

WTM/AB/WRO/WRO/16351/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

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:

Sr. No.	Name of the Intermediary	Registration Number	PAN
1.	M/s. Zoid Research (Prop. Tabrez Khan)	INA000001282	BBQPK0436A

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1. The Securities and Exchange Board of India (hereinafter, referred to as “**SEBI**”) received large number of complaints against Zoid Research and its proprietor Mr. Tabrez Khan (hereinafter referred to as “**the Noticee**”). The Noticee is registered as an Investment Adviser (Registration no. INA000001282) under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the “**IA Regulations**”) with effect from March 20, 2014. It has its registered office at 202, Mangal City Mall, Plot No. A-1 PU 4, Commercial Scheme 54, Opposite Vijay Nagar Police Thana, Vijay Nagar, AB Road, Indore – 452010. The website address of the Noticee is www.zoidresearch.com. The complainants *inter alia* alleged that the Noticee had assured them of guaranteed return from the investments made on its advice, charged them exorbitant and progressively increasing fees, misrepresented about its employees while soliciting payments from them and non-redressal of the grievances.
 2. SEBI examined the complaints and documents made available by them and also recorded statement of the proprietor of the Noticee and one of its employees. Based on the material obtained, a *prima facie* conclusion was drawn to the effect

that the Noticee was in violation of various clauses of the Code of Conduct specified under the IA Regulations as well as several other provisions of the IA Regulations and the relevant Circular of SEBI on non- redressal of investor grievances. Subsequently, on February 8, 2019, an *ex-parte* interim order (“**Interim Order**”) was passed by SEBI under Section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) with the following directions:

Quote

- a) *Mr. Tabrez Khan/ Zoid Research is restrained from buying, selling or dealing in the securities market or associating himself/ itself with securities market, either directly or indirectly, in any manner whatsoever, till further directions.*
- b) *Mr. Tabrez Khan/ Zoid Research and any other employee/person working under him/it in his/its investment advisory activity shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.*
- c) *Mr. Tabrez Khan is directed to provide a full inventory of all assets held in his name or in the name of Zoid Research, 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.*
- d) *Mr. Tabrez Khan is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets, held in his name or in the name of Zoid Research, including money lying in bank accounts except with the prior permission of SEBI.*
- e) *The depositories are directed to ensure that till further directions no debits are made in the demat accounts, of Mr. Tabrez Khan/ Zoid Research held jointly or severally.*
- f) *The banks are directed to ensure that till further directions, no debits are made in the bank accounts held by Mr. Tabrez Khan/ Zoid Research jointly or severally.*
- g) *The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of Mr. Tabrez Khan / Zoid Research, jointly or severally, are not transferred.*

Unquote

3. Being aggrieved by the aforesaid directions in the Interim Order, the Noticee preferred an Appeal no. 50 of 2019 before the Securities Appellate Tribunal, Mumbai (hereinafter referred to as “**Honble SAT**”). While dismissing the Appeal

no. 50 of 2019, Hon'ble SAT vide its order dated February 20, 2019, directed as under:

Quote

1. *After hearing the learned counsel for the parties, we find that the present appeal has been filed against the ex-parte ad interim order dated February 08, 2019. In our opinion, the appropriate approach would be to file an objection as directed by the Whole Time Member ("WTM") of Securities and Exchange Board of India ("SEBI") in the impugned ex-parte interim order. Considering the urgency pointed out by the learned counsel for the appellant that the entire business of the appellant would come to a halt, we dispose of the appeal with the following directions:*

- 1) *The appellant will file the objections, if any, before the WTM of SEBI within 48 hours.*
- 2) *The objections along with an application for vacating the ex-parte interim order for stay be filed before the WTM.*

If such an application is filed, the WTM of SEBI, after providing an opportunity of hearing, will decide the matter within a week thereafter.

Unquote

4. I note that in accordance with the directions of Hon'ble SAT, the Noticee filed its reply on merits raising objections to the directions contained in the Interim Order and also filed an application for stay. After providing an opportunity of personal hearing and upon consideration of the submissions of the Noticee, vide its order dated March 01, 2019, SEBI dismissed the 'application for stay' which was filed by the Noticee, without granting any relief to the Noticee. Subsequently, after providing further opportunity of hearing to the Noticee, vide a confirmatory order dated October 25, 2019, the directions contained in the Interim Order were confirmed by SEBI, *qua* the Noticee. I note that, thereafter, adjudication proceedings under Chapter VIA of the SEBI Act, 1992 and Enquiry Proceedings under Section 12(3) of the SEBI Act, 1992, came to be initiated by SEBI. Vide an order dated November 27, 2020, the Adjudicating Officer, SEBI, imposed a penalty of Rs. 8,00,000/- upon the Noticee for the violation of the provisions of Regulations 7(2), 15(9), 16 and 21 of IA Regulations read with SEBI Circular dated December 18, 2015 (bearing no. CIR/OIAE/1/2014) and Clauses 1, 2, 3, 5 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations.

5. I note that the present proceedings are the outcome of a simultaneous separate enforcement action, that has been initiated by SEBI, qua the Noticee. As stated in the preceding para, SEBI had initiated actions under Chapter VIA and Section 12(3) of the SEBI Act, 1992, against the Noticee. I note that the Adjudication order dated November 27, 2020 was the result of the action under Chapter VIA and the present proceedings are the result of action under Section 12(3) (Chapter V) of the SEBI Act, 1992. SEBI had appointed the Designated Authority (hereinafter referred to as “**DA**”) under Regulation 24 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”), to hold an enquiry into the alleged violations of Regulations 7(2), 15(9), 16 and Clauses 1, 2, 3, 5 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations, by the Noticee. I note that the DA issued a show cause notice dated November 18, 2020 to the Noticee, calling it to explain why action for cancellation of certificate of registration or any other action, should not be recommended against the Noticee. After considering the submissions of the Noticee, DA in his Enquiry Report dated December 28, 2020 (hereinafter referred to as “**Enquiry Report**”), recommended cancellation of certificate of registration of the Noticee as an Investment Advisor.
6. Thereafter, a show cause notice dated January 20, 2021 (hereinafter referred to as “**SCN**”), came to be issued to the Noticee, calling upon to show cause as to why action as recommended by DA in its Enquiry Report or any other action including passing of appropriate directions as deemed fit, should not be taken against him.
7. I note that the Noticee filed a reply dated February 8, 2021 to the SCN. Subsequently, the Noticee was granted an opportunity of personal hearing on May 12, 2021, however, the Noticee sought an adjournment on the ground of prevailing pandemic. Another opportunity of personal hearing was granted to the Noticee on November 24, 2021. The authorized representative appearing on behalf of the Noticee was heard on the scheduled day.
8. The Noticee has raised a preliminary objection with respect to the maintainability of the SCN. It is case of the Noticee that the proceedings initiated by the present SCN are barred by the principal of law laid down by the Latin maxim “*Nemo debet bis vexari (pro una et eadem causa)*” and also barred by the doctrine of *res judicata*

as provided under Section 11 of Code of Civil Procedure, 1908. In this regard, attention is drawn to the narration of facts at para 4 and 5, above. As stated therein, the proceedings under Chapter VIA and Section 12(3) of the SEBI Act, 1992, though may be initiated on the same set of facts and against the same entity but the purpose, process and outcome of both the proceedings are distinct. While the proceedings under Chapter VIA results into imposition of monetary penalties on the violators of securities law whereas the proceedings under Section 12(3) are the disciplinary proceedings which are undertaken against a registered intermediary whereby if the conduct of the registered intermediary is found to be blameworthy then action of suspension or cancellation of certificate of registration of such intermediary results.

9. In view of the aforesaid discussion, I note that the purpose and object of the both the proceedings i.e. proceedings under Chapter VIA and proceedings under under Section 12(3) of the SEBI Act, 1992, are distinct and thus, the principle emanating from the maxim “Nemo debet bis vexari (pro una et eadem causa)”, is not applicable to the facts of the present case. I also would like to mention the observations of the Hon’ble SAT in the matter of *Sunita Gupta Vs SEBI* decided on September 19, 2019 (Appeal No. 269 of 2018), wherein Hon’ble SAT has unequivocally held that:

“it is well established now that SEBI is empowered to initiate multiple proceedings in the same matter”.

10. Therefore, issuing two different Show Cause Notices for the same cause of action in two different proceedings (in Adjudication proceedings under Chapter VIA of the SEBI Act, 1992 and in Enquiry Proceedings under the SEBI (Intermediaries) Regulations, 2008 read with Section 12(3) of SEBI Act, 1992) is not prohibited under the law.
11. Now I proceed to examine whether the Noticee has violated the provisions of Regulations 7(2), 15(9), 16 and Clauses 1, 2, 3, 5 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations. I note that while furnishing its

reply to the present SCN, the Noticee has not raised any contentions on merit, in fact, the Noticee has only raised the preliminary objection to the SCN, which has been dealt in the preceding paragraph. I also note that while replying to the show cause notice issued by the Designated Authority, the Noticee had similarly failed to reply on merit, but the Designated Authority, out of regard to the principles of equity and justice, and considering the fact that the cause of action being the same, has considered the reply filed by the Noticee in the Adjudication proceedings as the 'deemed reply' in the enquiry before him. I note that the Noticee has not raised any objection with regard to the consideration of this 'deemed reply' by the Designated Authority.

12. The allegations against the Noticee can be classified under the following heads:

12.1. Promising assured/ guaranteed returns to its clients:

12.1.1. I note that with regard to this allegation the Enquiry Report has observed the following:

"I note that in the agreements signed between the client and the Noticee, it has been expressly stated that for a certain service charge, the Noticee is supposed to provide services to the client for a "particular return". I also find that in various communications with its clients, the Noticee has used terms such as "IDP Commitment Plan", "total commitment profit", "committed profit slab", "profit commitment plan", etc.

The Noticee had submitted during the adjudication proceedings that it has never made any assurance of profit to anyone. It had submitted that for the one-time service charge, it will continue to render investment advisory services to the client till such time period that the "particular return" is achieved. The Noticee had admitted that the service provided by it will lapse once the "particular return", as stated in the agreement, is attained by the client.

I find that this interpretation of the Noticee with respect to "*particular return*" is not acceptable. The Noticee has contended that it does not assure a "particular return" to its investors. Instead it is committing to its clients that it will continue to provide investment advisory services to its clients till the time the "particular return" is achieved. The Noticee, being a registered SEBI intermediary, is well aware of the fact that all investments in the stock market are subject to market risk and a particular return, or for that matter, any form of return on an investment cannot be guaranteed, no matter how long the period for which the investment is held or advice on that investment is offered to the client. The Noticee had further submitted that:

There are some conditions made by party 1 to reduce market risk, which party 2 has to follow for getting particular return from the market.

- Trade on all given calls by company through text message, for our institutional pack.
- Manage proper Target and Stop loss level given by our research team.
- Follow all the instruction given by our executive during the service.

- Go through all below instruction, guidelines and T&C to minimize your risk from market."

From the aforementioned excerpt of the submissions of the Noticee it appears yet again that a "particular return" is being assured if the client of the Noticee follows the "conditions" as reproduced above. Therefore, the Noticee through the use of such terms/ clauses, is committing to the client that (i) he/ she will achieve the particular return mentioned in the agreement by acting on the investment advice provided and following the "conditions" stated above in the excerpt and (ii) the investment advice will be provided till the time such particular return has been achieved. I find that the commitment to the client that the service offered will continue till the "particular return" is achieved actually amounts to offering an assured/ guaranteed return and is a conscious concealment of the fact that **any** return on an investment cannot be guaranteed as all investments in the securities market are subject to market risk. There could be unpredictable market scenarios which could not have been foreseeable at the time of the Noticee entering into the purported agreements with its clients. Therefore, any intermediary, committing to deliver a "particular return" to the investors, is unacceptable. The Noticee submits that it has mentioned about "risk factors" associated with the investments at some other part of the agreement. The said disclaimer does not negate the fact that the Noticee has offered its services to its clients on the basis of assured profit/ returns as is evident from the nomenclature and content of various "investment schemes" offered by the Noticee as already detailed above and the Noticee's own written submissions, relevant excerpt wherefrom has also been reproduced."

12.1.2. I agree with the aforesaid finding of the Enquiry Report. From the copy of the Client Service Agreement, which was attached as Annexure to the show cause notice issued by the Designated Authority, I find that the Noticee had promised to provide a 'particular return' if certain conditions were met by the client investor. I note that all investments in the stock market are subject to market risk and a particular return, or for that matter, any form of return on an investment cannot be guaranteed, no matter how long the period for which the investment is held or advice on that investment is offered to the client. I note that such promise of 'particular return' by the Noticee was nothing but an 'assurance' to the client that certain returns are guaranteed if certain conditions are complied with. In view of the above, I find that the Noticee has violated the provision of Clauses 1, 2 and 5 of the Code of Conduct prescribed under Third Schedule of IA Regulations r/w. Regulation 15(9) of the IA Regulations.

12.2. Extracting money from the clients/ investors:

12.2.1. I note that with regard to this allegation the Enquiry Report has observed the following:

The Noticee had denied that it charged any extra fees on account of server fee, file handling fee, etc., from any client and that it had a standard pricing policy. It had also denied that deadlines for making payments are so stringent that most clients were unable to meet them and that the clients were enticed to take new package by claiming higher profit in new package. As per the Noticee, the charges and upgradation of plans were informed to the client in advance before asking for money and before switching plans. The plan was purportedly switched and payment of further service charges are made only with the wish, consent and knowledge of the client. In this regard, I note that the charge of extorting extra fees from the clients under different pretext not disclosed initially, was levelled in the SCN along with a sample copy of communications between the Noticee and one of its clients. It is imperative to note that the Noticee did not make any specific comment on the said communication, had not refuted the contents of the said communication apart from making a general and vague denial during the adjudication proceedings. Further, clients were being forced to opt for higher service packages involving greater service charges and investment plans involving greater risk without having regard to the risk profile of such clients. The Noticee had nowhere disowned the said sample email communications or any part thereof, annexed to the SCN wherein it could be clearly seen that progressively higher fees were being demanded by the Noticee from one of its clients for upgradation to a higher plan/package of investment and/or under different pretext, which had clearly not been disclosed to the client earlier. Therefore, I observe the said allegation to be true. The dealing of Zoid Research with its clients by luring through assurance of attractive returns, almost forceful upgradation to "higher packages" without carrying out mandatory risk profiling of such clients and forced payments does not befit the role of an IA.

With respect to a sample case of extracting monies from one of its clients, as alleged in the SCN, the Noticee had submitted during the adjudication proceedings as reproduced herein below:

"That the incidence has happened in isolation and taking such an incident as modus operandi will be unjust as the matter has already been resolved and as per the sms delivery report client has made the profits that were committed."

Yet again, it is seen that instead of offering specific comments upon the detailed correspondence between the Noticee and the concerned client wherein higher sums of money were being extracted under different pretexts, the Noticee casually referred to it as *"That the incidence has happened in isolation"* and submitted that the said client had earned some profit, in his defence.

The fact that the Noticee had "resolved" these issues with its clients at some point in time does not change the fact that the conduct of the Noticee as elaborated above, is violative of the provisions of IA Regulations and the Code of Conduct framed thereunder. Such violations cannot be condoned even if the concerned intermediary somehow 'settles' the issue with his client, as any violation of the SEBI Act or any Regulations framed thereunder, are offences *in rem* and not *in personam* as such violations are an attack on the integrity of the securities market as a whole and not a mere *inter se* dispute between two individuals. Also, whether a client has earned profit or suffered losses cannot have any effect on the question of violation of a statutory provision. Submissions of the Noticee in these lines (that the concerned client did earn profit after some time) are wholly irrelevant for the present adjudication.

12.2.2. I note that the Enquiry Report has elucidated the following two *Modus Operandi* that are allegedly adopted by the Noticee to extract money from his clients.

(i) **Modus Operandi 1**

The clients are taken on-board by the Noticee even if partial payment of service fee is received. Strict deadlines are put on the client for remaining payment. In case of delay in payment, the clients are told that they will not be entitled to receive service for his subscribed package. Thereafter, within short while, the clients are informed that the package that they have subscribed has limited seats/slots available and pressure is put on them to pay the remaining amount within the deadline otherwise they may not be entitled to continue with their package. Once the investor makes the remaining payment, he is informed that their package is fully subscribed and no more subscription is available. So, a new package with higher service fee is then offered. The timeline for making payment is so stringent that most of the clients are unable to meet the deadlines. As a result, when the client comes back with the remaining amount they are informed that the said package/slot is not available but new upgraded package is available but with higher service fee and he can pay that in instalments. The clients are enticed to take new package by claiming higher profit commitment in new package. Again the same tactics is applied by putting pressure on the client to pay the remaining amount within deadlines and on delay of payment, his package is upgraded without his consent, thereby, charging higher service fee and trapping the client in a vicious cycle. It is alleged that such up-gradation of package (which may involve advising of risky product) is done without carrying out mandatory risk profiling as contained in Regulation 16 of IA Regulations, 2013 again and/or without taking any consent from the client.

(ii) Modus Operandi 2

It is alleged that after making the payment as disclosed on the website, the Noticee has been asking for additional fees such as server fee, file allocation/handling fee, etc. which were not disclosed earlier to the clients while starting the services. This shows that the Noticee had not taken due care and diligence in its dealing with the client.

12.2.3. I note that the Noticee has not raised any contention in this regard while replying to the present SCN. From the Enquiry Report, I find that clients of the Noticee were being forced to opt for higher service packages involving greater service charges and investment plans involving greater risk without having regard to the risk profile of such clients. I also find that, after making the payment as disclosed on the website, the Noticee has been asking for additional fees such as server fee, file allocation/handling fee, etc. which were not disclosed earlier to the clients while starting the services. In view of the above, I find that the Noticee has violated Clause 1 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations r/w. Regulation 15(9) of the IA Regulations.

12.3. Non possession of NISM certificate by the proprietor, Mr. Tabrez Khan:

12.3.1. I note that with regard to this allegation, the Enquiry Report has observed the following:

“18. As already stated in the preceding paragraphs, regulation 7(2) of the IA Regulations mandates that Investment Advisers and their associated persons, including their partners and representatives, shall obtain Level 1 and 2 of the NISM Investment Adviser Certification.

I find that the proprietor, Mr. Tabrez Khan, in his reply filed during the adjudication proceedings, had accepted that for the period April 4, 2018 till July 14, 2018, he did not have the requisite NISM Level 2 certification, which is required under the Regulation 7(2) of the IA Regulations. He had submitted that he was unable to renew his Level 2 certification due to health issues. He also contented that he himself was not offering the advice or communicating with all the clients. Mr. Shailesh Barmaiya, Superintendent Research Analysis, who held required qualification of NISM Level 1 & 2 was offering services of research analysis for the said period. I do not agree with his contention that this requirement is not relevant as he himself was not offering advice or communicating with the clients. Regulation 7(2) is very clear that an individual registered as an Investment Adviser under the IA Regulations shall have, at all times, the relevant certification prescribed by the Board. Hence, as the sole Proprietor of the IA, Mr. Tabrez Khan was bound by the IA Regulations to hold the necessary certifications at all times."

12.3.2. I find that the Noticee has not denied the finding of the Enquiry Report on this count. I note that for the period from April 4, 2018 till July 14, 2018, the Noticee did not possess the requisite NISM Level 2 certification, which is required under Regulation 7(2) of the IA Regulations. I note that Regulation 7(2) is very clear that an individual registered as an Investment Adviser under the IA Regulations shall have, at all times, the relevant certification prescribed by SEBI. I also note that vide the notification No. LAD-NRO/GN/201-14/42/118, dated January 2, 2014, SEBI has prescribed that Investment Advisers and their associated persons, including their partners and representatives, offering investment advice, shall obtain certification from NISM by passing the NISM Series X-B: Investment Adviser (Level 2) Certification Examination. Hence, as the sole proprietor of Zoid Research, Mr. Tabrez Khan was bound by the IA Regulations to hold the necessary certifications at all times which he was not holding. Thus, I find that the Noticee has violated the provision of Regulation 7(2) of IA Regulations.

12.4. Fake names/ identity used by the employees of the Noticee to solicit payment from the clients/investors:

12.4.1. I note that with regard to this allegation, the Enquiry Report has observed the following:

19. The SCN contained an annexure which was a copy of the written statement dated June 26, 2018, of its Compliance Officer, wherein it was stated that the Noticee had communicated names of non-existent employees to a particular client. The Noticee had submitted an affidavit filed by its compliance officer during the adjudication proceedings,

wherein he had stated that the said statement was extracted from him “under coercion”. In this regard, I note that no such stand was taken by the Noticee in the proceedings before the SEBI initiated under section 11B of the SEBI Act, when this specific allegation was also contained in the interim order cum show cause notice of SEBI dated February 8, 2019. In this regard, the following has been recorded in the confirmatory order dated October 25, 2019, passed under section 11B of the SEBI Act:

The interim order mentioned an example wherein, as per the undertaking of its Compliance Officer, the Noticee had communicated names of non-existent employees to a particular client. This communication made to the client pertains to the August 2017 and I observe that it was also provided to the Noticee during the inspection of documents. In its submissions, the Noticee has not disputed the contents of this email and has not offered any explanation on the use of names of non-existent employees except stating that it has more than 100 employees and in case the client forgets the name of the person with whom he/ she communicated, then it is not the fault of the Noticee. If these persons were in fact employed by the Noticee at that point, then the same could have been substantiated by the Noticee by providing evidence of salary credits made to these employees. I find that the Noticee has not provided any such evidence.

It is therefore, observed from the above, that the submissions of the Noticee in two different proceedings pertaining to the same cause of action, are at variance with each other. This per se is indicative of mala fide and the submissions of the Noticee in this regard therefore cannot be accepted.

12.4.2. On the basis of an undertaking dated June 26, 2018 given by Mr. Shahid Khan, Compliance Officer of the Noticee, the Enquiry Report has reached a conclusion that fake names were used by the employees of Zoid Research for interacting with clients and soliciting payments. I note that Mr. Shahid Khan has later retracted from his undertaking by stating that it was taken ‘under coercion’. However, I agree with the findings of the Enquiry Report that the argument that the Compliance Officer was ‘under coercion’ was never raised by the Noticee in the Section 11B proceedings before the WTM - SEBI, which resulted into SEBI order dated October 25, 2019, and it was only raised for the first time in the adjudication proceedings. Thus, the contention taken by the Noticee that the Compliance Officer was ‘under coercion’ is an after thought and the charge of fake names being used by the employees of the Noticee to solicit payment from client / investors, is sustained.

13. I note that, for the aforesaid misdeeds and delinquent conduct of the Noticee, as brought out in para 12 above, the Noticee has been found to have violated provisions of Regulations 7(2), 15(9), 16 and Clauses 1, 2, 3, 5 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations, by the Designated

Authority. An extract of the relevant provisions as were applicable at that relevant time, is as under:

7. Qualification and certification requirement.

(1).....

(2) *An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services-*

(a) *from NISM; or*

(b) *from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:*

Provided that the existing investment advisers seeking registration under these regulations shall ensure that their partners and representatives obtain such certification within two years from the date of commencement of these regulations.

Provided further that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirement.

.....

15. General responsibility.

.....

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

Risk profiling.

16. *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 response 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.*

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

3. Capabilities.

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

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, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

14. I concur with the findings of the Designated Authority that the Noticee has violated the provisions of Regulations 7(2), 15(9), 16 and Clauses 1, 2, 5 and 6 of the Code of Conduct prescribed under Third Schedule of IA Regulations, for the following acts by it:

- 1.1. assuring guaranteed returns to its clients;
- 1.2. not having requisite qualification as per the IA Regulations to carry out the task of an investment advisor;
- 1.3. extracting money from clients through illegitimate means;
- 1.4. misrepresentation made by its employees as to their identities to the clients.

15. I note that the SCN called upon the Noticee to show cause as to why action as deemed appropriate by the competent authority should not be taken against them in terms of Regulation 28 of Intermediaries Regulations. I note that by the amendments made to Intermediaries Regulations on January 21, 2021, Regulation 27 which dealt with recommendations for actions which could be made by Designated Authority in case of default, has been substituted and Regulation 28 which dealt with procedure for action on receipt of the recommendation from Designated Authority, has been omitted and these matters now stand governed by the Regulations 26 and 27, respectively. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in **CIT, Bangalore Vs. Venkateshwara Hatcheries (P) Ltd. and Ors. (1999) 3 SCC 632** wherein it was held as under:

“.....15. As noticed earlier, the omission of Section 2(27) and re-enactment of Section 80JJ was done simultaneously. It is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-

enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date of enforcement of re-enacted provision. Viewed in this background, the effect of re-enacted provision of Section 80JJ was that profit from the business of livestock and poultry which enjoyed total exemption under Section 10(27) of the Act from assessment years 1964-65 to 1975-76 became partially exempt by way of deduction on fulfilment of certain conditions.....”

16. The aforesaid judgment has been quoted with approval by Hon’ble Supreme Court in its subsequent judgment in **Fibre Boards (P) Ltd., Bangalore Vs. CIT, Bangalore (2015) 10 SCC 333**. In the present case, I note that prior to the aforesaid amendment, procedure for conduct of enquiry proceedings before Designated Authority and Designated Member was provided under Regulations 25 to 28 of the Intermediaries Regulations (prior to the amendment) wherein Regulation 25 dealt with issue of SCN by Designated Authority, Regulation 26 dealt with reply of SCN by the Noticee, Regulation 27 dealt with recommendation for actions which could be made by the Designated Authority and Regulation 28 dealt with conduct of proceedings before Designated Member like issue of SCN, hearing and passing of final order. After the amendment, Regulation 25, as substituted deals with holding of enquiry proceedings before Designated Authority, Regulation 26 deals with recommendation for actions which can be made by Designated Authority and Regulation 27 deals with conduct of enquiry proceedings before Designated Member and passing of order by Designated Member. Thus, the proceedings before Designated Member which were earlier governed by the provisions of Regulations 28 are now governed by the provisions of Regulation 27 with certain modifications. Therefore, by virtue of the judgment of Hon’ble Supreme Court in Venkateshwara Hatcheries case (supra), the new Regulation 27 is regarded having force continuously (by virtue of pre-existing Regulation 28) and the modification or changes are to be treated as amendment coming into force with effect from the date of enforcement of new Regulation 27 i.e. January 21, 2021. Accordingly, the present proceedings can be concluded under the amended provisions of the Intermediaries Regulations.

17. I note that, at the time of personal hearing, the counsel for the Noticee had submitted that the Hon’ble High Court of Madhya Pradesh, in its order dated August 12, 2021 in Writ Petition no. 6617 of 2021, has directed respondent – SEBI, not to take any coercive action against the Noticee till the next date of hearing in

the said Writ Petition. I note that in the instant case, SEBI had initiated three proceedings against the Noticee, namely, proceedings under Section 11B(1) of the SEBI Act, 1992 (which may result in debarment of the entity from the securities market), proceedings under Chapter VIA of the SEBI Act, 1992 (which may result in imposition of monetary penalty) and proceedings under Section 12(3) of the SEBI Act, 1992 (which may result in suspension/cancellation of registration certificate). I note that the proceedings under Chapter VIA of the SEBI Act, 1992 have already culminated in the imposition of a penalty of Rs. 8,00,000/- upon the Noticee. However, SEBI has subsequently initiated proceedings under Section 15-I(3) of the SEBI Act, 1992, to consider enhancing the quantum of penalty, if the circumstances of the case, so justify. Upon perusal of the copy of the order of the Hon'ble Madhya Pradesh High Court and the copy of the Writ Petition in the said matter, I find that the said order dated August 12, 2021 was passed by the Hon'ble High Court in connection with the separate and distinct proceedings initiated by SEBI under Section 15-I(3) of the SEBI Act, 1992. I note that, Noticee has filed Writ Petition no. 6617 of 2021 before the Hon'ble Madhya Pradesh High Court after being aggrieved by the show cause notice dated February 24, 2021, that was issued under Section 15-I(3) of the SEBI Act, 1992. The present SCN is issued under Regulation 28 of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 and is not a subject matter of the Writ Petition no. 6617 of 2021. Hence, the contention by the Noticee that no coercive action be taken against him, citing the Hon'ble Madhya Pradesh High Court order in a distinct matter, is not tenable.

18. I note that, since the issuance of the directions in the Interim Order dated February 8, 2019, the Noticee has been restrained from dealing in securities. I also note that, vide the Adjudication Order dated November 27, 2020, the Noticee has been imposed with a penalty of Rs. 8,00,000/-. The Noticee has already paid the penalty amount. SEBI has initiated proceedings under Section 15-I(3) of the SEBI Act, 1992, to consider enhancing the quantum of penalty, if the circumstances of the case, so justify. In view of the facts enumerated above, I am of the opinion that, the suspension of the certificate of registration of the Noticee for a period of three years, may meet the ends of justice.

Direction:

19. Therefore, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, hereby suspend the certificate of registration to act as Investment Adviser, as granted to the Noticee for a period of 3 (three) years.

20. The order comes into force with immediate effect.

21. A copy of this order shall be served on the Noticee.

Sd/-

Date: May 11, 2022

Place: Mumbai

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