

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/S./2022-23/21361-21364]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992,
READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING
PENALTIES) RULES, 1995

In respect of

Noticee No.	Name of Noticees	PAN
1.	CapitalVia Global Research Limited	AADCC5782H
2.	Mr. Kiran Ravindra Kumar Choudhary	AAEPK1536D
3.	Mr. Rohit Gadia	AGXPG1899A
4.	Mr. Prem Prakash	AIAPP8261A

("hereinafter collectively referred to as Noticees")

In the matter of CapitalVia Global Research Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an inspection of M/s. CapitalVia Global Research Limited (SEBI Registration No. INA200001512; hereinafter referred to as '**CapitalVia/Noticee 1**') from September 11-12, 2017, at its office located at NRK Business Park, Indore. The period covered in the inspection was from April 01, 2016 till September 11, 2017 (hereinafter referred to as '**Inspection Period**') to verify whether CapitalVia and its directors, Mr. Kiran Ravindra Kumar Choudhary (hereinafter referred to as '**Noticee 2**'), Mr. Rohit Gadia (hereinafter referred to as '**Noticee 3**') and Mr. Prem Prakash (hereinafter referred to as "**Noticee 4**") (Noticees 1 to 4 hereinafter collectively being referred as "**Noticees/CapitalVia and its directors**") had complied with regulatory requirements prescribed in SEBI (Investment

Advisers) Regulations, 2013 (hereinafter referred to as '**IA Regulations**') including KYC requirements, risk profiling and suitability of the advice and maintenance of records and the adherence to the directions/observations contained in the SEBI orders dated November 11, 2016 (hereinafter referred to as "**SEBI Order 1**") and January 20, 2017 (hereinafter referred to as "**SEBI Order 2**"; both orders hereinafter referred to as "**SEBI Orders**") passed by Hon'ble Whole Time Member (hereinafter referred to as "**Hon'ble WTM**") of SEBI.

2. Vide SEBI Order 1, Noticee 1 and its directors, i.e., Noticees 2, Noticee 3 and Mr Anshul Mansingka were directed as under:
"1. Not to solicit or undertake any fresh advisory business with immediate effect till further directions.
2. To redress the grievances received against CapitalVia and to comply with all provisions of IA regulations and submit a compliance report to SEBI within three (3) months from the date of receipt of this order."
3. Thereafter, vide SEBI Order 2, the following directions were passed against Noticee 1 and its directors, i.e., Noticees 2, Noticee 3 and Mr Anshul Mansingka:
 - a. *"Not to solicit or undertake any fresh advisory business for another period of four months from the date of order.(i.e. till May 19,2017)*
 - b. *To discontinue the acceptance of funds from clients including by way of deactivation of online remittances, with immediate effect during the aforesaid four month period.*
 - c. *To disclose the contents of these directions prominently on its website(s) immediately."*
4. Pursuant to completion of inspection, it was alleged that Noticees had violated various provisions of IA Regulations and violated directions contained in the SEBI orders.

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide order dated December 29, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication**

Rules’) to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, non-compliance of directions contained in the SEBI orders dated November 11, 2016 and January 20, 2017 as well as Regulations 15(3), 16(c), 17 and Clause 6 of the Code of Conduct as specified in Third Schedule of the IA Regulations alleged to have been committed by Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show Cause Notice dated September 21, 2021 and Supplementary Show Cause Notice dated October 07, 2021 (hereinafter referred to as ‘**SCN and Supplementary SCN**’ respectively) was issued to Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15HB of SEBI Act for the violations of Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct under Schedule III of IA Regulations alleged to have been committed by them and for non-compliance of directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017 passed by Hon’ble WTM.
7. The relevant extracts of the allegations levelled against Noticees 1 to 4 in the SCN read with Supplementary SCN are as under:

“1. Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) passed an Interim Order cum Show Cause Notice dated November 11, 2016 against M/s. Capitalvia Global Research Limited (hereinafter referred to as ‘Capitalvia/Noticee 1/You’) and its directors, Mr. Kiran Ravindra Kumar Choudhary (hereinafter referred to as ‘Noticee 2’), Mr. Rohit Gadia (hereinafter referred to as ‘Noticee 3’), and Mr. Anshul Mansingka, stating as under:

- 1. Not to solicit or undertake any fresh advisory business with immediate effect till further directions.*
- 2. To redress the grievances received against CapitalVia and to comply with all provisions of IA regulations and submit a compliance report to SEBI within three (3) months from the date of receipt of this order.”*

...

2. Thereafter, SEBI passed a final order dated January 20, 2017 wherein the following directions were passed against Noticee 1 and its directors, i.e., Noticees 2, Noticee 3 and Mr Anshul Mansingka:-

- “a. Not to solicit or undertake any fresh advisory business for another period of four months from the date of order.(i.e. till May 19,2017)*
- b. To discontinue the acceptance of funds from clients including by way of deactivation of online remittances, with immediate effect during the aforesaid four month period.*
- c. To disclose the contents of these directions prominently on its website(s) immediately.”*

...

9. Vide SEBI order dated November 11, 2016, Noticees were directed not to solicit or undertake any fresh advisory business with immediate effect till further directions. Vide SEBI order dated January 20, 2017, Noticees were further directed not to solicit or undertake any fresh advisory business for another period of four months from the date of the order. During the inspection, on scrutiny of its client master (**Annexure 3**), SEBI observed that Noticee 1 had continued to receive advisory fees amounting to Rs. 2,08,66,490 for investment advisory services from 625 clients during the period November 12, 2016 to January 21, 2017.

...

15. SEBI observed that Noticee 1 accepted advisory fees from the clients during the ban period. Therefore, it is alleged that Noticee 1 and its directors, i.e., Noticees 2 to 4, continued to undertake fresh subscriptions from the clients during the period from November 12, 2016 to May 19, 2017 and thereby violated the directions imposed by SEBI vide its orders dated November 11, 2016 and January 20, 2017. It is also alleged that, by receiving renewal advisory business fees and money for an associate in same bank account, Noticee 1 and its directors, i.e., Noticees 2 to 4 contravened the general responsibility cast under Regulation 15(3) of IA Regulations.

...

22. I observe that Noticee 1 was carrying out risk profiling of the clients for the purpose of selling the available products without ensuring the suitability of the same. Therefore, it is alleged that by not doing risk profiling of its clients and by not ensuring suitability of advice provided to the client, Noticee 1 and its directors, i.e., Noticees 2 to 4 have violated Regulations 16 (c) and 17 of IA Regulations.

...

29. ... it was observed that Noticee 1 charged unreasonable fee from its clients. Therefore, it is alleged that by charging un-reasonable fees to clients, Noticee 1 and its directors, i.e., Noticees 2 to 4, have violated Clause 6 of Code of Conduct as specified in third schedule of IA Regulations.”

8. The SCN was duly served on Noticees by Speed Post Acknowledgement Due (**‘SPAD’**), through Digitally Signed Email dated September 22, 2021 and the Supplementary SCN was also duly served by SPAD and Digitally Signed Email dated October 07, 2021. Subsequently, Noticees filed settlement applications under SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as **“Settlement Regulations”**), in the matter vide letter to SEBI dated November 26, 2021. Thereafter, vide letter dated December 10, 2021, Noticees submitted their common reply to the SCN and Supplementary SCN. In the interest of natural justice, vide Hearing Notices dated May 24, 2022, which were duly served on Noticees via SPAD and via Digitally Signed Email, Noticees were granted an opportunity of hearing on June 08, 2022. Noticees appeared for the hearing on the scheduled date through their Authorised Representatives (**“AR”**) Adv. Sagar Ghogre and Adv. Deepak Lad. During the course of the hearing, ARs of Noticees reiterated the submissions made in their reply dated December 10, 2021. Since settlement applications under Settlement Regulations were filed by Noticees, the final order with respect to them was kept in abeyance till the disposal of settlement applications filed by them. Subsequently, vide email dated August 29, 2022, the concerned department of SEBI informed that the settlement application of Noticees had been rejected. Therefore, I now proceed to adjudge the alleged violations qua Noticees.
9. In regard to the allegations made in the SCN and Supplementary SCN, the summary of the Noticees’ relevant submissions in their reply dated December 10, 2021, is as under:
 - i. Noticees 1-4 have contended that they have complied with the orders passed by SEBI and have made the necessary changes regarding regulatory compliance.
 - ii. Noticees 1-4 contended that Risk Profiling was done by them in terms of the SEBI orders and the risk profiling questionnaire was based on all factors laid down under the IA Regulations.
 - iii. Noticees 1-4 have contended that Noticee did not undertake any fresh advisory business and thereby complied with the SEBI order. Noticees 1-4 have contended

that Noticee 1 had accepted funds from existing clients and emails acknowledging such receipt of payment had been sent to customers as part of automated communication. Noticees 1-4 contended that the aforesaid communications did not pertain to fresh advisory business and thus, the same were not restricted by the SEBI orders.

- iv. Noticees 1-4 contend that certain clients were sent system generated emails regarding investment products/payment status of existing subscriptions which was due to automated communication which had not been updated. Noticees 1-4 further contend that certain clients were sent emails to give its existing clients an extension of validity/renewal of service with respect to existing services. Thus, Noticees 1-4 contend that Noticee 1 had not violated the directions contained in the SEBI order.*
- v. Noticees 1-4 have contended that the KYC processes and risk profiling was always done with respect to its clients and any person could not subscribe to its services by merely paying via the payment gateway as was alleged. Noticees 1-4 have contended that the risk profiling of the customer was based on different factors and not only investment amount. Noticees 1-4 contend that the payment gateway was merely an online payment mechanism and has nothing to do with client on-boarding process.*
- vi. Noticees 1-4 have contended that the allegations made in respect of specific clients are not based on substantiating evidence and are based on mere conjectures and surmises.*
- vii. Noticees 1-4 have further contended that defaults if any were unintentional and without malice.*
- viii. Noticees 1-4 have contended that IA Regulations do not prescribe any maximum amount of fees which can be charged from a client and fees charged by them were legally permissible.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the charges levelled against the Noticees, reply filed by Noticees, and other documents/evidence available on record. The issues that arise for consideration in the present case are:

- I) Whether Noticees 1-4 have violated Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations and have violated directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017 passed by Hon'ble WTM?
- II) Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?
- III) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?
11. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions, which are as under:

Relevant provisions of SEBI Act

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*

Relevant provisions of IA Regulations:

15. General Responsibility.

...
(3) *An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.*

16. Risk Profiling.

...
(c) *where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated.*

17. Suitability.

Investment adviser shall ensure that-

- (a) *All investments on which investment advice is provided is appropriate to the risk profile of the client;*
- (b) *It has a documented process for selecting investments based on client's investment objectives and financial situation;*
- (c) *It understands the nature and risks of products or assets selected for clients;*

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

Issue No. I - Whether Noticees 1-4 have violated Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations and have violated directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017 passed by Hon'ble WTM?

12. I have carefully perused the charges levelled against Noticees in the SCN read with Supplementary SCN, reply filed by Noticees 1 to 4, SEBI's inspection report and other documents/evidence available on record. On the basis of the aforesaid records, it has been alleged that Noticees have failed to comply with the SEBI Orders passed by Hon'ble WTM and have violated various provisions of the IA Regulations.
10. I note that SEBI vide its order dated November 11, 2016 directed Noticees not to solicit or undertake any fresh advisory business from date of the order till further directions ("**interim restraint period**"). Vide SEBI order dated January 20, 2017, Noticees were further directed not to solicit or undertake any fresh advisory business for another period of four months from the date of the order. Thus, Noticee 1 was restrained from soliciting or undertaking any advisory business from January 20, 2017 to May 19, 2017 ("**restraint period**"; the total time period of restraint from November 11, 2016 to May 19, 2017 is referred to as "**cumulative restraint period**").
11. In this regard, I have perused the trail of email communication between Noticee 1 and its clients. The screenshots of email communication between Noticee 1 and some of its

clients are placed below as illustration of solicitation of business by CapitalVia during the period after the passing of SEBI Order 1 and SEBI Order 2:

Dear Lalit A,

Date: 14-02-2017

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **Bullion Pack** has expired on 14-02-2017. In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

CapitalVia/2016/602427

ID : 602427

Dear Neetu,

Date: 24-11-2016

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **Stock Cash** has expired on 24-11-2016. In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

Dear Shweta,

Date: 24-01-2017

Thank you for being associated with CapitalVia Global Research Limited. Your subscribed service **BTST/STBT Pack** has expired on 24-01-2017. In order to continue our services, kindly renew the service pack.

Should you have any queries related to your transaction, please do not hesitate to contact us on number mentioned below.

We strive to serve you better as always!

We insist you to go through the below points before proceeding with our services and products:

- We do not offer any assured or guaranteed returns on our services or products.
- Membership once taken, can not be cancelled, refunded or transferred. Please read refund policy.
- Please read detailed disclaimer & risk warning: [Click here](#)

Dear RAYMOND ,

Date: 23-11-2016

CapitalVia Welcomes you to the world of professional trading. You have successfully subscribed for **Options - Call and Put** and will be able to enjoy tips and advice to make the most of your investment.

Thank you for subscribing to the services of CapitalVia Global Research Limited Please find details of your services as under:

Service Details:

- Service: Options - Call and Put
- Start Date: 24-11-2016
- Expiry Date: 24-03-2017
- Carrier: SMS, Android App

With our services, you will experience award-winning CapitalVia support, backed by proven track record for providing consistent, quality services for optimal results.

Dear Arvind ,

Date: 16-01-2017

CapitalVia Welcomes you to the world of professional trading. You have successfully subscribed for **Stock Future Plus** and will be able to enjoy tips and advice to make the most of your investment.

Thank you for subscribing to the services of CapitalVia Global Research Limited Please find details of your services as under:

Service Details:

- Service: Stock Future Plus
- Start Date: 17-01-2017
- Expiry Date: 17-04-2017
- Carrier: SMS

12. I note from the aforesaid emails dated November 23, 2016, November 24, 2016, January 16, 2017, January 24, 2017, and February 14, 2017 that Noticee 1 had solicited fresh investment advisory assignment/business from existing clients as well as new clients during both the interim restraint period and restraint period.
13. I have perused the CapitalVia's client master and the account statements of bank accounts of Noticee 1 at Axis Bank (A/c No. 911020035630712), HDFC (A/c No. 02812320001963 and 50200003869255), ICICI (A/c No. 024105500192) and State Bank of India (A/c No. 00000032001090962), for the period from November 12, 2016 to April 13, 2017 as placed on record. In this regard, I observe the following illustrative instances of payments received from clients as extracted from the account statements which are as under:

S. No.	Date	Bank	Particulars	Amount (Rs.)
1.	06/12/2016	Axis Bank	NEFT/VIJBH16341024170/SHASHANK MOHAN SHAH//URGENT/	15,000
2.	08/12/2016	Axis Bank	MOB/TPFT/KISHAN KANAYALA/913010047716384	10,000
3.	19/01/2017	Axis Bank	DHARMESH KUMAR	50,000
4.	27/02/2017	Axis Bank	NEFT/KKBKH17058684210/SANJIV RAIU PAI VERNEKAR/Pa	17,249
5.	21/11/2016	HDFC Bank	NEFT/KKBKH17058684210/SANJIV RAIU PAI VERNEKAR/Pa	30,000
6.	03/12/2016	HDFC Bank	FT-CR-50100056177745-Sanjay Shekhar	35,000
7.	10/03/2017	HDFC Bank	Cash Dep Begum Bazar	10,000

8.	24/04/2017	HDFC Bank	-NEFT CR-ICIC0SF0002-Krishnakant Sonawane	4,000
9.	07/12/2016	ICICI	By cash- Haridwar	10,000
10.	19/01/2017	ICICI	By cash-Dadar-Gokhale road	10,000
11.	05/01/2017	ICICI	TRFR FROM- MEERA	37,500
12.	25/11/2016	SBI	BY TRANSFERNEFT* UCBA0002004*SAA83244067*ASHA UPADHYAY	15,000
13.	28/04/2017	SBI	TRANSFER FROM 11234502049 Mr. GOPAL HARISCHANDRA /	17,250
14.	03/12/2016	HDFC Bank	Sanjay Shekhar	35,000
15.	16/01/2017	Axis Bank	Prakash Kumawat	15,000
16.	14/12/2016	Axis Bank	Dharmesh Kumar	5,500
17.	17/12/2016	Axis Bank	Dibya Dyotan Hazra	30,000
18.	16/01/2017	SBI	Uday Shankar	15,000
19.	17/01/2017	SBI	Rajesh Gurunath Shrisat	15,000
20.	17/01/2017	SBI	Rajesh Gurunath Shrisat	15,000

14. I have also perused the pricing details of CapitalVia's services as shown on its website. I note from the account statements of CapitalVia that some of the amounts received in the said bank accounts also corresponds with the monthly subscription fees for CapitalVia's services as shown on its website for various services. For instance, the Stock Cash product was being sold along with Commodity pack which were sold for a monthly subscription amount of Rs. 5,000 and Rs. 10,000 respectively and BTST/STBT Futures which was sold for a monthly subscription amount of Rs. 10,000 was also being sold along with Stock Cash product. The Index Options product was also being sold along with Stock Cash product for a monthly subscription amount of Rs. 5,000. Thus, Noticee 1 received Rs. 15,000 each from clients namely, Rajesh Gurunath Shrisat, Uday Shankar and Prakash Kumawat for the aforesaid products for which payments were made during the cumulative restraint period.

15. As noted above, CapitalVia had solicited fresh subscription of its services from existing as well as new clients and had received advisory fees for undertaking new assignments for providing advisory services to existing clients during the cumulative restraint period.

16. From a perusal of the Noticee's client master and its account statements, I further observe that 625 clients had transferred funds amounting to Rs. 2,08,66,490/- toward fees charged by CapitalVia for various advisory services offered on its website during cumulative

restraint period, i.e., from November 11, 2016 to May 19, 2017 which was in violation of the SEBI orders.

17. In this regard, I note from the records of inspection that Noticee 1 in its letter to SEBI dated June 19, 2018 had submitted that they had not on-boarded any new clients during the period from November 12, 2016 to May 19, 2017 and continued to provide advisory services to their existing clients only and had received Rs. 1,92,41,787 from the existing clients as subscription fees during the entire restraint period. I note that the aforesaid submission in CapitalVia's letter dated June 19, 2018 is tantamount to an admission that CapitalVia had undertaken fresh assignments for investment advisory services. Noticees 1-4 have further contended in their reply to the SCN and Supplementary SCN that Noticee 1 did not undertake any fresh advisory business and that certain clients were sent emails to give an extension of validity/renewal of service with respect to existing services. Thus, Noticees have contended that they had complied with the SEBI orders. Noticees 1-4 have also contended that Noticee 1 had accepted funds from existing clients and emails acknowledging such receipt of payment had been sent to customers as part of automated communication and that the aforesaid communications did not pertain to fresh advisory business and thus, the same were not restricted by the SEBI orders. I am of the view that the intent of the directions contained in SEBI Orders was to allow Noticees to complete only its ongoing mandates by providing the advisory services to the clients from whom the advisory fees were collected prior to the passing of SEBI Orders. However, as observed above, Noticee 1 had undertaken fresh advisory business from its existing clients as well as was engaging in soliciting new business. Therefore, I find the view that undertaking such fresh assignments, even though from its existing clients, was tantamount to a violation of the directions contained in the SEBI orders. Thus, I find the aforesaid contentions of Noticees 1-4 to be unacceptable.
18. In view of the foregoing, I find that Noticee 1 along with its directors, i.e., Noticees 2 to 4, continued to undertake fresh subscriptions from the clients during the period from November 12, 2016 to May 19, 2017 and thereby, violated the directions imposed by SEBI vide its orders dated November 11, 2016 and January 20, 2017. Thus, the allegation that Noticee 1 and its directors, i.e., Noticees 2 to 4 have violated directions contained in the SEBI orders dated November 11, 2016 and January 20, 2017 stands established.

19. I note that it is also alleged in the SCN read with Supplementary SCN that, by receiving renewal advisory business fees and money for an associate in same bank account, Noticee 1 and its directors, i.e., Noticees 2 to 4 contravened the general responsibility of maintaining an arms-length relationship between investment advisory activities and other activities under Regulation 15(3) of IA Regulations. In this regard I note that vide its letter dated June 20, 2019 and email dated February 20, 2019, CapitalVia had admitted that it was operating another business concern named "LearnOD" which provided an online education platform. In its aforesaid letter and email, CapitalVia had admitted that it had received funds and paid money in relation to the business activities of LearnOD from its HDFC bank account in which funds transferred by clients towards advisory fees were received by CapitalVia. In the reply to the SCN, Noticee 1 has again admitted that payments were received in respect of the business activities of LearnOD in the same bank accounts in which CapitalVia was receiving funds from Clients towards advisory fees. This shows that Noticees failed to maintain an arms-length relationship between investment advisory services and other activities. Thus, I find that the allegation that Noticee 1 and its directors, i.e., Noticees 2 to 4 have contravened Regulation 15(3) of IA Regulations, stands established.
20. It is alleged in the SCN read with Supplementary SCN that CapitalVia had not conducted adequate risk profiling of clients. It is also alleged that CapitalVia had not ensured that the investment advice provided by it was suitable to its clients having regard to their risk profile.
21. In terms of Regulation 16 of IA Regulations, Investment adviser shall ensure that:-
- (a) *it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-*
 - (i) *age;*
 - (ii) *investment objectives including time for which they wish to stay invested, the purposes of the investment ;*
 - (iii) *income details;*
 - (iv) *existing investments/ assets;*
 - (v) *risk appetite/ tolerance;*
 - (vi) *liability/borrowing details.*
 - (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.*
- (c) *where tools are used for risk profiling, it should be ensured that the tools are fit for the purpose and any limitations are identified and mitigated;*
- (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.*
- (e) *risk profile of the client is communicated to the client after risk assessment is done;*
- (f) *information provided by clients and their risk assessment is updated periodically.*

22. I also note that in terms of Regulation 17 of IA Regulations, Investment adviser shall ensure that:-

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

23. In this regard, from the risk profiling questionnaire as found in email correspondence between CapitalVia and its clients, I observe the following in its Risk Profiling Methodology (hereinafter referred to as '**RPM**'):

(a) While Noticee 1 had included the factors as prescribed under IA Regulations in the risk profiling questionnaire, the assessment of risk profile was based on only 3 factors i.e. Investment of client, Age group and Risk Appetite.

(b) For investment of client, the following scores were assigned to different range of income:

- (i) Less than 1 Lac- 2
- (ii) 1 to 3 Lacs- 3
- (iii) 3 to 5 Lacs- 5
- (iv) 6 to 10 Lacs- 5
- (v) 10 to 30 lacs- 5
- (vi) Greater than 30 lacs- 5

I observe that the same score was assigned to all income ranges above Rs 3 lakh.

(c) From the risk profiling questionnaire of one of the clients, Mr. Yarabolu Venkat, I observe that the questionnaire did not contain the question in respect of risk appetite. Therefore, I observe that the assessment of risk profile by CapitalVia was based on only 2 factors i.e. Investment of customer, Age group and the same was not adequate.

(d) I also observe that the same product was offered and sold to one of its clients, Shahina Parveen Herial, multiple times for almost same duration irrespective of the risk profile of the client.

(e) I observe from Risk Profiling Methodology that no client could avail the advisory services for 'low risk' category as the scores were assigned in such a manner that considering minimum scores for all the factors the average was coming to be more than '2'.

(f) I further observe in respect of RPM that Noticee 1 had sold multiple packages such as HNI, Stock futures, Nifty futures etc. to a single client on the basis of different investment amount submitted in the risk profiling questionnaire.

24. Therefore, I observe that the process employed by Noticee for risk profiling subsequent to SEBI inspection conducted in 2015, was without any rational and scientific basis and that there were serious defects in the RPM deployed by Noticee 1, i.e., it was not adequate for the assessment of risk profile of its clients.
25. I note from the records of inspection that vide its letter to SEBI dated June 19, 2018 and its email dated February 20, 2019, Noticee 1 had claimed to have revamped the entire risk profiling methodology. In this regard, I have perused the screenshots of the pertinent sections of the website of CapitalVia which provide the method of subscription to CapitalVia's services. The aforesaid screenshots are provided as under:

The image displays two screenshots of the CapitalVia website interface. The top screenshot shows the 'Personal Details' and 'Payment Options' sections. The 'Personal Details' section includes a 'Make Payment' button. The 'Payment Options' section lists various payment methods: PayuMoney, paytm, BillDesk, EBS, and CC Avenue. The 'Order Summary' section shows the 'Stock Cash - Monthly' plan with a 'Have a Promo Code?' field, 'Amount' of ₹ 5000, 'GST @ 18%' of ₹ 900, and a total 'Amount Payable' of ₹ 5900. The bottom screenshot shows the 'Personal Details' section with input fields for 'First Name', 'Middle Name', 'Last Name/Surname', 'PAN NO.', 'DOB', 'Mobile', 'Email', 'Product', and 'Amount'. A captcha 'cryzj5' is displayed, and a 'Continue' button is visible. The 'Order Summary' section on the right shows the same 'Stock Cash - Monthly' plan details, including the 'Amount Payable' of ₹ 5900 and a QR code for payment.

Personal Details

Payment Options

PayUmoney PayuMoney

paytm Paytm

BillDesk Bill Desk

EBS EBS

CCavenue CCavenue

Credit Card

Debit Card

NET Banking

Cash Card

Name on the card

Expiry

Month Year

123 CW

Make Payment

26. I note from the aforesaid screenshots, that CapitalVia's website was designed in such a manner that any person could directly buy any product that is being offered by Noticee 1 through its website-www.capitalvia.com, without due assessment of his risk profile by Noticee 1. Thus, I observe that any client could avail the advisory services of CapitalVia by paying a subscription amount via its website without undergoing the process of risk profiling. Thus, I find that Noticee 1 was onboarding new clients without conducting the process of prior risk profiling.
27. In terms of Regulations 16 and 17 of IA Regulations, CapitalVia was required to conduct Risk Profiling of clients before providing them investment advice by deploying a reliable RPM which adequately captures and analyses the information provided by clients w.r.t. age, investment objectives, income details, risk appetite, borrowing details etc. in order to form an accurate client risk profile and conduct an independent assessment of suitability of its advice to its clients on the basis of an accurate client risk profile.
28. As noted above, the RPM deployed by Noticee 1 was without any rational and scientific basis and there were serious defects in the same. Therefore, I find that Noticee 1 failed to conduct adequate risk profiling of clients in accordance with Regulation 16 of IA Regulations. As observed herein, Noticee 1 sold its investment products and provided investment advice to its clients, without obtaining full details pertaining to risk profile and in some cases, clients directly subscribed to its services. I note from the aforesaid records that Noticee 1 gave recommendations to its clients in respect of high-risk complex

products such as BTST/STBT Futures and Commodity Pack, without conducting assessment of suitability of its advice to its clients. Therefore, I find that due to its inadequate RPM as well defects in its processes, Noticee 1 failed to carry out proper assessment of the suitability of its investment advice and so the subscription of CapitalVia's investment advisory services by its clients was not based on a reasonable assessment that the structure and risk reward profile of its products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss, as mandated in terms of Regulation 17 of IA Regulations.

29. In this regard, Noticees 1-4 have contended in their reply that the KYC processes and risk profiling was always done with respect to its clients and any person could not subscribe to its services by merely paying via the payment gateway as was alleged. Noticees 1-4 have also contended that the risk profiling of the customer was based on different factors and not only investment amount. Noticees 1-4 have contended that the payment gateway was merely an online payment mechanism and has nothing to do with client on-boarding process. However, as observed above, any client could avail the advisory services of CapitalVia by paying a subscription amount via its website without undergoing the process of risk profiling by paying a subscription amount on CapitalVia's website. I am of the view that risk profiling, if any, done after the subscription fees were paid via the website of Noticee 1 was not being done adequately and such post-facto risk profiling was merely a sham which only paid a lip service to the regulatory requirements stipulated under Regulation 16 and Regulation 17 of IA Regulations. Therefore, I am not inclined to accept the aforesaid contentions.
30. Thus, I find that the allegation that Noticee 1 along with its directors, i.e., Noticees 2 to 4 have violated Regulations 16(c) and 17 of IA Regulations, stands established.
31. It has also been alleged in the SCN that Noticees had charged excess fees which were not fair and reasonable and thereby violated Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations.
32. As per Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations, "*An investment adviser advising a client may charge fees, subject to*

any ceiling as may be specified by the Board if any. The Investment Adviser shall ensure that fees charged to the clients is fair and reasonable.”

33. In this regard, I note from the records of inspection, including complaints from investors, that during the term of subscription of the advisory services, Noticee 1 charged advisory fees in the range of Rs. 5,03,500 to 31,90,000 from the 49 clients, chosen as sample during inspection, for the period from August 2015 to August 2017. I observe that CapitalVia had charged the aforesaid fees towards advisory services under different packages such as Stock Cash product, Commodity pack, BTST/STBT Futures etc. I have perused the details of fees charged for CapitalVia's services as shown on its website. I also note from records of inspection that Noticee 1 had charged excessive fees from clients by selling high risk products/services such as “Options- Call and Put”, “Nifty Options Pack” and “Stock Future Plus” to clients who were willing to assume moderate risk. Thus, I observe from the aforesaid details that CapitalVia did not have a fee structure based on transparent and well-defined parameters covering the intended investment amount and risk profile of clients as well as accuracy of its advice. I, therefore, find that CapitalVia did not have a consistent, reasonable or rational fee structure.
34. In this regard, from the records of inspection, I note that Noticee 1 vide its letter submitted to SEBI dated June 19, 2018 during inspection, accepted that aforesaid fees were charged by Noticee 1 from the said 49 clients. I also note from records of inspection that there were multiple SCORES complaints in respect of the aforesaid fees charged by CapitalVia. As an instance, I note that one of the SCORES complainants alleged that CapitalVia charged a fee of Rs. 25,00,000/- for their services rendered wherein they promised an assured return of 10%. I observe that similar complaints had been received on the SCORES platform and CapitalVia had to issue refund to certain investors in view of such complaints. The details of complaints on SCORES platform of SEBI in relation to the excessive fees charged by Noticee 1 are as under:

Name of the complainant	Registration number/Date	Status
Madan Mohan Mohta	SEBIE/KN17/0000295/1- 27.02.2017	Disposed
H Shahina Parveen /H Nadeem Ahmed	SEBIE/KN17/0000276/1- 14.05.2017	Disposed
Siddique Ali	SEBIE/KN16/0000564/1-09.12.2016	Disposed

	SEBIE/KN16/0000563/1-08.12.2016	
Pankaj Kumar	SEBIE/KN17/0000176/1- 06.4.2017	Disposed

35. I have also perused records of CapitalVia pertaining to one of the complainants (Client no. ACC57407, Shahina Parveen Herial). From the said records, I observe as follows:

- (i) An advisory fees of Rs. 31,90,000 was collected from the complainant.
- (ii) Irrespective of the investment amount, the client was considered as 'High Risk Category' client at all the times even when the client had invested a lower amount.
- (iii) The details of the services provided to the client are as under:

S. No.	Name of the service	Duration
1.	HNI Research-Equity	30.03.2016-29.04.2016
2.	Stock Future Plus	18.04.2016-17.07.2016
3.	Stock Cash Plus	18.04.2016-17.07.2016
4.	Options-Call and Put	18.04.2016-17.07.2016
5.	Nifty Options Pack	18.04.2016-17.07.2016
6.	Nifty Future tips	18.04.2016-17.07.2016
7.	Premium Stock Tips	18.04.2016-17.07.2016
8.	BTST/ STBT Pack	29.04.2016-28.07.2016
9.	Stock Cash Plus	29.04.2016-28.07.2016
10.	Stock Future Plus	29.04.2016-28.07.2016
11.	HNI Research –Equity	13.05.2016-27.07.2016
12.	HNI Research –Equity	23.05.2016-21.08.2016
13.	HNI Research –Equity	01.06.2016-30.08.2016
14.	HNI Research –Equity	27.06.2016-25.09.2016
15.	HNI Research –Equity	29.08.2016-28.09.2016
16.	HNI Research –Equity	21.09.2016-31.10.2016

36. On perusal of the above-mentioned details, I observe that the same product was sold by CapitalVia multiple times for almost similar duration and multiple products were sold for same duration disregarding the low risk profile of the said client. In their reply, Noticees 1-4 have stated that the fees were based on services offered to the client on the basis of client's risk profile as well as other factors. On perusal of the risk profiling questionnaire furnished by Noticee 1, I note that under the head "Risk assessment", the aforesaid client

was wrongly classified as having a 'high risk appetite' even though she had herself stated in the risk profiling questionnaire that she was willing to accept 'moderate risk'. Therefore, I note that Noticee 1 charged significantly high advisory fees from the said client on the basis of such wrong classification of risk appetite of the client. I, thus, find that the contention put forth by Noticees is not tenable.

37. Noticees 1-4 have further contended that IA Regulations do not prescribe any maximum amount of fees which can be charged from a client and fees charged by them were legally permissible. They have also contended that the fee charged was based on various factors and was charged in the normal course of business and was not excessive. I further note that in its email dated November 15, 2017 during inspection, Noticee 1 had also stated that the fee charged was based on various factors namely, experience of the analyst serving, frequency of involvement, tenure of subscription, number of products subscribed to, standard of service and support expectations of a client and the cost-efforts of operations while serving clients. In the aforesaid letter, Noticee 1 had also stated that the issue of higher fees was raised in the SEBI's Interim Order and that it had well presented the entire logic, mechanism and the rationale, based on which, it charges fees from clients and had stated that it incurred substantial expenditure on skilled manpower and high end technology. However, as observed from the records of inspection, I note that Noticees have not produced any records to justify the fee charged from each client i.e., whether such fees were assessed to be reasonable having regard to the structure and risk reward profile of such products/services, the clients' risk profile, knowledge, investment objectives, risk appetite and capacity for absorbing loss, and CapitalVia also failed to demonstrate how the various parameters, as mentioned by it in its own statement, have been applied while arriving at the different fees charged from the clients.

38. In view of the aforesaid observations, I find that CapitalVia has not been able to demonstrate that aforesaid fees levied by them was fair and reasonable as against the advice rendered in terms of reliability, duration, accuracy and suitability of the advice and was based on certain defined criteria. This is also validated by the complaints received against CapitalVia on the SCORES platform and the fact that Noticees' justification for its fee structure was rejected by the Hon'ble WTM in SEBI Order 1 as well as in SEBI Order 2. Based on the foregoing observations, I find that CapitalVia had arbitrarily charged excessive fees from clients in relation to its advisory services without having regard to the

intended investment amount, investment objectives and risk appetite and risk profile of its clients.

13. Therefore, I find that the allegation that Noticee 1 along with its directors, i.e., Noticees 2 to 4 have violated Clause 6 of the Code of Conduct specified under Schedule III of IA Regulations, stands established.

Issue No. II- Do the violations, if any, attract a monetary penalty under Section 15HB of SEBI Act?

14. It has been established in the foregoing paragraphs that the Noticees 1-4 have violated have violated Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct under Schedule III of IA Regulations and have violated directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."*
15. Therefore, in view of the foregoing findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations of Regulations 15(3), 16(c), 17 of IA Regulations and Clause 6 of the Code of Conduct under Schedule III of IA Regulations and directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017, will attract monetary penalty under Section 15HB of SEBI Act. The respective provisions as applicable at the time of the violations are reproduced as under:

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.*

Issue No. III - What should be the quantum of monetary penalty?

16. While determining the quantum of penalty under Section 15HB of SEBI Act, it is important to consider the factors as stipulated in Section 15J of SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J - *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

17. In the present matter, it is noted from available records that Noticees had collected Rs. Rs. 2,08,66,490 from 625 clients by charging them exorbitant fees for investment products/services without adequate disclosures and adequate risk profiling of such clients, as well as without assessing whether the structure and risk reward profile of such products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Thus, Noticees had subjected their clients to extraordinary financial risks without any knowledge of such risks on their part, while charging them exorbitant fees and without complying with basic requirements of IA Regulations. Therefore, I find that Noticees had acted with blatant disregard for the interest of their clients and made a disproportionate gain by exposing their uninformed clients to the risk of financial peril. I am of the view that the aforesaid amount of money collected as fees by the Noticees from their clients was tantamount to disproportionate gain or unfair advantage obtained by Noticees, even though the material available on record does not sufficiently quantify the amount of loss caused to investors as a result of the aforementioned violations by Noticees. As regards the repetitive nature of the default, I do not find the inspection having brought on record any regulatory action taken by SEBI in past against Noticees for the same violations as those observed in the instant inspection.

18. It has been established that Noticees had violated the provisions of IA Regulations and

directions contained in SEBI Orders dated November 11, 2016 and January 20, 2017. As a SEBI registered investment adviser, Noticee 1 along with its directors, Noticees 2 to 4, were under a statutory obligation to abide by the provisions of IA Regulations and act honestly and fairly in the best interests of their clients, which they had deliberately failed to do. Thus, I find that such blatant disregard for the directions of SEBI and the provisions of law governing the functioning of Investment Advisers, as displayed by Noticees, calls for a stiff penalty which would act as a deterrent.

ORDER

19. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the maximum penalty of Rs. 50,00,000 (Rupees Fifty lakhs Only), jointly and severally, on Noticees under Section 15HB of SEBI Act for the aforementioned violations.
20. Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, said Noticees may contact the support at portalhelp@sebi.gov.in.
21. The Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in the table below which should be sent to "The Division Chief, EFD – DRA - 4, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	
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22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of SEBI Act for the realisation of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

PLACE: Mumbai

DATE: November 22, 2022

SOMA MAJUMDER

ADJUDICATING OFFICER