be mentioned that FIR is only a preliminary report and not a charge sheet. Filing of FIR does not lead to conviction as the charges are not conclusively determined at the FIR stage. Only after charge sheet filed any charges are finalised."

11. I note that the 'fit and proper' criteria specified in Schedule II of the Intermediaries Regulations, 2008 at the relevant time stated as follows:

"Criteria for determining a 'fit and proper person'

For the purpose of determining as to whether an applicant or the intermediary is a 'fit and proper person' the Board may take account of any consideration as it deems fit, including but not limited to the following criteria in relation to the applicant or the intermediary, the principal officer, the director, the promoter and the key management persons by whatever name called –

- (a) integrity, reputation and character;
- (b) absence of convictions and restraint orders;
- (c) competence including financial solvency and network

(d) absence of categorization as a wilful defaulter”

Regulation 13 of IA Regulations on ‘Conditions of Certificate’ states that-

- “13. The certificate granted under regulation 9 shall, inter alia, be subject to the following conditions:-
 - (b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;”

12. It has been noted in the ER that the Noticee submitted that it had informed SEBI regarding FIR vide e-mail dated July 30, 2020. The contention of the Noticee that it had promptly informed SEBI of the filing of FIR has been accepted by the DA. I note that Regulation 13(b) mandates providing of information to SEBI promptly, without specifying any particular time period. In the present case, I note that FIR was registered on July 25, 2020 against the Noticee and it had informed SEBI on July 30, 2020 about filing of FIR, i.e. within 5 days. Therefore, having regard to facts and circumstances of the case, I agree with the observations made in the ER that there is no violation of Regulation 13(b) of IA Regulations, 2013. I further note that requirement of being ‘fit and proper’ person is a continuous requirement and has to be fulfilled by the intermediary concerned at all times. Thus, even today Noticee must be satisfying fit and proper person criteria as existing on date, pursuant to amendments made to said criteria on November 17, 2021 which *inter alia* provides that for the purpose of determining as to whether any person is a ‘fit and proper person’, SEBI may take into account *inter alia* any criminal complaint under Section 26 of the SEBI Act, 1992 or information under Section 154 of the Code of Criminal Procedure, 1973 filed against such person by the Board and which is pending or charge sheet filed in matters concerning economic offence. I note that the criterion for disqualification from being considered a ‘fit and proper person’ under the Intermediaries Regulations, 2008 mentions that the FIR should have been filed by SEBI. In the present case, the FIR was filed by some investors of the Noticee. Therefore, under the amended criteria of ‘fit and proper person’ also, it cannot be concluded that the Noticee is not a ‘fit and proper’ person’. I find that an FIR which is filed under Section

154 of the Cr.P.C. is the first instance that the police is informed of an offence. Thereafter, investigation is undertaken which may lead to filing of chargesheet. I note that FIR *per se* does not attract disqualification under 'fit and proper' criteria, however, if subsequently, the Noticee is convicted or chargesheeted for economic offence, then under the applicable 'fit and proper' criteria, SEBI may review the 'fit and proper' status of the Noticee. Thus, I agree with the finding in the ER that filing of FIR cannot be equated with conviction as the charges are not conclusively determined at the FIR stage and I agree with observations in the ER that filing of FIR, in the present case, does not attract disqualification under 'fit and proper' criteria.

Allegation related to promising assured / guaranteed returns to clients

13. It has been alleged in the DA SCN, on examination of SCORES complaints, that Noticee promised assured profit / unrealistic returns from securities market on the investment made by the clients and lured them to avail its services and acted fraudulently.

14. In this regard, details of certain complaints registered on SCORES from the clients of the Noticee, as mentioned in the ER are given below:

a. Complaint of Mr. Pushpendra Kumar under SCORES Regn. no. SEBIE/MP20/0000120/1 dated January 09, 2020:

According to the complaint, the Noticee had promised a net profit of Rs.6 lacs and taken fees of Rs.1.74 lac. Complainant Mr. Pushpendra Kumar submitted copy of email dated October 14, 2019 received from the Noticee's email id info@niveshicon.com wherein it was mentioned as follows:

"Service Name – Equity Combo (Cash Premium, Option Premium & Future Premium)
Cash Premium 63000/-
Future Premium 75000/-
Option Premium 83000/-
Service Charges: INR 2,21,000/- + GST

Net Profit: Approx. 6 to 8 Lakh (subject to Market Risk)
Service Tenure: Quarterly + (1 Month Complementary Services)
NOTE: If you subscribed above service you will get discount offer 30 %
i.e. (66,300/-) already you have paid 62,540/- that was also adjusted in
above service plan so your remaining amount will be 92,160/- + Gst
(39,780/-)"

- b. Complaint of Mr. Ajay Sharma under SCORES Regn. no. SEBIE/MP20/0000492/1 dated February 17, 2020:

Noticee had approached complainant Mr. Ajay Sharma with attractive return plan. Mr. Ajay Sharma submitted copy of email dated May 18, 2019 received from the Noticee's email id info@niveshicon.com wherein it was mentioned as follows:

"SERVICE NAME :- (CUSTOMIZE PLAN)EQUITY
SERVICE CHARGES :- 128500/-
EXPECTED RETURN APPROX :- 4 lakh (SUBJECT TO MARKET RISK)
SERVICE TERM :- 45 trading days (i.e 2 calendar month)

NOTE - TO EXECUTE THE PLAN INITIALLY YOU HAVE TO PAY 50% of the service amount i.e 64250/- (PLUS GST).

As per conversation we agreed to take 30000/- to initiate the process and remaining you need to pay 34250/- then after your file will be completed, to start trading."

- c. Complaint of Mr. Tutare Dadasaheb Tatyaba under SCORES Regn. no. SEBIE/MP20/0000952/1 dated April 18, 2020:

According to the complaint, Noticee had approached complainant Mr. Tutare Dadasaheb Tatyaba and asked to pay fees initially Rs. 2,700/- and then gradually to pay Rs.4,50,000/- and allegedly assured him returns of Rs.17,50,000/-. The complainant stated that based on this assurance he paid Rs. 4,77,200/- to the Noticee. He further mentioned that he took loan for payment of fees and trading purpose and instead of getting profit, he suffered total loss of Rs.10,02,200/. Complainant also submitted call recording and invoices in support of his complaint. The extracts of call recording are given below:

Call recording duration 5.43 minutes:

"Niveshicon @1.25 minute: Jaise aapko maine bataya tha 4 lac 11 hazar ki apni platinum service 6 mahine ke liye ok. Isme proper 3 member ki team assign ki jayegi aur proper isme profit aapka

nikalke aayega 6 mahine me wo 11 lac rupaye ka profit nikalkar aayega. Aur plus daily ki aapki earning rahegi wo 6 se 7.50 hazar ki earning rahegi.”
Tutare: Okay”

- d. Complaint of Mr. Sonu Verma under SCORES Regn. no. SEBIE/MP20/0000944/1 dated April 27, 2020:

The complainant stated that he was asked to join platinum service and assured returns of Rs.17 lacs. Complainant Mr. Sonu Verma further stated that he incurred loss of Rs.20 to 30 thousand after which Noticee promised to give customize package and assured returns of Rs.50 to 55 lacs in 1 year. Complainant also mentioned that Noticee’s representative was handling his demat account. He paid Rs.4,04,000/- and incurred loss in trading of Rs.80,000/-. Complainant submitted call recordings in support of his complaint.

Call recording of 14:40 minutes received vide email dated June 07, 2020:

“Niveshicon @3.51 minute: 21 March se pehale hum aapko 8 lakh se 8.75 lakh ke bich yaane jo aapko 17 lakh 50 hazar maine bola uska lumpsum 50% amount mai is teen mahine me aapko cover karke de sakta hun.

Sonu Verma: Okay.

Niveshicon: Is me muze 50 hazar rupaye ka fund Demat me chahiye.

Sonu Verma: Okay.

Niveshicon: Uske baad jo call generate hogi usme minimum se minimum 30 se 40 hazar per call se profit nikal ke aa jayega. Daily basis pe 3 se 4 call ka minimum 50 se 75 hazar profit market se nikalkar aa jayega.

Sonu Verma: Okay.”

Call recording received vide email dated June 07, 2020, duration 20.15 minutes.

“Niveshicon @0.55 minute: Sir ek customize service rahegi. Aapke according kaam hoga thik hai. Iski annual charges 5 lakh ki annual charge rahegi. Ok. Isme jo return nikal kar aayega 1 year me, wo return rahega 17 lakh 50 hazar rupaye ka return aapka 1 year me nikal kar aayega.

Sonu Verma: Thik hai

Niveshicon: Is profile me aapki jo investment ki requirement rahegi who 25 se 30 hazar ki investment ki requirement rahti hai

Sonu Verma: Thik hai”.

15. The ER notes that during the proceedings before the DA, the Noticee denied that it had made false promise to its clients regarding guaranteed return and submitted that it never

tempted any of its client to invest on the basis of guaranteed return. Noticee further submitted that it had always informed their clients that the estimated profit will be subject to market risk and no guarantee of profit was ever given by it and that the invoices issued by Noticee contains the term that all profits will be subject to market risk and it has never failed to issue invoices to its clients. Further the Noticee submitted that it has never obtained any profit by making false promise to its customers. I note that in response to the SCN, the Noticee has submitted that documents submitted by it before the DA may be considered in these proceedings. On perusal of disclosure annexures and invoices for four clients, i.e. Mr. Gourishankar Lohagave, Mr. Pushpendra Kumar, Mr. Ajay Sharma and Mr. Ramraj Dhakar, I note that none of these documents submitted by the Noticee bear any signature of the client. For that reason, I am of the view that these documents cannot be considered in these proceedings. Moreover, these documents mention a general disclaimer that estimated profit will be subject to market risk whereas in the following records the Noticee has specifically promised assured returns:

- i. With respect to the client Mr. Pushpendra Kumar the Noticee, vide email dated October 14, 2019 had promised a net profit of Rs.6 to 8 lacs (subject to market risk).
- ii. With respect to the client Mr. Ajay Sharma the Noticee has, vide email dated May 18, 2019 promised a return of approximately 4 lakh (subject to market risk).
- iii. With respect to Mr. Tutare Dadasaheb Tatyaba in the call recording of duration 5.43 minutes the Noticee had mentioned as follows:

“Niveshicon @1.25 minute: Jaise aapko maine bataya tha 4 lac 11 hazar ki apni platinum service 6 mahine ke liye ok. Isme proper 3 member ki team assign ki jayegi aur proper isme profit aapka nikalke aayega 6 mahine me wo 11 lac rupaye ka profit nikalkar aayega. Aur plus daily ki aapki earning rahegi wo 6 se 7.50 hazar ki earning rahegi.”

- iv. With respect to Mr. Sonu Verma in the call recording of 14:40 minutes received vide email dated June 07, 2020 the Noticee has stated as follows:

“Niveshicon @3.51 minute: 21 March se pehale hum aapko 8 lakh se 8.75 lakh ke bich yaane jo aapko 17 lakh 50 hazar maine bola uska lumpsum 50% amount mai is teen mahine me aapko cover karke de sakta hun.

Sonu Verma: Okay.

Niveshicon: Is me muze 50 hazar rupaye ka fund Demat me chahiye.

Sonu Verma: Okay.

Niveshicon: Uske baad jo call generate hogi usme minimum se minimum 30 se 40 hazar per call se profit nikal ke aa jayega. Daily basis pe 3 se 4 call ka minimum 50 se 75 hazar profit market se nikalkar aa jayega.”

In the call recording received vide email dated June 07, 2020 of duration 20.15 minutes the Noticee has stated as follows:

“Niveshicon @0.55 minute: Sir ek customize service rahegi. Aapke according kaam hoga thik hai. Iski annual charges 5 lakh ki annual charge rahegi. Ok. Isme jo return nikal kar aayega 1 year me, wo return rahega 17 lakh 50 hazar rupaye ka return aapka 1 year me nikal kar aayega.

From the above-mentioned emails and call records, I find that the Noticee was clearly promising assured returns to clients. I note that the Noticee has not denied the veracity of these emails and call records but has referred to the general disclaimer that was mentioned in the invoices issued by the Noticee. I am of the view that the Noticee cannot take recourse of the general disclaimer on one hand whereas on the other hand the Noticee was making specific promises of assured returns to its clients. I also note that Regulation 15 (1) and code of conduct under Schedule III of IA Regulations, 2013 *inter alia* provides that an investment adviser shall act in a fiduciary capacity towards its clients. The Code of Conduct contained in Schedule III of the IA Regulations, 2013 also casts a duty on the registered investment advisor to act honestly, fairly and in the best interests of its clients and with due skill, care and diligence. The Code of Conduct also mandates that an investment adviser shall make adequate disclosures of relevant material information while dealing with its clients. I find that the Noticee promised assured return to the clients knowing fully well that investment in equity, equity derivatives, and commodity derivatives are subject to market risk. Therefore, the Noticee has indulged in concealment and misrepresentation of facts and has failed to act in the

best interest of its clients and also failed to exercise care and due diligence. In view of the same, the Noticee has violated Regulation 15 (1) of IA Regulations, 2013 and Clause 1, 2 and 5 of the Code of Conduct in Schedule III read with regulation 15 (9) of IA Regulations, 2013.

Allegation related to unfair dealing with the clients, selling multiple packages and charging unreasonable fee

16. It has been alleged in the SCN that the Noticee lured its clients to buy/subscribe to multiple packages. It was also alleged that Noticee sold newer services / products to its clients even though the subscription period for products earlier bought by the client was not yet over. Further, it was alleged that there was no difference in features of the products but just nomenclature was changed however fees of the products were different. In this regard, I find that the ER observes that the Noticee initially sold products which required payment of small amount of fees by the clients and then allegedly forced the clients to switch to products with higher fees. The ER also mentioned an example wherein the Noticee started with its basic product 'Standard Cash' for which the amount of advisory fees charged was comparatively very less and then made the client switch to products with higher fees such as "Crystal Option/Future" and "Premium Option/Future", etc. The amount of fees for "Crystal Option/Future" and "Premium Option/Future" was 5 to 7 times higher than 'Standard Cash' product. The fees of Standard Cash product was Rs.7,000/- p.m. whereas fees of Crystal Option" product was Rs.50,000/- p.m. and "Premium Option was Rs.40,000/- p.m.
17. The specific instances where Noticee sold multiple packages and allegedly charged unreasonable fees, as mentioned in the ER are given below:
 - Client Name: Mr. Tutare Dadasaheb Tatyaba:

As per the details submitted by Noticee, the monthly charges for Premium Option product was Rs. 40,000/-. As such, proportionate charges for 42 days service of Premium Option was 56,000/-. However, it was observed that for the period from January 13, 2020 to February 24, 2020 (42 days) Noticee charged Rs.68000/- instead of Rs.56000/-. Further from the 5 invoices of the client it was observed that Noticee was not giving adequate information to its clients about service period for which the amount was taken from client. It was also observed that the client stated the following in his risk profiling form:

Q. What is your experience with commodity investments?

A. No experience

Q. Proposed Investment Amount?

A. <1 lacs

Q. Market value of portfolio held

A. <1 lacs

From the questions above it was observed that investment amount and market value of portfolio of Client Mr. Tutare Dadasaheb Tatyaba was less than Rs.1 lac. However, it is observed that Noticee took around Rs.3.70 lac towards service charges for about 8 months, by issuing 11 different invoices and sold 4 different services. Also, Standard Cash product was sold five times within a month of December, 2019 without mentioning service period in the invoices and charged Rs.99,200/- towards fees. Further, in clients' risk profile form, it was mentioned that client had no experience in commodity investment. Despite this, Noticee sold client product on commodities segment i.e. Standard MCX and took Rs.1,01,000/- as fees towards it. Further, the Premium Option product was sold on January 07, 2020 for the tenure January 13, 2020 to February 24, 2020 for Rs.68,000/-. Even though another similar product i.e. Crystal Option was sold for the tenure January 14, 2020 to February 13, 2020 for Rs.50,000/-. It was observed

that there was no difference in product Premium Option and Crystal Option. However, Noticee sold both products for the overlapping period.

- Client Name: Mr. Adarsh Veer Bhardwaj

With respect to this client, it was observed that, in case of 4 invoices, service period was not mentioned. Further from the invoices of the client it was observed that for the same product the Noticee charged different fees. For instance, (a) Platinum Cash product was sold on May 17, 2019 with tenure of service of 1 month for Rs.81,250/-. However, same product was again sold on May 19, 2020 (within 2 days) with tenure of service of 1 month for Rs.25000/-, (b) Stock Cash product was sold on May 17, 2019 with tenure of service of 1 month for Rs.7,300/-. However, same product was again sold on May 22, 2020 (within 5 days) with tenure of service of 1 month for Rs.3,540/-, (c) Cash Premium product was sold on July 06, 2020 with tenure of service of 1 month for Rs.28,000/-, same product was again sold on July 08, 2020 (within 2 days) with tenure of service of 1 month for Rs.27,000/-. Cash Premium product was again sold on August 07, 2020 with tenure of service of 1 month for Rs.30,000/-. However, same product was again sold on same date i.e. August 07, 2020 with tenure of service of 1 month for Rs.20,000/-. It was further observed that the service was upgraded to the next package and the new service was sold before completion of the duration of the earlier service sold to the clients. As per Risk Profiling Form, the risk category of the client Mr. Adarsh Veer Bhardwaj was "Medium". At the end of the Risk Profiling Form, details of risk based classification of the services are given. As per the classification, products such as Premium Advice and HNI Equity were meant clients with 'high risk' appetite. However, it was observed that Noticee sold these products to clients and collected service charges of Rs.3,00,205/-, even though as per RPF his risk category was "Medium". I was also observed that proposed investment amount of Mr. Adarsh Bhardwaj, in Risk Profiling Form was mentioned as less than Rs.1 lac, market value of portfolio held was mentioned

as between 1 to 2 lacs, gross annual income was mentioned as between 1 to 5 lacs out of which upto 50% was allocated to pay off debt. In spite of all these financial parameters, Noticee took Rs.5,57,395/- towards service charges from the client for the service period of 4 months (i.e. from May 15, 2019 to September 07, 2019). The service charges taken was more than 5 times of his proposed investment amount, more than 2.5 times of his investment portfolio held and more than two times of the net gross annual income (after deducting debt dues).

- Client Name: Mr. Ajay Babu

In regards to client Mr. Ajay Babu, it also was observed for the same product the Noticee charged different fees (a) On September 30, 2019, product Option Premium was sold and monthly charges of Rs. 23,000/- was taken from the client. However, very next day i.e. on October 01, 2019, same product i.e. Option Premium was sold and Rs.2,07,500/- taken from client towards service charges, (b) on September 30, 2019, service charge of Rs. 23,000/- was charged for a month service for the product Option Premium. On the very next day Rs.2,07,500/- was charged (which is 9 times of the amount charged on previous day) for the same service i.e. Option Premium for same period i.e. a month, (c) on October 01, 2019, service charges of Rs.2,07,500/- was taken from the client however as per the product pricing submitted by the Noticee, monthly service charges of the product Premium Option was Rs. 40,000/-. Further as observed from above, before completing the earlier service period of a product, charges were taken for same service for overlapping period. As per Risk Profile Form submitted by the Noticee, client's risk category was "Medium Risk Appetite" however, Option Premium product from high risk category was sold to Mr. Ajay Babu whose risk category was "Medium". The client Mr. Ajay Babu filed complaint in SCORES two times. In the first complaint, client mentioned that employees of the Noticee were persuading him for payment of more and more service charges and threatened him that if the additional service charges

were not paid then he would suffer loss in the securities market and the earlier service charges paid would be forfeited. He also stated that Noticee's employee had obtained login id and password of his trading/Demat a/c and had done trading in his trading/Demat a/c and incurred him a loss of Rs.5 lacs. It was also mentioned in his complaint that he paid service charges through credit card and by taking loan from friend. He submitted whatsapp communication alongwith his complaint, between him and Niveshicon employee Mr. Vishal. Some of the relevant communication extracts are placed below:

"30/09/2019 8:39 pm Ajay: Mere liye sab kuchh naya hai mujhe trading samajh me nahi ata hai.
01/10/2019 9:09 am Vishal from Niveshicon: Send me I'D password
01/10/2019 9:09 am Ajay: 251009158
01/10/2019 9:09 am Ajay: vinay@159
01/10/2019 9:19 am Ajay: Theek hai logging karke me 3 lacs daal deta hu fir ap trading karna
01/10/2019 9:19 am Vishal from Niveshicon: ok
01/10/2019 10:58 am Ajay: Apka one month ka fee kitna hai
01/10/2019 10:59 am Vishal from Niveshicon:485000
01/10/2019 11:00 am Vishal from Niveshicon: Market return 169000
01/10/2019 11:01 am Vishal from Niveshicon: Work mere according hoga Company profit
01/10/2019 11:02 am Vishal from Niveshicon: But mere according 2100000 Normal hai Market se Ok
01/10/2019 11:24 am Ajay: Kitna pay karna hai
01/10/2019 11:25 am Vishal from Niveshicon: bhai 485000/-
01/10/2019 11:27 am Ajay: Itna to mere credit card ka limit bhi nahi hai
01/10/2019 11:27 am Vishal from Niveshicon: Bhai....ye apka first and last investment h... Apki pocket se, Uske bad to sirf kamana hi h...
01/10/2019 11:27 am Ajay: Lekin apki website par itna rupaya ka monthly koi plan nahi dikh raha hai
01/10/2019 11:28 am Vishal from Niveshicon: Bhai ye.... Customize plan h...
01/10/2019 3:12 pm Vishal from Niveshicon: 3 Oct ko kam se kam 5 to 7 lk profit hoga
01/10/2019 3:12 pm Ajay: Thik hai
01/10/2019 3:15 pm Vishal from Niveshicon: Bas ap wait kro apke demat me 10 October tak 1500000/- nikal dunga.
01/10/2019 4:38 pm Vishal from Niveshicon: 204500/- service amount 3000/- message amount
01/10/2019 4:44 pm Vishal from Niveshicon: 10 october tak apko kam se kam 15 lk nikal dunga promise.
01/10/2019 6:04 pm Ajay: Bhai bahut bada risk liya hai maine mere 7.5 lacs fase huye hai dekh lena
02/10/2019 1:49 pm Vishal from Niveshicon: 128810/- amount last hai sir"

Pursuant to complaint of client Mr. Ajay Babu, vide email dated February 20, 2020, Noticee promised Mr. Ajay Babu to repay amount of Rs.4 lacs towards full and final settlement. However, since no amount was paid by Noticee as promised, Mr. Ajay Babu

filed another complaint in SCORES on April 01, 2020. Further, his mother Smt. Usha Devi filed another complaint in SCORES under registration. no. on April 14, 2020 wherein she mentioned *inter alia* that her son Mr. Ajay Babu committed suicide because of loss incurred of Rs.9 lac due to wrong advice by Noticee and Noticee had threatened and blackmailed her son. She has also mentioned that due to Noticee's behaviour and mental torture, her son committed suicide and she urged SEBI to take serious action against the Noticee to avoid such incidents in future.

18. Regarding the aforesaid allegation, I note that the Noticee was charging fees from its clients as follows:

A. Client Name: Mr. Tutare Dadasaheb Tatyaba

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount Rs.
1	05.12.2019	NIA0003186	Standard Cash	Not mentioned	2,700/-
2	21.12.2019	NIA0003187	Standard Cash	Not mentioned	18,500/-
3	24.12.2019	NIA0003199	Standard Cash	Not mentioned	37,000/-
4	27.12.2019	NIA0003223	Standard Cash	Not mentioned	11,000/-
5	27.12.2019	NIA0003220	Standard Cash	Not mentioned	30,000/-
6	04.01.2020	NI13940418	Standard Cash	13.01.2020 to 21.01.2020	2,000/-
7	07.01.2020	NI13940418	Premium Option	13.01.2020 to 24.02.2020	68,000/-
8	13.01.2020	NI13940418	Crystal Option	14.01.2020 to 13.02.2020	50,000/-
9	14.01.2020	NI13940418	Crystal Option	14.02.2020 to 13.03.2020	50,000/-
10	19.01.2020	NI13940418	Standard MCX	20.01.2020 to 01.05.2020	51,000/-

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount Rs.
11	23.01.2020	NI13940418	Standard MCX	04.05.2020 to 12.08.2020	50,000/-
				Total	3,70,200/-

I find that for the invoices at serial numbers 1 to 5 above there is no applicable date for the packages sold to the client. Moreover, there is overlapping of applicable dates for packages at serial number 6,7 8 and 10. I also note that, as mentioned in ER there was no difference between the packages Premium Option and Crystal Option. The ER also mentions an instance with regard to client Mr. Tutare Dadasaheb Tatyaba, where the Noticee charged Rs.68000/- for Premium Option product whereas the monthly charges for Premium Option product was Rs.40,000/- and the proportionate charges for 42 days service of Premium Option should have been Rs. 56,000/-. Therefore, I find that the Noticee has sold the same package multiple times to the client, charged him arbitrarily high fees (not in line with fee schedule provided by the Noticee itself), sold packages to him without applicable dates.

B. Client Name: Mr. Adarsh Veer Bhardwaj

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount Rs.
1	15.05.2019	NIA0001750	Stock Cash - Intraday	Not mentioned	10,000/-
2	17.05.2019	NIA0001751	Stock Cash - Intraday	Not mentioned	10,000/-
3	17.05.2019	NIA0001753	Platinum Cash	1 month	81,250/-
4	17.05.2019	NIA0001754	Stock Cash	1 month	7,300/-

5	17.05.2019	NIA0001755	Cash Premium	1 month	50,000/-
6	18.05.2019	NIA0001772	HNI Stock Cash	?	31,450/-
7	19.05.2019	NIA0001783	Platinum Cash	1 month	25,000/-
8	22.05.2019	NIA0001784	Stock Cash	1 month	3,540/-
9	23.05.2019	NIA0001782	Equity-HNI Service	Not mentioned	1,13,755/-
10	25.06.2019	NIA0001887	Platinum Cash	1 month	1,20,100/-
11	06.07.2019	NIA0002023	Cash Premium	1 month	28,000/-
12	08.07.2019	NIA0002039	Cash Premium	1 month	27,000/-
13	07.08.2019	NIA0002201	Cash Premium	1 month	30,000/-
14	07.08.2019	NIA0002203	Cash Premium	1 month	20,000/-
				Total	5,57,395/-

I find that for the invoices at serial numbers 1, 2 and 9 above there is no applicable date for the packages sold to the client. Moreover, there is overlapping of applicable dates for packages at serial number 3,4,5,7 and 8 and 11 to 14. With regard to client Mr. Adarsh Veer Bhardwaj, Platinum Cash product was sold on May 17, 2019 with tenure of service of 1 month for Rs.81,250/-. However, same product was again sold to the same client on May 19, 2020 (within 2 days) with tenure of service of 1 month for Rs.25000/-. Further Stock Cash product was sold on May 17, 2019 with tenure of service of 1 month for Rs. 7,300/-. However, same product was again sold on May 22, 2020 (within 5 days) with tenure of service of 1 month for Rs. 3,540/- etc. Therefore, there appears to be major inconsistencies in the fees charged for the same packages from

the same client by the Noticee, on different dates. In view of the same, I find that the Noticee has sold the same package multiple times to the client, charged him arbitrarily high fees (not in line with fee schedule of the Noticee itself), sold packages to the client without applicable dates.

C. Client Name: Mr. Ajay Babu

Sr. No.	Invoice Date	Invoice No.	Product Name	Duration of service	Amount Rs.
1	19.09.2019	NIA0002521	Standard Cash	Not mentioned	2,000/-
2	30.09.2019	NIA0002622	Option Premium	Monthly	23,000/-
3	01.10.2019	NIA0002623	Option Premium	Monthly	2,07,500/-
4	01.10.2019	NIA0002652	Platinum Option	Monthly	15,000/-
				Total	2,47,500/-

I note that with respect to the fees charged from this particular client, as noted in the table above, the applicable periods for package at serial number 1 and 2 are overlapping. It is also noted that on September 30, 2019, product Option Premium was sold and monthly charges of Rs.23,000/- was taken from the client. However, very next day i.e. on October 01, 2019, same product i.e. Option Premium was sold and Rs.2,07,500/-, on September 30, 2019, service charge of Rs. 23,000/- was charged for a month service for the product Option Premium. On the very next day Rs.2,07,500/- was charged (which is 9 times of the amount charged on previous day) for the same service i.e. Option Premium for same period i.e. a month etc. As already observed above, there is inconsistency in fee amount. I note from the transcript of the conversation between the Noticee and Mr. Ajay Babu that the client clearly states that he has no experience in trading in securities market and the client also states that he has limited means. In this regard, I note that an investment adviser has fiduciary duty to its clients and fiduciary duty implies a relationship of trust and implies that the intermediary has a duty to act in the interest of the client who has reposed

trust in the intermediary. I find that the Noticee has failed in its fiduciary duty to the client.

D. I also note from the ER that in most of the product there was no difference in features but just nomenclature has been changed, for instance:

Crystal Option (Fees 50000/- p.m.)	Premium Option (Fees 40000/- p.m.)
- We provide you around 1-2 Crystal Intraday Options market calls - Here risk will be lower than reward in percentage term. (according to market condition ratio can be change) - In this plan we have achieved a high level of accuracy on consistent basis - Telephonic support will we provided from 9:00 AM to 6:00 PM - Domestic and Global Market position Overview. - Economic Update	- We provide you around 1-2 Super Premium Intraday Options market calls - Here risk will be lower than reward in percentage term. (according to market condition ratio can be change) - In this plan we have achieved a high level of accuracy on consistent basis - Telephonic support will be provided from 9:00 AM to 6:00 PM - Economic Update.

Crystal Future (Fees 50000/- p.m.)	Premium Future (Fees 45000/- p.m.)
- We provide you around 1-2 Crystal Intraday Futures market calls - Here risk will be lower than reward in percentage term. (according to market condition ratio can be change) - In this plan we have achieved a high level of accuracy on consistent basis - Economic Update. - Market trend with Support and resistance	- We provide you around 1-2 Premium Intraday Future market calls - Here risk will be lower than reward (according to market condition ratio can be change) - In this plan we have achieved a high level of accuracy on consistent basis - Important Global Market Updates - Telephonic support will be provided from 9:00 AM to 6:00 PM

E. I also note that the ER has concluded as follows, which I am in agreement with for the reasons stated in foregoing paras:

- Noticee charged fees from its clients 3 times or more than the proposed investment amount as given by its clients.
- Client had no experience in commodity market still he was given advise by the Noticee to deal in commodity segment for which separate charge was taken by the Noticee.
- Duration of service of the products were not mentioned
- Same product was offered at different charges and hence not uniform.
- Same product was offered at a gap of one day or for the overlapping period.
- Service was upgraded to the next package and the new service was sold before completion of the duration of the earlier service.

19. In view of the conduct of the Noticee as detailed in para A. to E. above, I find that the Noticee was not charging fair and reasonable fees from its clients and the fees charged was unreasonable, arbitrary and unfair. I also find that by selling the same package twice and selling same package with two different names, the Noticee has failed to exercise care and due diligence and also failed to act in the best interest of its clients. In view of the same, the Noticee has violated Regulation 15 (1) of IA Regulations, 2013 and Clause 1, 2, 5 and 6 of the Code of Conduct in Schedule III read with regulation 15 (9) of IA Regulations, 2013.

Allegation related to irregularities regarding Risk Profiling and Suitability Assessment

20. It has been alleged that Noticee sold products/services meant for high risk clients to clients who have medium risk appetite. Accordingly, it has been alleged that the Noticee

has failed to carry out due diligence while doing risk profiling and suitability assessment. In this regard, the examples given in the ER as follows:

A. Client Name: Ms. Kshitija Anand Mali

As per the Risk Profile Form dated February 11, 2020 submitted by Noticee, her risk category is 'Medium'. As per Suitability Assessment done by Noticee, it was clearly mentioned that Standard Cash is suitable product based on the investment objective, risk tolerance and experience of the client. However, it was observed from the table below that after selling Standard Cash product on February 11, 2020 for Rs.9,000/- for service period upto March 23, 2020, Noticee sold Standard Option product within 4 days and taken Rs.11,000/- as service charges.

Sr. No.	Invoice Date	Invoice No.	Product Name	Service period	Amount Rs.
1	11.02.2020	NIA0003915	Standard Cash	12.02.2020 to 23.03.2020	9,000/-
2	15.02.2020	NIA0003916	Standard Option	17.02.2020 to 16.04.2020	11,000/-
3	09.03.2020	NIA0004313	Crystal Future Pack	11.03.2020 to 23.03.2020	20,000/-
4	18.03.2020	NIA0004580	Index Option	19.03.2020 to 08.05.2020	18,000/-
5	18.03.2020	NIA0004650	Standard Future	19.03.2020 to 20.04.2020	8,000/-
				Total	66,000/-

Further, in the Suitability Assessment of Noticee, it was mentioned that for Medium risk category clients, Noticee offered products such as Standard Cash, Index Future, Standard Option, Crystal Option, Index Option, Intraday Beginner Stock Cash and

Intraday Beginner Stock Option. It was observed that Noticee sold Crystal Future Pack product on March 09, 2020 (i.e. within 1 month from Suitability Assessment date), and took Rs.20,000/- as service charges. As per the Suitability Assessment of the Noticee, Crystal Future Pack was suitable for “Very High Growth” clients. However, the client Ms. Kshitija Anand Mali was offered Future Pack product which was not meant for Medium risk client. The Noticee submitted in its reply through SCORES that it did risk profiling again and submitted revised Risk Profile Form which was communicated to client on March 11, 2020. As per the revised risk profiling form, the client’s risk category was changed from “Medium” to “Very High Growth” within a month’s period. Further, the product Crystal Future was sold on March 09, 2020 whereas revised risk profiling was done on March 11, 2020 i.e. high risk product has been sold before doing revised risk profiling. Noticee has not given any justification or criteria for revising the client’s risk portfolio and whether the client’s consent was taken for revising the risk portfolio.

B. Client Name: Mr. Onkar Kolapkar

Mr. Onkar in his complaint stated that on March 19, he got a call from this company asking to join their week service of Rs. 4000 and pursuant to which he joined and further after some time he again got call from them asking for joining another service of Rs. 30,000. He did not agree that time because as a student he did not have much amount but the company told him that if he does not pay Rs. 26,000 his service will be cancelled automatically. In view of which he paid Rs. 10,000 but after paying Rs. 10,000, they again called him asking for more money and said they would cancel the service if the amount is not paid. Mr. Onkar told the Noticee that he only has Rs. 7,000 in his demat to which they agreed. Noticee further asked to borrow another Rs. 16,000 . Then he decided to cancel the service and sent the service cancel mail on 23 March. As per Risk Profile Form, client’s risk category is ‘Medium’. The age of the client was 20 and his income from primary and secondary source is NIL. However, Noticee sold him Crystal

Option Pack service of Rs. 30,000/- for a period March 20, 2020 to April 07, 2020. In his complaint in SCORES under regn. no. SEBIE/MP20/0001173/1 wherein he has mentioned that Noticee initially asked him to pay just Rs.4000/- but after making payment of Rs.4000/- on March 19, 2020, Noticee asked him to pay additional Rs.26000/- and threatened that if he does not pay the additional amount his earlier amount paid would be forfeited. Hence, he paid remaining amount of Rs.26,000/- by arranging funds from friends and from his scholarship amount. On March 23, 2020, he requested Noticee to cancel the service and refund the amount, to which Noticee refused to make any refund. It was observed from Risk Profile Form that even though client does not have any income (since he is a college student), Noticee sold him service of Rs. 30,000/- and persuaded for the recovery of service charges which client has paid by taking loan from friends and from scholarship amount. Further, the service sold to him i.e. Crystal Option Pack is from Future and Option category. The ER notes that the Noticee in its reply submitted that the aforesaid client had demanded the services and as soon as it came to his knowledge that the said client is a student, it promptly stopped the services of the said client, however the DA has not accepted this submission of the Noticee due to lack of supporting documents.

C. Client Name: Mr. Ajay Sharma

As per risk profiling form, the client's risk category is Medium. As per the classification of products submitted by the Noticee, HNI Equity and Premium Advice products are categorized as "High Risk" products. It can be observed from the table below that Noticee sold Equity HNI Services and Cash Premium products which are high risk products, to him.

Sr. No.	Invoice Date	Invoice No.	Product Name	Tenure of service	Service Charges Rs.
1	18.05.2019	NIA0001759	Equity HNI Services	Not mentioned	30,000/-
2	24.05.2019	NIA0001780	Equity HNI Services	Not mentioned	20,000/-
3	26.06.2019	NIA0001908	Cash Premium	Monthly service charges	11,000/-
				Total	61,000/-

21. I note that with respect to the client Ms. Kshitija Ananda Mali the risk profiling of the client has been changed within one month from 'Medium' to 'Very High Growth'. The Noticee has failed to provide any rationale for such a change within a short period of time. I also note that even before the risk profile of the client was changed, the Noticee had already started selling products to her which were meant for clients with high risk tolerance. I also note that all the three clients, i.e. Ms. Kshitija Ananda Mali, Mr. Onkar Kolapkar and Mr. Ajay Sharma were in the category of medium risk but the Noticee sold products which were of high risk category. Noticee did not take any consent from the clients for changing to higher category. I also note that the following three clients had the risk profile as provided in the Risk Profiling Form as follows:

Client Name	Experience	Proposed Investment	Market Value of portfolio held	Risk Category
Tutare Dadasaheb Tatyaba	No experience	Less than 1 Lacs	Less than 1 Lacs	Medium
Adarsh Veer Bhardwaj		Less than 1 Lacs	1-2 lacs	Medium

Ajay Babu				Medium
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I note that the Noticee had sold Crystal Option and Premium Option to Mr. Tutare Dadasaheb Tatyaba which was the same as Crystal Future (as detailed in para 18 above). I find that Crystal Future was meant for clients with high risk tolerance and therefore, Crystal Option and Premium Option should have also been sold to clients with high risk tolerance. However, the Noticee sold these packages to Mr. Tutare Dadasaheb Tatyaba who had a medium risk tolerance. I also note that Noticee had sold Premium Option to Mr. Ajay Babu which was the same as Crystal Future (meant for clients with high risk tolerance) and should not have been sold to a medium risk client. I agree with the observation in the ER that the objective of risk profiling and suitability assessment is to determine the risk tolerance level of clients and recommend suitable asset allocation/investment commensurate with the risk tolerance level of clients, and if the same is not empirically made, it can lead to unsuitable and inappropriate product or services being offered to the clients, which defeats the objective of risk profiling and suitability and due diligence by the investments adviser. I note that Regulation 17 of the IA Regulations, 2013 *inter alia* mandates that the investment adviser shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client and that it has a reasonable basis for believing that a recommendation or transaction entered into meets the client's investment objectives and is such that the client is able to bear any related investment risks. I find that the Noticee has failed to comply with the mandate of Regulation 17 in case of the five clients mentioned above. Moreover, I also note from the transcript of the conversation between Mr. Ajay Babu and the Noticee that the investor was reminding him of his lack of knowledge in securities market and his limited means, however, the Noticee allured him to invest beyond his means. In view of the above, I find that the Noticee has violated Regulations 15(1), 15(8), 17(a), 17(d), 17(e) of IA Regulations, 2013 and failed to abide by the Clauses 1, 2, 5 and 6 of the Code of Conduct in Schedule III read with Regulation

15(9) of IA Regulations, 2013. Further, by not obtaining consent of client on risk profiling form, Noticee has violated circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

Allegation of 'fraud' and related charges

22. I note that the ER has concluded that the conduct of the Noticee, as detailed in the previous paras, resulted in violation of Regulation 3(a), (b), (c), (d) of PFUTP Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992. In this regard, I note that the definition of 'fraud' as given in Regulation 2(c) of the PFUTP Regulations, 2003 is as follows:

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
 - (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
 - (3) an active concealment of a fact by a person having knowledge or belief of the fact;
 - (4) a promise made without any intention of performing it;
 - (5) a representation made in a reckless and careless manner whether it be true or false;
 - (6) any such act or omission as any other law specifically declares to be fraudulent,
 - (7) deceptive behavior by a person depriving another of informed consent or full participation,
 - (8) a false statement made without reasonable ground for believing it to be true.
 - (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
- And "fraudulent" shall be construed accordingly;
..."

The Hon'ble Supreme Court while interpreting the aforesaid definition in *SEBI Vs. Kanaiyalal Baldevbhai Patel* (2017) 15 SCC 1 held that to constitute fraud under

aforesaid definition of fraud only “inducement” while dealing in securities is required. I note that the term ‘dealing in securities’ has been defined as follows in the PFUTP Regulations, 2003:

“2(b) “dealing in securities” includes:

- (i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;
- (ii) such acts which may be knowingly designed to influence the decision of investors in securities; and
- (iii) any act of providing assistance to carry out the aforementioned acts.”

I note that the in terms of Regulation 2(b)(ii) of PFUTP Regulations, 2003 definition of ‘dealing in securities’ also includes the acts which are designed to influence the decision of investors in securities and therefore rendering advice which influences investors to invest in securities also constitute ‘dealing in securities’. I note that the definition of ‘dealing in securities’ had been amended w.e.f. February 01, 2019 to its present form, based on the Report of Committee on Fair Market Conduct dated August 08, 2018 which recommended as follows:

“Fraudulent, manipulative or unfair trade practices may be carried out with the aid and assistance of persons other than the parties who are transacting in the securities market, including intermediaries who may have contributed to such dealings. The prohibition of fraudulent and unfair trade practices is in the context of dealing in securities. Hence, the definition of ‘dealing in securities’ should also include those who assist in and indeed often orchestrate or control the dealings in securities, or those who knowingly influence the decisions to invest in securities.

The observation in the Report of Committee on Fair Market Conduct clearly indicates that the definition of ‘dealing on securities’ in Regulation 2(b) of the PFUTP Regulations, 2003 intends to bring under its ambit those acts of intermediaries, such as the Noticee, which are meant to influence the decisions of investors to invest in securities. Therefore, I find that rendering investments advice amount to ‘dealing in securities’. I find that the Noticee, while dealing in securities has induced its clients to invest in securities *inter alia*

by promising assured returns to clients. In this regard, I note that investment in securities market are subject to market risks and an investor may end up in losing his invested money also let aside the returns. Therefore, any promise of assured return is *per se* false and maker of such promise can be said to have been knowingly making this false representation. In my view, the above-mentioned acts of the Noticee are squarely covered by the definition of 'fraud' in Regulation 2(c) of the PFUTP Regulations, 2003. Thus, I find that the Noticee has also violated provisions of Regulation 3 (a) and (d) of the PFUTP Regulations, 2003 read with section 12A (c) of SEBI Act, 1992. Further, I note that the Noticee double sold the same package to the same clients for the same period. Moreover, it charged fees from clients which were higher than the fees provided in the fee schedule of the Noticee. I find that charging unreasonably high fees as well as double selling of same packages were acts involving misrepresentation and concealment which are unfair trade practices. In my view, the above-mentioned acts of the Noticee are squarely covered by the definition of 'fraud' in Regulation 2(c) of the PFUTP Regulations, 2003. Thus, I find that the Noticee has also violated provisions of Regulation 3 (a) and (d) of the PFUTP Regulations, 2003 read with section 12A (c) of SEBI Act, 1992.

Allegation related to failure to redress of investor grievances and not displaying the complaints status on website

23. The SCN has observed from the data obtained from SCORES that 13 complaints were pending against Noticee as on August 18, 2020. Out of these complaints, it was seen that in 08 complaints, the Noticee had failed to file ATR within prescribed timeline of 30 days. The details of pending complaints in which the Noticee had filed ATR after 30 days and complaints in which Noticee did not file ATR as on August 18, 2020, are given below:

Sr. No.	Name of Complainant	Date of receipt of complaint	Date of forwarding complaint to IA (X)	Date of Reminders	Date of Final ATR (Y)	Excessive time above 30 days
1	Ajay Sharma	17 FEB 2020	18 FEB 2020	04 JUN 2020, 16 JUN 2020, 01 JUL 2020, 07 AUG 2020	11 AUG 2020	146
2	Pushpendra Kumar	09 JAN 2020	13 JAN 2020		24 FEB 2020	12
3	Rahul Jha	09 MAR 2020	28 MAY 2020	16 JUN 2020, 10 JUL 2020	Not submitted	52*
4	Tutare Dadasaheb Tatyaba	18 APR 2020	28 MAY 2020	16 JUN 2020, 10 JUL 2020	Not submitted	52*
5	Yaashika	18 MAR 2020	28 MAY 2020	16 JUN 2020, 10 JUL 2020	Not submitted	52*
6	Pradeep Kumar	15 FEB 2020	28 MAY 2020	16 JUN 2020, 10 JUL 2020	Not submitted	52*
7	Sonu Verma	27 APR 2020	28 APR 2020		11 JUN 2020	14
8	Naveen Kumar	02 JUL 2020	14 JUL 2020		Not submitted	5*

***up to August 18, 2020**

24. Regulation 21(1) of IA Regulations, 2013 mandates that the investment advisor shall redress clients' grievances promptly. Further, SEBI, vide Circular CIR/OIAE/2014 dated December 18, 2014 has, *inter alia*, mandated that registered intermediaries to whom complaints are forwarded through SCORES, shall take immediate efforts for its resolution, within thirty days of receipt of the complaint. Further, the said circular stated that the intermediary has to file an Action Taken Report (hereinafter referred to as "**ATR**") under SCORES within 30 days of date of receipt of the grievance, otherwise it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance. As per circular SEBI/HO/IMD/DF1/CIR/P/2019/169

dated December 27, 2019 (w.e.f. January 01, 2020), the investment advisor is required to display the following information on the homepage (without scrolling) of their website/mobile app on monthly basis (within 7 days of end of the previous month):

Number of complaints				
At the beginning of the month	Received during the month	Resolved during the month	Pending at the end of the month	Reasons for pendency

25. I note that the Noticee has failed to redress grievances within the mandated time of 30 days in 8 instances and failed to file ATR in 5 out of the same 8 instances. I note that in the proceedings before the DA, the Noticee has taken the plea that ATR was not submitted due to Covid- 19 lockdown and also due to the filing of the FIR by the investors. These contentions have been dismissed by the DA, since, the complaints pertained to January and February 2020, i.e. before lockdown and filing of FIR was not grounds for failing to redress investor grievances. The Noticee had also submitted that after registration of FIR, it had settled the disputes in 13 out of 16 complaints (in respect of the remaining 3 complaints 2 had been filed by the deceased Mr. Ajay Babu) and in view of the redressal of grievances, the Hon'ble High Court of Madhya Pradesh had also granted the bail to Noticee and its employees. Be that as it may, it is a fact that the Noticee had redressed the investor grievances with delay ranging from 5 days to 146 days and thus, violated the mandate of the SEBI circular. In view of the same, I find that the Noticee has violated Regulation 21(1) read with Regulation 28(f) of IA Regulations, 2013. Further, the Noticee was not displaying the status of the complaint on the homepage of its website and therefore, I find that Noticee has violated SEBI Circular no. SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

26. In conclusion, I find that the Noticee has violated the following provisions:
- a. Regulation 13(b) of IA Regulations, 2013
 - b. Regulation 3 (a) and (d) of PFUTP Regulations, 2003 read with section 12A (c) of SEBI Act, 1992.
 - c. Regulation 15(1), 15(8), 17(a), 17(d), 17(e) of IA Regulations, 2013
 - d. Clauses 1, 2, 5 and 6 of Code of Conduct as mentioned in Schedule III read with regulation 15(9) of IA Regulations, 2013
 - e. Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.
 - f. SEBI Circular CIR/OIAE/2014 dated December 18, 2014 and Regulation 21(1) read with 28(f) of IA Regulations, 2013
 - g. Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019.

Direction

27. In view of the above, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, 2008 hereby direct that the certificate of Registration no INA00000904 of M/s Niveshicon Investment Advisory (Prop. Veerendra Gupta) be suspended for a period of six months.
28. This Order comes into force with effect from March 21, 2023.

29. A copy of this order shall be served on the Noticee, all recognized Stock Exchanges and BSE Administration & Supervision Ltd. (BASL).

-Sd-

ANANTA BARUA

Place: Mumbai

WHOLE TIME MEMBER

Date : February 28, 2023

SECURITIES AND EXCHANGE BOARD OF INDIA