भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

DEPUTY GENERAL MANAGER
INDORE LOCAL OFFICE

SEBI/WRO/ILO/NM/OW/P/ 1520/1/2022.
March 17, 2022

Noticee No.	Name of the Noticee	Address
1	Money Desire Research (Registration No. INA000002454) (PAN: AAYFM6388F)	63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001. Email: moneydesireresearch@gmail.com
2	Anoop Kumar Tiwari (PAN: ALLPT5927F)	67, Hardi Tivariyan, Tehsil – Naigarhi, District – Rewa – 486340, Madhya Pradesh.
3	Raghvendra Singh (PAN: CHPPS6375C)	63, Mangal Nagar, M-307, Sairam Plaza, Bhawarkua, A.B. Road, Indore, Madhya Pradesh – 452001.

Show Cause Notice under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Rule 4 (1) of SEBI (Procedure for Holding Inquiry and imposing Penalties) Rules, 1995 and Regulation 35 of SEBI (Intermediaries) Regulations, 2008

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received multiple complaints against M/s. Money Desire Research (hereinafter referred as '**MDR / Noticee No. 1**') a SEBI registered Investment Adviser bearing registration no. INA000002454 (PAN: AAYFM6388F). SEBI had conducted an examination of complaints and noticed violations of provisions of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred as "**IA Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') and SEBI Act, 1992 (hereinafter referred as "**SEBI Act**") by MDR.

2. During the pendency of the examination, based on the *prima facie* findings of facts, it was thought fit to take interim measure protecting the interest of the investors of securities market. SEBI had passed an

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ex parte interim order dated January 15, 2020, against MDR and its partners namely Mr. Anoop Kumar Tiwari (PAN: ALLPT5927F) (hereinafter referred as '**Noticee No. 2**') and Mr. Raghvendra Singh

(PAN: CHPPS6375C) (hereinafter referred as '**Noticee No. 3**') exercising powers under Sections 11(1), 11(4), 11B and 11D read with Section 19 of the SEBI Act and Regulation 35 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as "**Intermediaries Regulations**"), *inter alia*, directing MDR and its partners to cease and desist from undertaking the activity of investment advisory services.

3. Vide aforesaid interim order SEBI, *inter alia*, directed MDR and its partners to file their reply/objections, to the Order if any, within 21 days from the date of receipt of the Order. The said interim order could not be served upon MDR vide speed post acknowledgment due. Consequently, the interim order was affixed at the registered office of MDR and one other address of MDR available with SEBI. However, the interim order was served on one of the partners of MDR namely, Shri Anoop Kumar Tiwari.

4. To carry on further examination in the matter, SEBI had sought certain / information details from MDR vide letter and email dated August 14, 2020. The letter was returned undelivered. In the absence of any information / details forthcoming from the Noticees, SEBI placed reliance on the information received from the complainants to carry out examination in the matter. Pursuant to the examination of details furnished by the complainants, following are the findings of the examination conducted by SEBI:

5. **Promising assured profit / unrealistic return to its clients**

5.1 It was noticed that MDR had been indicating targeted / expected returns (from the investment made by the clients based on the call / tips given by MDR) while soliciting service from its clients. Some of the instances are as under-

Table 1: Returns assured / expected to the clients (based on SCORES complaints)

Client Name	Name of the service	Return Assured (in Rs.)	Service Fee

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Kiran Aravalli	Equity Umbrella	1 to 1.50 lac a day (expected return) on Rs. 5 lac investment (i.e. 30% returns per day)	8 lacs
Ajay Sharma	Redeemed points	10 lacs	2.25 lacs
NA	Swing Cash+	8 to 9% return on each call provided in a week (In week 3 to 4 calls are given).*	On website, only product features are mentioned and service charges are not mentioned.

**Information disseminated on its website which is currently inactive. However, print outs of Noticee No. 1's webpages are available on record.*

5.2 Complaint of Mr. Kiran Aravalli (SEBIP/MP18/0000300/1) (**Annexure - 1**) was received in SCORES wherein the complainant has submitted a copy of email dated July 15, 2017 sent by MDR stating as follows:

"Equity Umbrella:- Customer will get all equity product with intraday, BTST, weekly levels and short term holdings.
Required Investment: 5 Lac
Expected Return: 1 to 1.5 lac/ day
Management Charges: 8 lac"

5.3 Complainant in his letter dated July 16, 2018 (attached to SCORES complaint) has submitted that MDR has made false promise of returns of Rs. 1 crore within 3 months. Further, he has also submitted the proof of payment made to MDR of Rs.18.50 lacs (**Annexure - 2**).

5.4 Vide email dated September 23, 2019 (**Annexure – 3**), a complainant Mr. Ajay Raj Sharma, has submitted an email dated May 23, 2018 of MDR wherein it has been mentioned that MDR is launching auto points plan having following features:

"We provide 1000 Redeemed points in this plan Each point would be calculate of rs.1000.

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*Completing of our 1000 points You will get 1000*1000 = 10,00,000/- (10-12 lakh.)*

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Our best experience to cover these whole points with in 50 to 60 trading session or whenever you will not get the whole profit according to the commitment till the time your services not going to be end.

Our charges on whole 1000 points is INR- 2,25,000/- excluding GST."

5.5 MDR had various products/ services and as a product feature, most of the products displayed on the website of MDR, http://moneydesireresearch.in (currently inactive though print out of webpages are available on record) also included claims of - high returns and targets (**Annexure - 4**).

- In "Swing Cash+" product it is mentioned *"We provide you around 3-4 cash positional based calls in a week" "High return of 8-9% on each call".*
- In its product "Swing Future+" it is mentioned that *"We provide you around 3-4 positional Future Calls in a week, Target of Rs.8000-9000"*
- Further, in its product "Premium Swing Options+" it is mentioned that *"We provide you around 3-4 positional stock options calls in a week, Target of Rs.5000-7000"*
- In its product "Premium Stock Future", "Premium Stock Options", "Rhodium Future" it is mentioned that *"2-3 premium positional Futures Calls per week, you will get 3-5% average return on positional calls"*

5.6 It is also observed that Shri. Alpesh Jariwala (SCORES complaint no. SEBIE/MP20/0000778/1) (**Annexure - 5**) has provided certain call recordings (**Annexure – 6**) that took place between him and the representatives of MDR. It is noticed from the examination of the transcript of the call recordings that the representatives of MDR were assuring high returns to the complainant. The transcript is placed below:

S. No.	Client Information	Date	Duration of Talk	Chat In Recording
1	Employee Ravi	January 30,	1:27 TO 1:32	Ravi Call= Aapka Paisa Main Market Se Safe Zone Se Nikalke De Dunga Koi Dikkat Nahi Hai Par

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S. No.	Client Information	Date	Duration of Talk	Chat In Recording
		2020		Chize Complete Hongi
			1:35 TO 1:40	Client=2 Din Main Paisa Nikal Ke De Doge 1, 20,000
				Ravi Call= 1, 21,000 Ab 2 Tarik Ko Baat Hogi Apni
			1:50 TO 1:59	Client=Mujhe 1, 20,000 Do Din Main Milna Chahiye Ye Appka Commitment Hain
				Ravi Call =Ji
				Client=Main Ye Payment Kar Raha Hu Aur Next Week Bhi Aap Paisa Nahi Mangoge
				Ravi Call= Ji
2	Employee Ravi	February 20, 2020	8:14 TO 8:18	Client=Aapne Kitna Profit Nikal Ke Diya Hai
				Employee=Nikal Jayega Sir Nikal Jayega
3	Employee Ravi	February 25, 2020	4:10 TO 4:15	Employee= 3 Mahine Mere Saath Kaam Karo Balance Sheet Maintain Rakho Aapko Profit Apne Aap Dikhega
4	Employee Akash	January 30, 2020	2:35 TO 2:45	Employee= Jab Aapka Profit 2, 02,500 Recover Hoga Tab Aapko Pay Karna Hai Remaining Amount Jo Ki Hoga 24,500
5	Employee Akash	March 5, 2020	7:25 TO 7:33	Client= Vo Bhi Kitna Ho Payega
				Employee= Vo Pura Karaunga
				Client= 2, 00,000
				Employee= 2, 06,500
				Client= Thik Hai I Will Reply Accordingly
6	Employee	February	00:40 TO	Employee= Aapka Pura File Complete Hai Pura

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S. No.	Client Information	Date	Duration of Talk	Chat In Recording
	Aman	28, 2020	00:47	Process Comlete Hai Koi Mana Thodi Na Kar Raha Hu Ki Refund Nahi Ho Raha
7	Employee Akash	January 30, 2020	00:25 TO 00:32	Akash Call = Definitely When You Will Get A 2,02,500 Rs. When You Want To Pay The 24, 500 Rs.

5.7 It is alleged from the above tables that MDR induced its clients by promising them assured / expected unrealistic profits. Extracts of the relevant portion of the complaints show that the complainants were given to understand that assured returns will be delivered by MDR. It is alleged that by making / promising assured / expected profits and unrealistic returns, on investments regardless of the market segment or security in which the investment is made, MDR has indulged in fraudulent practices knowing fully well that such promise is not only practically impossible but also not permissible under the law and would be misrepresenting the truth by deceiving the investors under the scheme or artifice. It is alleged that such representation is fraudulent and is covered within the definition of "fraud" as defined under Regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that MDR had violated Regulations 3(a), (b), (c), (d) of PFUTP Regulations read with Sections 12A(a), (b) and (c) of SEBI Act. Further, the aforesaid act of MDR has also led to the alleged violation of Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III read with Regulation 15(9) of IA Regulations. The text of the aforesaid provisions is provided separately as **Annexure – A**.

5.8 The aforesaid alleged violation of securities laws, if proven, makes MDR and its partners liable for suitable directions under Sections 11(1), 11(4), 11B(1) of SEBI Act and Regulation 35 of Intermediaries Regulations read with Regulation 28 of IA Regulations along with monetary penalty, if any, under Sections 15HA and 15HB of SEBI Act. The text of the aforesaid provisions is provided separately as **Annexure – A**.

6. Selling Multiple Services and Collecting Unreasonable Amount of Fees

6.1 It is unearthed that MDR has not been fair and transparent in its dealing with its clients regarding

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the fees charged to its client. The examination shows that MDR was engaged in selling the same product/service to its client again for the period for which fees/charges have already been collected by it. These acts of the Noticee No. 1, is alleged to be in complete disregard to the responsibility entrusted on it under the provisions of IA Regulations to act in fiduciary capacity and in the best interests of its clients. Some of the instances where MDR has sold multiple services/products to clients are given below:

6.2 **Client Name: Amar Ghosalkar**

S. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	08-Jun-18	INV291	Stock Option	08-Jun-18 to 16-Jul-18	31,250/-
2	08-Jun-18	INV292	Stock Option	08-Jun-18 to 16-Jul-18	31,313/-
3	08-Jun-18	INV294	Stock Option	08-Jun-18 to 31-Aug-18	57,347/-
4.	14-Jun-18	INV301	Stock Option	14-Jun-18 to 28-Sep-18	45,000/-
Total					**1,64,910/-**

It is noticed from the above table that Stock Option service has been repeatedly sold for the same or overlapping period for which service charges have already been collected through earlier invoices (**Annexure - 7**).

6.3 Details of products/ services sold to Tabish Khan (**Annexure - 8**) are given below:

S. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	June 19, 2018	569	All Equity	1 month	7,500/-
2	June 19, 2018	570	All Equity	3 months	40,000/-
3	June 19, 2018	571	All Equity	6 months	60,000/-
4	June 20, 2018	584	All Equity	6 months	52,000/-
5	June 21, 2018	585	All Equity	1 year	1,01,011/-
6	June 21, 2018	587	All Equity	1 year	15,000/-

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7	July 05, 2018	827	Stock Option + Future	1 month	7,500/-
8	July 12, 2018	836	Stock Option + Future	3 months	60,000/-
9	July 17, 2018	841	Stock Option + Future	3 months	65,100/-
10	July 28, 2018	853	Stock Option + Future	6 months	1,25,000/-
Total					**5,33,111/-**

It is alleged from the above that service charges were collected disproportionately for the product "All Equity" i.e. for 1 month service charges are Rs. 7,500/- and for 3 months it is Rs. 40,000/-. Further, "All Equity" product was sold 6 times during the period June 19, 2018 to June 21, 2018, the duration of which ranged from 1 month to 1 year. Thus, it is observed that the same product was sold multiple times to Mr. Tabish Khan and there was overlap in the duration for which the product "All Equity" was sold.

6.4 It is further alleged that service charges were collected disproportionately for the product "Stock Option + Future" i.e. for 1 month service charges collected was Rs. 7,500/- and for 3 months service charges collected was Rs. 60,000/-. Further, "Stock Option + Future" product was sold 4 times between July 05, 2018 and July 28, 2018. Thus, it is observed that the same product was sold multiple times to Mr. Tabish Khan. It is also observed that there was overlap in the duration for which the product "Stock Option+ Future" was sold. Moreover, MDR has sold same services/ products to its clients before the expiration of their earlier service.

6.5 Details of products / services sold to Mr. Rathva Maheshbhai (**Annexure - 9**) are given below:

Sl. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
1	April 19, 2018	INV 194	Stock Option	19-Apr-18 to 31-May-18	35,500/-
2	May 04, 2018	INV- MAY2018006	Cash	Not mentioned	20,000/-
3	May 09, 2018	INV- MAY20180013	Cash	Not mentioned	20,000/-
4	May 16, 2018	INV- MAY20180027	Cash	Not mentioned	20,000/-
5	May 18, 2018	INV- MAY20180032	Cash	Not mentioned	20,200/-
6	May 26, 2018	INV 265	Cash Premium	28-May-18 to 31-Dec-18	1,40,000/-

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Sl. No.	Invoice Date	Invoice No.	Product	Period of service	Invoice Amount (Rs.)
7	May 28, 2018	INV 266	BTST/STBT	28-May-18 to 24-Aug-18	2,10,203/-
8	May 28, 2018	INV 267	Nifty Future	28-May-18 to 23-Nov-18	1,26,202/-
9	June 29, 2018	INV- JUNE20180133	Cash	Not mentioned	30,000/-
Total					**6,22,105/-**

It is observed from the above table that MDR has sold multiple products within short period of time and before completion of the service period of the earlier product sold. In the month of May, 2018, client has been sold services 7 times. Further, out of 9 invoices issued, period of service is not mentioned in 5 invoices, though the same product namely, Cash, was sold to the client.

6.6 From the above, it is alleged that MDR has not been fair and transparent in its dealing with the clients about the fees charged to the client. Further, MDR sold same service to the same client for which fees have already been collected by it. By selling the same product multiple times, it is alleged that MDR is keeping its own interest ahead of the clients' interest. The said act of MDR, is alleged to be in complete disregard to the responsibility entrusted on it under IA Regulations to act in a fiduciary capacity and in the best interest of its clients.

6.7 In view of the above, it is alleged that MDR has (a) failed in its responsibility to act in a fiduciary capacity to its client which is entrusted upon it under Regulation 15(1) of IA Regulations and (b) has failed to abide by clauses 1 and 6 of the Code of Conduct for Investment Advisors as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations. Further, it is alleged that the above act of IA was done with the purpose of enhancing the income of IA by defrauding its clients. It is alleged that aforesaid act of MDR is fraudulent and is covered within the definition of 'fraud' as defined in Regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that MDR had violated Regulations 3 (a), (b), (c), (d) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act. The text of clause 6 of the aforesaid provisions is provided separately as **Annexure – A**.

6.8 The aforesaid alleged violation of securities laws, if proven, makes MDR and its partners liable for

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suitable directions under Sections 11(1), 11(4), 11B(1) of SEBI Act and Regulation 35 of Intermediaries Regulations read with Regulation 28 of IA Regulations along with monetary penalty, if any under Sections 15HA and 15 HB of SEBI Act. The text of of the aforesaid provisions is provided separately as **Annexure – A**.

7. **MDR is not doing Risk Profiling and Suitability of the clients properly**

7.1 SEBI received a SCORES complaint no. SEBIP/MP18/0004671/1 filed by Mr. Dhananjay Vaid, stating that MDR advised him to buy premium services since his risk appetite is high. In this regard, on October 22, 2019, MDR has submitted Risk Profile Form (herein after referred to as '**RPF**') and KYC document through SCORES as part of final ATR. Upon examination of complaint and RPF, it is alleged that MDR is not assessing the risk capacity of the client correctly. In RPF of clients, MDR is recording contradictory answers of the risk assessment questions. Some of the contradictory answers in the RPF of Dhanajay Vaid (**Annexure - 10**) are reproduced below:

Question	Answer	Weightage
Risk Tolerance	High	5
How would you honestly describe yourself as a risk taker?	Low risk taking capability (I'd have a hard time tolerating any losses)	2
Assume that you have invested rupees one lac in a share that goes down by 10% the next day.	Do not bother because you have done enough research on the company	4

7.2 It is alleged that apart from the above, the risk profiling of several other clients including Tabish Khan, Kiran Aravalli and Yogesh Joshi has been done by MDR in a similar manner (**Annexure - 11**).

7.3 It is observed that MDR had posted its Suitability Assessment Policy on its website. It has categorized various products as per the risk category i.e. High risk and Medium risk. It had a product named as Stock Option which was categorized under High Risk category. MDR had sold the Stock Option product of high risk category to one of its client namely Mr. Amar Ghosalkar whose risk category was Medium Risk as per his risk profiling form (**Annexure – 12**).

7.4 In another instance, MDR had sold the 'BTST/STBT' product (as mentioned in the invoice) and

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Stock Option product (**Annexure - 13**), both of high risk category, to one of its client namely Mr. Maheshbhai Rathva. However, as per risk profiling form, his risk category was Medium Risk.

7.5 In view of the above, it is alleged that MDR has not done risk profiling of its client properly as required under regulation 16(b) read with 16(d) of IA Regulations. Further, it is alleged that MDR is not selling products / services which are appropriate as per its clients' risk taking ability as mentioned under Regulations 17(a) and 17(e) of IA Regulations. Moreover, it is alleged that MDR has failed in its responsibility to act in a fiduciary capacity towards its client which is entrusted upon it and has acted in violation of Regulation 15(1) of IA Regulations. MDR has also failed to abide by clause 2 of the Code of Conduct for IA as specified in Schedule III of IA Regulations read with Regulation 15(9) of IA Regulations. The text of Regulations 16, 17(a) and 17(e) of IA Regulations is provided separately as **Annexure A**.

7.6 The aforesaid alleged violation of securities laws, if proven, makes MDR and its partners liable for suitable directions under Sections 11(1), 11(4), 11B(1) of SEBI Act and Regulation 35 of Intermediaries Regulations read with Regulation 28 of IA Regulations along with monetary penalty, if any, under Section 15HB of SEBI Act. The text of the aforesaid provisions is provided separately as **Annexure A**.

8. Non-compliance of SEBI directions contained in interim ex parte order

8.1 SEBI had passed an *interim ex parte* order dated January 15, 2020 against MDR. SEBI vide its aforementioned order had, *inter alia*, directed MDR and its Partners to-

"provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order".

However, no information to this effect has been received from MDR and its partners. In view of the same, it is alleged that MDR and its partners have not complied with the directions issued by SEBI vide the aforesaid order.

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8.2 The aforesaid alleged violation of securities laws, if proven, makes MDR and its partners liable for monetary penalty, if any under Section 15HB of SEBI Act.

9. As per section 4 of Indian Partnership Act, 1932, 'partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them for all; persons who have entered into partnership with one another are called individually 'partners' and collectively 'firm' and the name under which their business is carried on is called the 'firm name'. As per section 2(a) of Indian Partnership Act, 1932, an 'Act of Firm' means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. In terms of section 25 of the Indian Partnership Act, 1932, "Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner." Therefore, MDR being a partnership firm, partners of MDR namely, Mr. Anoop Kumar Tiwari and Mr. Raghvendra Singh are *prima facie* responsible for the violations committed by MDR.

10. In light of the above, Money Desire Research and its Partners - Anoop Kumar Tiwari and Raghvendra Singh, are hereby called upon to show cause as to (i) why suitable directions under Sections 11B(1) and 11(4) read with section 11(1) of SEBI Act, 1992 and Regulation 35 of Intermediairies Regulations read with Regulation 28 of IA Regulations, should not be issued against MDR and its partners and (ii) why suitable directions for imposing penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB of SEBI Act should not be issued against MDR and its partners for the aforesaid alleged violations.

11. The written submissions of the Noticees, if any, along with documentary evidences that the Noticees chooses to rely upon in support of their submissions, should reach the undersigned, at the address given below and also in softcopy (in MS Word format) by e-mail at email-ids amitn@sebi.gov.in, and nirmalm@sebi.gov.in, within 21 days from the date of receipt of this notice, failing which it shall be construed that Noticees have no reply to submit and the matter shall be proceeded on the basis of the material available on record.

Securities and Exchange Board of India

Indore Local Office

104-105, Satguru Parinay, Opposite C-21 Mall,

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12. The Noticees may also indicate in their reply whether they are desirous of a personal hearing before the Whole Time Member, SEBI, in the matter. The Noticees are advised to keep SEBI informed about the change in their correspondence address, if any, till the proceedings in the extant matter are complete.

13. Further, the Noticees are hereby advised to keep SEBI informed of all type of bank accounts (savings, deposits, recurring, current, etc.) mentioning the account no., name and address of the bank/branch held by them, details of all demat accounts / mutual fund units held by them and list of all the movable/immovable assets owned by them.

14. The Noticees may also note that a settlement mechanism is provided under the SEBI (Settlement Proceedings) Regulation, 2018. If the Noticees wish to opt for the settlement process, they may apply for the same in the manner given in the aforesaid Regulations under intimation to the undersigned. Further, the Noticees may note that filing of settlement application does not confer any right to seek the settlement of the proceedings.

15. The documents relied upon in the notice have been annexed as per the list of enclosures (in CD).

Nirmal Mehrotra
Deputy General Manager

Enclosures: As above

Documents	Annexure
Complaint of Mr. Kiran Aravalli along with copy of email dated July 15, 2017.	1.
Letter dated July 16, 2018 from Kiram Aravalli and proof of payments.	2.
Email dated September 23, 2019 from Ajay Raj Sharma submitting an email dated May 23, 2018 of MDR.	3.
Print out of web pages of MDR.	4.

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SCORES complaint no. SEBIE/MP20/0000778/1 of Alpesh Jariwala.	5.
Call Recording – in CD.	6.
Copy of invoices of Amar Ghosalkar.	7.
Copy of invoices of Tabish Khan.	8.
Copy of invoices of Rathva Maheshbhai.	9.
Risk Profile Form of Mr. Dhananjay Vaid.	10.
Risk Profile Form of Tabish Khan, Kiran Aravalli and Yogesh Joshi.	11.
Risk Profile Form of Amar Ghosalkar.	12.
Risk Profile Form of Maheshbhai Rathva.	13.

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Annexure - A

The relevant provisions of the IA Regulations, PFUTP Regulations and the SEBI Act are reproduced hereunder:

Relevant provisions of IA Regulations:

Consideration of application and eligibility criteria.

6. For the purpose of the grant of certificate the Board shall take into account all matters which are relevant to the grant of certificate of registration and in particular the following, namely, —

(f) whether the applicant, its partners, principal officer and persons associated with investment advice, if any, are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

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.*

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

Risk profiling.

16. *Investment adviser shall ensure that,-*

(b) it has a process for assessing the risk a client is willing and able to take, including:

(i) assessing a client's capacity for absorbing loss;

(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;

(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

(d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear and not misleading, and should ensure that:

(i) questionnaire is not vague or use double negatives or in a complex language that the client may not understand;

(ii) questionnaire is not structured in a way that it contains leading questions.

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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;

(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.

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default.

28. An investment adviser who -

(a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;

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

[*See* sub-regulation (9) of regulation 15]

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.

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.

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Relevant provisions of PFUTP Regulations:

3. Prohibition of certain dealings in securities No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

Relevant provisions of SEBI Act:

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

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Penalty for fraudulent and unfair trade practices.

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

Penalty for contravention where no separate penalty has been provided.

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

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.*

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