

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

**UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,
1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF
INDIA (INTERMEDIARIES) REGULATIONS, 2008**

In respect of:

Sl. No	Name of the Entity	SEBI Registration No.	PAN
1.	Ayushi Chauksey	INA000008075	AVUPC8746J

BACKGROUND

1. Ayushi Chauksey is registered as an Investment Adviser (IA) (hereinafter referred to as **"Noticee"** / **"IA"**) under the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as the **"IA Regulations"**), having SEBI Registration No. INA1000008075, since July 14, 2017. The website of Noticee is <https://www.investmentbulls.com>.
2. An inspection of the Noticee was conducted during the financial year 2018-2019. The focus of the inspection was to ensure compliance with respect to concerned regulations and circulars including investor service/complaints, Know Your Client (KYC) compliance, on-boarding of clients, fees/charges, conditions of grant of registration, risk evaluation and dealing with clients and Anti Money Laundering (AML) guidelines issued from time to time. Accordingly, the inspection was conducted from September 18, 2019 to September 20, 2019. The period of inspection was from April 01, 2018 to March 31, 2019 (hereinafter referred to as

“Inspection Period”). The inspection revealed the violation of various provisions of SEBI (Investment Advisers) Regulations, 2013.

3. The present proceedings originate from the report dated April 19, 2023 (hereinafter referred to as **“DA Report”**), submitted by the Designated Authority (hereinafter referred to as **“DA”**) in terms of Regulation 26 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **“Intermediaries Regulations”**). The DA, based on findings recorded in the said DA Report, had recommended disposing of the proceedings without any adverse action against Ayushi Chauksey.

SHOW CAUSE NOTICE, REPLY AND HEARING:

4. Pursuant to the DA Report, a show cause notice dated May 12, 2023 (hereinafter referred to as **“SCN”**) was issued to the Noticee in accordance with Regulation 27(1) of the Intermediaries Regulations, enclosing a copy of the DA Report dated April 19, 2023. Vide the said SCN, drawing reference to the DA Report, the Noticee was called upon to show cause why any other action in terms of Intermediaries Regulation, as deemed fit by the Designated Member (hereinafter referred to as **“DM”**), should not be taken against it. Since the allegations made in the SCN is based on the conclusion of the DA Report, the reference to DA Report and SCN are used interchangeably in this Order. Further, it may be noted that the reference of DA report and SCN at various places in this order is one and the same. The allegations in the DA Report in brief are *inter alia* as under:

- 4.1. Failure to comply with requisite qualification and certification requirement;
- 4.2. Failure to describe oneself as ‘Investment Adviser’ in correspondences;
- 4.3. Charging unreasonable fees;
- 4.4. Irregularities with respect to risk profiling of clients;
- 4.5. Failure to comply with suitability norms;
- 4.6. Failure to provide information / documents to SEBI inspection team

5. In view of the above, it was alleged that the Noticee has violated provision of Regulations 7(2), 13(d), 16(a), 16(b), 16(e), 16(f), 17 (a), (b), (c), (d), (e), 24 read with 25(1), (2) and 28 of SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "**IA Regulations**") read with clauses 1, 2, 4, 5, 6 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations and Regulation 3(d) and 4(2)(s) of SEBI (Prohibition of Unfair Trade Practices Regulations), 2003 (hereinafter referred to as the "**PFUTP Regulations**")
6. In response to the SCN, the Noticee filed a detailed reply dated June 22, 2023. In compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee on September 15, 2023 through video conferencing. The Authorized Representative (hereinafter referred to as "**AR**") of the Noticee appeared online before me on September 15, 2023 and reiterated the reply dated June 22, 2023 made by the Noticee. During the course of hearing, the Noticee / AR made following oral submission:
 - 6.1. *"The Noticee charges fixed fee i.e. per product, fee was fixed at Rs.30,000 per individual per month. Depending on the number of products the client availed of, the total fee payable would change.*
 - 6.2. *The Noticee offered discounts depending on the tenure that the clients opted for, as a business incentive."*
7. The summary of reply dated June 22, 2023 is as follows:
 - 7.1. There was no disproportionate gain nor any grave misconduct on the part of IA. All non-compliances were technical in nature and were the result of inadvertent bona fide error. No act whatsoever has been committed by the IA with the intention of causing wrongful gain/disproportionate gain or loss to any of her clients.
 - 7.2. The IA has complied with all the requisite rules and regulations and has been cautious to not repeat any of the violations as noted by the inspection team. Till date only 5 complaints have been received against the IA which were duly resolved by IA.

- 7.3. The Noticee has fully cooperated with the inspecting team. Documents and/or information has been continually supplied by the Noticee to the inspecting team. The Noticee is well intentioned and has not concealed any material information.
- 7.4. The Noticee has carefully considered all the observations made during and after the Inspection and has actively taken steps to rectify the inconsistencies pointed out by the inspecting team in order to put an efficient system in place.
- 7.5. Further, under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, a penalty was imposed, which the Noticee has duly paid.

CONSIDERATION OF ISSUE AND FINDINGS:

8. I have carefully perused the DA Report, SCN, replies submitted by the Noticee and other material available on record. After considering the allegations levelled against the Noticee in the instant matter as brought out in the SCN, the issues which arise for consideration in the present proceedings are as under:
- 8.1. **Issue No. 1: Whether the Noticee has violated the provisions of IA Regulations?**
- 8.2. **Issue No. 2: Whether the Noticee has violated the provisions of PFUTP Regulations?**
- 8.3. **Issue No. 3: If answers to Issue No. 1 or 2 is in the affirmative, then what directions are to be issued against the Noticee under Regulation 26 of Intermediaries Regulations?**
9. Before addressing the issues in this case, it would be appropriate at this stage to refer to the relevant provisions of the laws, which are alleged to have been violated by the Noticee and/or are referred to in the present proceedings. The same are reproduced below for ease of reference:

SEBI (INVESTMENT ADVISERS) REGULATIONS, 2013

Regulation 7: Qualification and certification requirement.

Reg. 7(2): An individual registered as an investment adviser under these regulations and partners and representatives of an investment adviser registered under these regulations offering 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 India or any recognized stock exchange in India provided that 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 requirements.

Regulation 13: Conditions of Certificate

Reg. 13(d): individuals registered as investment adviser shall use the term 'investment adviser' in all their correspondences with their clients.

Regulation 15: General Responsibility

Reg. 15(9) An investment adviser shall abide by Code of Conduct as specified in Third Schedule.

Regulation 16: Risk Profiling

Reg. 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 a 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)...
- (d)...
- (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."*

Regulation 17: Suitability

Reg. 17: Investment adviser shall ensure that:

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

Regulation 24: Notice before inspection:

Reg. 24(3) During the course of an inspection, the investment adviser against whom the inspection is being carried out shall be bound to discharge its obligations as provided in regulation 25.

Regulation 25: Obligation of investment adviser on inspection:

Regulation 25:

- (1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including representative of investment adviser, if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.*
- (2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such cooperation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.*

Regulation 28: Liability for action in case of default.

Reg. 28: An investment adviser who

- (a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;*
- (b) fails to furnish any information relating to its activity as an investment adviser as required by the Board;*
- (c) furnishes to the Board information which is false or misleading in any material particular;*
- (d) does not submit periodic returns or reports as required by the Board;*
- (e) does not co-operate in any enquiry, inspection or investigation conducted by the Board;*
- (f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf,*

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

THIRD SCHEDULE
[under Regulation 15(9)]
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.

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

5. Information to its clients

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

6. Conflicts of interest

An investment adviser shall try to avoid conflicts of interest as far as possible and when they cannot be avoided, it shall ensure that appropriate disclosures are made to the clients and that the clients are fairly treated.

7. Compliance

An investment adviser including its 85[partners, principal officer and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.

8. Responsibility of senior management

The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.

SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation 2003:

Regulation 3: Prohibition of certain dealings in securities:

No person shall directly or indirectly—

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

Regulation 4: Prohibition of manipulative, fraudulent and unfair trade practices:

Reg. 4(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

- (s) mis-selling of securities or services relating to securities market;*

Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by-

- (i) knowingly making a false or misleading statement, or*
- (ii) knowingly concealing or omitting material facts, or*
- (iii) knowingly concealing the associated risk, or*
- (iv) not taking reasonable care to ensure suitability of the securities or service to the buyer;*

SEBI (Intermediaries Regulations), 2008

Regulation 23: Cancellation or suspension of registration and other actions.

Reg. 23. Where any person who has been granted a certificate of registration under the Act or regulations made thereunder, –

- (a) fails to comply with any conditions subject to which a certificate of registration has been granted to him;*
- (b) contravenes any of the provisions of the securities laws or directions, instructions or circulars issued thereunder;*

the Board may, without prejudice to any action under the securities laws or directions, instructions or circulars issued thereunder, by order take such action in the manner provided under these regulations.

Regulation 26: Recommendation of action

Reg. 26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures,—

- (i) disposing of the proceedings without any adverse action;*
- (ii) cancellation of the certificate of registration;*
- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the noticee:*

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

Issue No. 1: Whether the Noticee has violated provisions of the IA Regulations?

10. Failure to comply with requisite qualification and certification requirement:

10.1. As per Regulation 7(2) of IA Regulations, the registered IA must have a certification on financial planning or fund or asset or portfolio management or investment advisory services either from National Institute of Securities Market (NISM) or from any other organization or institution including Financial Planning

Standards Board India or any recognized stock exchange in India, provided that such certification is accredited by NISM. IA is also required to obtain fresh certification before expiry of the validity of the existing certification.

10.2. It was alleged that despite expiry of the Noticee's NISM –Series-X-A: Investment Adviser (Level-1) Certification in July 2018 and NISM-Series-X-B: Investment Adviser (Level 2) Certification in October 2018, the Noticee continued providing investment advisory services. Thus, it was alleged that Noticee has violated provisions of Regulation 7(2) of IA regulations.

10.3. In this regard, Noticee submitted that, initially the Noticee was NISM certified for the period - 2015 to 2018, after which the Noticee was actively engaged in setting up the said business and in its foundational development and was unable to take the exams for the NISM certification. Thereafter, the Noticee applied for the said exam and cleared it. Noticee submitted that the instant mistake shall not be repeated in the future.

10.4. From the documents submitted by the Noticee, I note that Noticee had renewed NISM –Series-X-A: Investment Adviser (Level-1) Certification on August 07, 2021 and NISM-Series-X-B: Investment Adviser (Level 2) Certification on September 13, 2021. I also note that Noticee had not submitted requisite certification of IA for the period July 2018 to September 2021. She has admitted that she has not taken the exams for the NISM certification during the said period. I also note that during the period July 2018 to September 2021, Noticee continued to provide investment advisory services and the same was not denied by the Noticee. Thus, I find that Noticee has violated Regulation 7(2) of IA Regulations.

11. Failure to describe oneself as 'Investment Adviser' in correspondences:

11.1. As per Regulation 13(d) of IA Regulations, an IA shall use the term '*investment adviser*' in all their correspondences with their clients. It was alleged that the Noticee has not used the term 'Investment Adviser' in the correspondences including bulk SMS, Whatsapp messages and emails, with her clients.

- 11.2. In this regard, Noticee submitted that, she had communicated her position to her clients as an “Investment Advisor” through the medium of emails in the introduction paragraph itself. The same could not be done with SMS due to the word limit. With regard to Whatsapp messages, the same were only used as a news broadcasting medium for important data points. The Noticee claim to have initially mentioned the term “Investment Advisor” in her introductory Whatsapp messages.
- 11.3. The Noticee has admittedly not used the term ‘Investment Adviser’ in bulk SMS and Whatsapp messages correspondences. I note that with regard to the claim that the Noticee had initially mentioned the term “Investment Advisor” in her introductory Whatsapp messages, I find that no documentary evidence is support of said claim has been submitted by the Noticee. In any case, I note that Regulation 13(d) of IA Regulations require IA to use the term ‘*investment adviser*’ in each and every correspondence with their clients and not limit the same to introductory messages alone.
- 11.4. With regard to the email communications, Noticee claimed that she had communicated her position as investment adviser in the introduction paragraph itself. In support of the said claim, Noticee submitted a copy of email dated March 27, 2019 sent to the client- Sureshbhai Khimjibahi Jogia. In this email, I note that Noticee did in fact describe herself as an ‘investment adviser’ in the introduction paragraph. However, from the annexures attached to the pre-enquiry SCN dated June 24, 2022, I find that the Noticee had not at all used the term ‘investment adviser’ to describe herself in Noticee’s emails with many other clients.
- 11.5. Clearly, therefore, the Noticee has not complied with the requirement imposed by Regulation 13(d) of IA Regulations.

12. Charging unreasonable fees:

- 12.1. As per Regulation 15(9) of IA Regulations, an IA shall abide by Code of Conduct as specified in Third Schedule of the IA Regulations. As per clause 6 of code of conduct specified in third Schedule of IA Regulations, an investment adviser,

advising a client may charge fair and reasonable fees, subject to any ceiling as may be specified by the Board, if any.

12.2. The DA report considered that the Noticee had been charging unreasonable fees from the clients.

12.3. According to the DA Report, fees charged from the clients of the Noticee vary greatly, without any specific reason. For instance, Madhusudhan paid a fee of Rs.11,50,000 within a span of two months, P. Subramanian paid a fee of Rs.9,00,000 within a span of 3 months and Shri Attanu Pramanic paid fees of Rs. 7,66,250 within a span of 6 months. These amounts appear to have been paid by them for the same service. The details of fees collected from the said three clients are as under:

Table No. 1

Sr. No.	Client Name	Date of Payment / Agreement	Capital Invested (Assets Under Advise) (in Rs.)	Fee collected (in Rs.)	Service Start date	Service End date	Durati on (no. of days)	Details of Scheme opted
1	Madhusudhan	04/10/2018	15,00,000	5,00,000	05/10/2018	09/12/2019	430	Level-3 - Stock Future
2	Madhusudhan	03/10/2018	15,00,000	5,00,000	04/10/2018	08/12/2019	430	Level-3 - Stock Future
3	Madhusudhan	01/10/2018	15,00,000	50,000	02/10/2018	16/11/2018	45	Level-3 - Stock Future
4	Madhusudhan	29/09/2018	15,00,000	50,000	30/09/2018	14/11/2018	45	Level-3 - Stock Future
5	Madhusudhan	08/09/2018	15,00,000	50,000	09/09/2018	24/10/2018	45	Level-3 - Stock Future
6	P.Subramanian Sampreeth Reddy	30/06/2018	11,50,000	80,000	01/07/2018	30/08/2018	60	Level-3 - Commodity
7	P.Subramanian Sampreeth Reddy	12/06/2018	11,50,000	4,70,000	13/06/2018	18/07/2019	400	Level-3 - Commodity
8	P.Subramanian Sampreeth Reddy	30/05/2018	11,50,000	2,50,000	31/05/2018	11/01/2019	225	Level-3 - Commodity
9	P.Subramanian Sampreeth Reddy	10/04/2018	11,50,000	1,00,000	16/04/2018	16/07/2018	91	Level-3 - Stock Future
10	Attanu Pramanic	30/01/2019	20,00,000	2,70,000	05/02/2019	20/09/2019	227	Level-3 - Stock Future
11	Attanu Pramanic	26/11/2018	20,00,000	2,00,000	27/11/2018	27/03/2019	120	Level-3 - Stock Future
12	Attanu Pramanic	10/07/2018	20,00,000	2,96,250	11/07/2018	18/03/2019	250	Level-3 - Stock Future

12.4. I also note that the Noticee had collected fees multiple times from different clients. The details in this regard are as under:

Table No. 2

Name of the clients	Number of times collected	of fee	Total Amount Collected (Rs.)
Mohamaad Arzoo	2		7,50,000
Shyam Sunder Thaney	4		6,71,000
Dinesh Kumar V. S.	8		6,28,380
Pawan Tiwari	9		6,01,000
Samir Patel	2		5,93,250
Ashok Singhaniya	5		5,58,000

- 12.5. Noticee submitted that, initially, the Noticee charged her clients on a fixed fee basis. For certain clients, services were customized as per the requirements of the clients and consequently fees were charged differently, however they were offered discounts as well. Since the inspection, the Noticee has adopted a fixed fee mode as per the prescribed SEBI regulations. The 3 clients highlighted in the observations opted for customized services from the Noticee and hence were charged accordingly based on High risk appetite, request for products, Newsletters and important updates, personalized assistance, Long term services etc.. The Noticee claims to have refunded the complete fees to clients namely Mr. Dinesh VS, Mr. Shyam Sunder and Mr. Pawan Tiwari, as their risk profiles did not match the client investment objective.
- 12.6. From the Table No. 1 above, it is observed that even before the duration of a particular service had expired, additional payments were taken from the client for the same service. For example, on October 03, 2018, client Madhusudhan made payment to the Noticee for “Level-3 Stock Future” service for a duration of 430 days and then on next day itself i.e. on October 04, 2018, another payment has been made to Noticee for the same “Level-3 Stock Future” service for 430 days. Similarly, before the expiry of the tenure of “Level-3 commodity” service for client P.Subramanian Sampreeth Reddy, Noticee received payment on 30/05/2018, for a duration of 225 days. Another payment has been received by the Noticee on 12/06/2018, for the same service for 400 days. Further, it is also observed that, there are instances where the Noticee has sold a service to

the client even before the tenure of the earlier package for different service ended. For e.g., on 30/05/2018, the “Level-3 - Commodity” service was sold to the client, P.Subramanian Sampreeth Reddy, which commenced from 31/05/2018. However, at the same time, the client had already subscribed to the “Level-3 - Stock Future” service which was to end on 16/07/2018.

- 12.7. As per the prescribed Code of Conduct, investment advisers shall ensure that fees charged to the clients are fair and reasonable. Charging of reasonable fees includes not only the quantum of fees to be charged for a particular service but also the mode or manner in which the fees are levied on the clients. From the above observations, it is seen that the Noticee has accumulated a huge amount of service fee from the clients by allotting multiple subscriptions of the same/ different package in a very short span of time. It is also observed that the clients are made to pay for multiple subscriptions to the same package within few days. By virtue of this practice, the client is already locked in to the services offered by having made advance payments for services to be delivered in the future and the Noticee has not discharged its fiduciary responsibility towards its clients.
- 12.8. During the course of the hearing given to the noticee on September 15, 2021, the noticee explained that her fee, per product was fixed at Rs.30,000 per individual per month. Depending on the number of products the client availed of, the total fee payable would change. The noticee also claimed that she offered discounts depending on the tenure that the clients opted for, as a business incentive. While the submissions were not corroborated by documentary proof, the calculations explained by the Noticee do support the amounts charged as alleged in the DA Report. However the question of the reasonableness of the fee charged by the noticee still remains. In order to determine the “reasonableness” of the fee charged by the Investment Adviser, I note that no fixed standard can be devised to term whether the conduct of charging fee answers the test of reasonableness. The IA Regulations provides for the principle based determination of fee by the Investment Adviser indicating that such fees have to be fair and reasonable and the same can be tested as a violation of the Code of Conduct. While determining the

reasonableness of the fee, the same has to be seen from the perspective of various factors such as proportionality, uniformity etc. In the instant case, for the same service, fee has been taken twice for different durations with the durations overlapping. It does not stand to reason why fee for same service is taken for overlapping durations. In my view, such fees, qualify to be called as “unreasonable”. Further, the disproportion of the fee to the declared investment capacity of clients is a matter of concern and suggest unreasonableness.

12.9. From the Table No. 1 above, it is observed the even for one product, the annualized percentage of fee collected from the client Madhusudhan works out to approx. 28%. Similarly for subscribing to one product by P.Subramanian Sampreeth Reddy and one product by Attanu Pramanic, the annualised percentage works out to approx. 42% and 30%, respectively. For clients to make gains on the capital invested, they would need a return of more than the percentages noted above, which are clearly unrealistic.

12.10. I note that SEBI vide Circular dated September 23, 2020 has brought some regulatory changes to ensure that the IA does not charge unreasonable fees by prescribing specific caps for fees; such as (a) under Assets under Advice (AUA) mode, the maximum fees that may be charged, shall not exceed 2.5 percent of AUA per annum per client (including family members) across all services offered by IA; (b) under Fixed fee mode the maximum fees that may be charged, shall not exceed Rs. 1,25,000/- per annum per client (including family member) across all services offered by IA. Further, IA may charge fees in advance not exceeding fees for 2 quarters. In case of pre-mature termination of the IA services, IA shall refund the fees to client for unexpired period. While the SEBI circular mandated a fee of not more than 2.5% of AUA, the annualized percentage computed above is several multiples of the specified limit. This further demonstrates how unreasonable and exorbitant the fee charged by the Noticee was.

12.11. With respect to the Noticees’ claim that she has refunded the complete fees to clients namely Mr. Dinesh VS (Rs. 6,38,380), Mr. Shyam Sunder (Rs.

6,71,000) and Mr. Pawan Tiwari (Rs. 6,01,000), SEBI vide email dated September 18, 2023 and September 20, 2023 had advised Noticee to submit the documentary proof of refund of complete fees to said 3 clients. Noticee vide email dated September 20, 2023 has submitted the documentary evidence in this regard. Upon perusal of said documentary evidence, in respect client Mr. Dinesh VS, I find from the email communication between the Noticee and client Mr. Dinesh VS, that they had mutually agreed for settlement amount Rs. 4,05,000 and the client Mr. Dinesh VS had confirmed that he had received an amount of Rs. 4,05,000 from the Noticee. Further, Noticee has submitted an excel sheet recording the payment of amounts to Mr. Shyam Sunder (Rs. 5,00,000) and Mr. Pawan Tiwari (Rs. 6,15,000) through banking channel and Noticee had also submitted ledger entry in her own books of account. However no independently verifiable document (bank statement, client confirmation of payment receipt etc.) was submitted by the Noticee. Thus, in the absence of sufficient documentary evidence, the said claim of refund cannot be verified. However, even if I were to accept this claim, the fact remains that Noticee did charge fees that were apparently unreasonable, from these clients.

12.12. In view of the above, I find that the Noticee has violated the provisions of Regulation 15(9) read with clause 1, 2 and 6 of Code of Conduct as mentioned under third Schedule of IA Regulations.

13. Irregularities with respect to risk profiling of clients:

13.1. As per Regulation 16 (a) and 16(b) of IA Regulations, IA is required to obtain information about the client which includes age, investment objective, income details, existing investments, risk appetite, liabilities, etc. for the purpose of determination and quantification of risk appetite of the client. As per clause 4 of code of conduct read with Regulations 15(9) of IA Regulations, IA is required to seek information from its clients about their financial situation, investment experience and investment objectives before providing them investment advice / services. As per Regulation 16(e), the IA is under obligation to communicate

the risk profile of the client after risk assessment is done. As per Regulation 16(f) of IA Regulations, the IA is obligated to ensure that the information provided by clients and their risk assessment is updated periodically.

13.2. The SCN alleged that:

- 13.2.1. Noticee did not take into account factors relevant for an informed decision making of the clients such as age, investment objectives of the clients, income details, existing investments/assets, risk appetite, liability details etc, thereby reflecting laxity on the part of the Noticee in assessment of client's risk profile by soliciting incomplete information.
- 13.2.2. The risk profiling questionnaire had a "Submit" button at the bottom, giving the false impression of being electronically filed, but were actually filed physically. There was no client signatures on risk profiling questionnaires.
- 13.2.3. The Noticee did not have a defined process for assessing the risk appetite of the clients and there was no mechanism in place to appropriately allocate weightage to answers after analyzing response of clients.
- 13.2.4. Noticee did not communicate the risk profile to the clients and the same was not being updated periodically.

13.3. Noticee submitted that:

- 13.3.1. The questions such as DOB/age, source of income, presence of dependents, etc. were incorporated by the Noticee. All the points as mentioned by the inspecting authorities as per the regulations were present in the questionnaire except a few, which were immediately added after the suggestions of the inspecting authorities and due amendments were made by the Noticee.
- 13.3.2. The system for risk profiling was earlier in the stage of development due to which the same was done manually by the Noticee. Subsequently, when the website of the Noticee took off, the "Submit" button was provided so that it would automatically redirect the client to the next page displaying the suitability assessment report. However, clients who were facing difficulties in submitting the said form online are requested to take print

outs of the same, fill it manually and email a soft copy of the filled out form to the Noticee. On receiving the above mentioned soft copy, the Noticee emails the suitability assessment report back to the client.

13.3.3. Initially, the weightages for assessing the risk appetite of the clients were allotted by the Noticee manually. Thereafter, the Noticee approached certain organizations who developed relevant software. The process has been completely revamped by, among other things, revising the weightage systems and by introducing an OTP system which enables the suitability report to reach the customer's email immediately after taking the assessment.

13.4. In this regard, from the material available on record, I note that the Noticee, through risk profiling questionnaires, had captured the required parameters for assessing the risk profile of the client such as age, income, investment objective, risk appetite, details of liability among others. However, I note that the said questionnaires submitted during the inspection did not have signatures of the clients. I also note that no supporting documents were kept by the IA regarding the information captured in the questionnaire such as income, existing investments, liability details, etc. I also note that the risk profile questionnaire only had a 'submit' button at the bottom, giving the false impression of being electronically filed, but were actually filed physically, which gives rise to the doubt that the questionnaires were filed by someone other than the client. Thus, I find that neither the risk profiling questionnaire forms contain signatures of the clients nor are there any documents submitted by the clients available on record which suggest that Noticee had actually checked the risk profile of the clients.

13.5. With regard to the allegation of not communicating the risk profile to the clients, the Noticee has submitted that she used to email the suitability assessment report back to the client. However I note that IA has not submitted any document in support of the said claim.

13.6. IA submitted that by incorporating an OTP system, the suitability report reaches the customer's email immediately after taking the assessment. Though no

documentary proof in this regard was submitted before the inspection team, the IA has now submitted the documentary evidence i.e. test email dated July 11, 2022 sent to the test client (Ayushi Chauksey) regarding suitability assessment report which shows that OTP system is now in place. Hence, I note that the Noticee had taken corrective steps. But the fact remains that at the time of inspection, it was not clear that whether the risk profiling form was filled in by the client or someone else as neither was there any signature, nor was it communicated to the client.

13.7. Thus, I find that the Noticee did not have a structured and foolproof process for assessing the risk appetite of the clients thereby adversely affecting the IA's ability to provide customized advice to its clients. Accordingly, I find that the Noticee has violated Regulations 16(a), 16(b), 16(e), and 16(f) of IA Regulations read with clause 1, 2, 4 and 5 of Code of conduct for IA Regulations.

14. Failure to comply with suitability norms:

14.1. As per Regulation 17 of the IA Regulations:

- 14.1.1. IA shall ensure that all investments on which investment advice is provided is appropriate to the risk profile of the client;
- 14.1.2. IA should have documented process for selecting investments for its clients based on their investment objective and financial situation;
- 14.1.3. IA should understand the nature and risks of products or assets selected for clients;
- 14.1.4. IA shall have reasonable basis for believing that a recommendation meets client's investment objective, the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance and the client has the necessary experience and knowledge to understand the risks involved in the transaction; and
- 14.1.5. IA has to ensure that a recommendation given to client is based on reasonable assessment that the risk reward profile of financial product is consistent with client's experience, knowledge, investment objective, risk appetite and capacity for absorbing loss.

14.2. The SCN alleged that:

- 14.2.1. The risk profile questionnaire was revised by the Noticee to attract more number of clients.
- 14.2.2. The Noticee recommended moderate risk profile clients to invest in equities for medium term to long term and high risk clients to invest for short term to long term.
- 14.2.3. The Noticee misrepresented the services by classifying high risk as low risk.
- 14.2.4. The Noticee did not provide segregated information as per the service / package subscribed by the clients regarding the trading tips via bulk SMS or through bulk WhatsApp messages.

14.3. Noticee submitted that:

- 14.3.1. Initially, the draft of risk-profiling questionnaire was based on general theoretical concepts. Later, in order to ease the customer experience, the Noticee adopted the questions as given by an outside agency. The Noticee had no intention to allure any client by changing the risk assessment mechanism. The Noticee herself approached certain organizations who developed relevant software wherein they had predefined questions and weightage allotted.
- 14.3.2. The Noticee agrees that derivatives is a high risk segment and made no attempt to fabricate the risk involved. The level based approach had been incorporated by the Noticee taking into consideration the loss appetite of the client. The following is an example of the product analysis and terms:
 - 14.3.2.1. level 1: loss absorption- approx. Rs 2500, intraday recommendations;
 - 14.3.2.2. level 2 loss absorption approx. Rs 8000 , intraday recommendations;
 - 14.3.2.3. level 3 loss absorption –approx. Rs 12000, intraday & delivery based recommendations
- 14.3.3. After the inspection, the Noticee has gone back to implementing the single product based approach which was initially being followed by her.

14.3.4. The product delivery to the client was done by way of CRM messages. These CRM messages had level wise filters in them based on Level 1, 2 and 3 categorization. On WhatsApp only free news was shared with the subscribers

14.4. From the inspection report as well as the DA report, I note that the risk profiling questionnaire were found to be basic, and inadequate to assess suitability of advice to be provided to the clients. I note that the Noticee has blamed the software company for predefining questions and for allotment of weightage. The software company was engaged by the Noticee as its agent and accordingly, the primary responsibility to comply with the relevant provisions of IA Regulation, continued to rest with the Noticee.

14.5. From the inspection report, I note that clients – Mr. Abdul Gaffar, and Mr. Hemant Pataskar, both were assigned moderate risk profiles. From the risk profiling reports, it is observed that the Noticee has made recommendations to moderate-risk-profile-clients to invest in equities for the medium term to long term. Both Mr. Gaffar and Mr. Pataskar purchased a package/service titled “L3 Future”. The “L3 Future” service provided intraday stock tips and advises clients on their holdings of stock futures. By its very nature, derivatives such as stock futures are considered to be very risky. By selling such services to moderate risk clients, the Noticee has not ensured that all investments on which investment advice is provided by her is appropriate to the risk profile of the client. Thus, I find that the Noticee does not take into account the risk profiles of clients while making investment recommendations.

14.6. From the DA Report, I note that ‘Level 1’ is least risky and is offered to clients with a conservative approach i.e. low risk capacity clients. However, I note that Noticee offered derivative trading even in “Level 1” products. It is further observed that the Noticee categorized trading in derivatives segment as *“the safest and the top mode to obtain accurate benefits in this highly unpredictable stock option market”*. Thus, I find that the Noticee had misrepresented high risk

services as low risk and did not exercise due care while defining or designing her service.

14.7. I note that the Noticee did not provide segregated information in regard to the trading tips sent to the clients via bulk SMS or through bulk WhatsApp messages as per the service / package prescribed by the clients. Noticee also did not provide any document on the basis of which messages recommending buy/sell of certain securities was made to the clients. Therefore, Noticee did not provide any documented process for selecting investments based on client's investment objectives and financial situation.

14.8. From the submission of the Noticee, I note that the Noticee had failed to submit any documentary evidence in support of her claims that Customer Relationship Management (CRM) messages had level wise filters and also failed to explain the criteria of levelling done in CRM. I also note that the Noticee failed to explain with supporting documents/ rationale as to how she maintained the risk reward ratio according to the loss absorption capacity of her clients, when the messages were sent via bulk SMS or through bulk WhatsApp messages.

14.9. From the above, I note that the Noticee did not have a mechanism to ensure that the recommendations made by her either met the client's investment objectives or was such that the client would be able to bear any related investment risks consistent with his/her investment objectives and risk tolerance. Hence, I find that the Noticee had violated Regulation 17 (a), (b), (c), (d) and (e) of IA Regulations and clauses 1, 2 and 8 of Code of Conduct as mentioned in Schedule III read with Regulation 15(9) of IA Regulations.

15. Failure to provide information / documents to SEBI inspection team:

15.1. As per Regulation 24 of IA Regulations, an IA during the course of inspection, is required to discharge its obligations as provided in Regulation 25, which mandates the IA to produce to the inspecting authority any books, accounts and other documents in its custody or control and furnish such statements and information as the inspecting authority may require for the purposes of inspection. It also mandates the IA to extend all such cooperation as is required

and furnish such information as sought by the inspecting authority in connection with the inspection.

15.2. It was alleged that the Noticee failed to cooperate with the inspecting team by not providing the following information/documents

15.2.1. Copy of fees invoice;

15.2.2. List of all employees;

15.2.3. Details of her demat account;

15.2.4. Risk profile of clients and proof of having communicated the same to them;

15.2.5. Rationale for providing buy/sell messages to clients;

15.2.6. Proof of disclosure to clients about her business, investment holdings, conflict of interest, rationale on which investment advise is given;

15.2.7. KYC records and suitability assessment records

15.3. Noticee submitted that, all the documents that were asked for by the inspecting team, were submitted by the Noticee at the time of the inspection and if any document was missed in the process, it was solely due to the unavailability of the same. The Noticee claimed that she faced an unexpected server crash due to which certain documentation was lost. The Noticee claims to have started using a cloud server to save all the documentation in order to avoid any future instance of a system breakdown/crash.

15.4. In this regard, I note that the IA Regulations imposes a strict liability on IA to keep the documents / records for a minimum period on 5 years. It is the responsibility of the Noticee to preserve the data, which the Noticee failed to do. Thus, I find that the Noticee had failed to discharge her obligations as provided in Regulation 25 by not producing all documents to the inspecting authority in connection with the inspection. In view of the above I also find that the Noticee has violated provisions of Regulation 24 read with Regulation 25 (1), (2) and Regulation 28 of IA regulations.

16. With respect to the submission of the Noticee regarding imposition of penalty under Adjudication rules and subsequent payment of the same, I find that the penalty imposed vide adjudication order dated October 21, 2022 is for different sets of violations and not for the violation of the legal provisions or for the cause of action as mentioned in this order.

Issue No. 2: Whether the Noticee has violated the provision of PFUTP Regulations?

17. With regard to the violation of provisions of PFUTP Regulations, I find that for all the aforesaid violations as mentioned in Issue No. 1, DA Report has concluded that Noticee had violated Regulation 3(d) and 4(2)(s) of PFUTP Regulations. In this regard, I find that there was no case made out along with supporting evidence in the DA Report that supports the allegation of fraud. Mere mentioning of the legal provisions of PFUTP Regulations in the DA Report does not aid arriving at any conclusion with respect to the charge of fraud. In view of the above, I find that provisions of the PFUTP Regulations are not applicable in this case.

Issue No. 3: If answers to Issue No. 1 or 2 is in affirmative, then what directions be issued against Noticee under Regulation 26 of Intermediaries Regulations?

18. Investment advisors play an important role in retail and small investor participation in the securities market. For this reason, investment advisors are expected to strictly comply with the provisions of the IA Regulations, both in letter and in spirit. In the instant case, as already concluded in previous paragraphs of this Order, the Noticee has defaulted on various obligations mandated under IA Regulations. The DA has concluded that the violations with respect to risk profiling, suitability assessment and unreasonable fees are technical in nature and that the IA has taken corrective measures with respect to many defaults identified in the inspection report. On these

grounds, the DA has recommended no adverse action against the Noticee. I am of the view that the alleged violation of regulation 13 (d) of the IA Regulations which mandate that an IA must describe themselves as 'Investment Advisers' in correspondences, is a technical violation. However I do not agree that risk profiling, suitability assessment etc. are technical in nature. Infact, they are central to the functions of an IA. So is the need to have professional certification from NISM. at all points in time. With respect to all these violations, as discussed in detail in previous paragraphs of this Order, I note that the Noticee has in fact taken corrective measures. I also note that pending complaints (numbering only five) have been redressed. As regards the reasonableness of the fee the IA was charging, I note that while SEBI regulations did not, at the time, provide any objective cap on the fee that could be charged, the amounts that were charged by the IA should have been less usurious. The new framework for fees as mandated by way of SEBI circular dated September 23, 2020 (*as discussed in previous paragraphs*) has however brought some objectivity in this regard. I have not been informed of any violation of this circular by the Noticee. Taking into consideration all of the above, though I do not agree with the recommendation made by the DA to dispose of the proceedings without any adverse action, I am of the view that the overall conduct of the Noticee does not warrant a major penalty of suspension or cancellation of certificate of registration.

ORDER:

19. In view of the facts and circumstances of the case and the conclusions arrived at discussed above, I, in exercise of powers conferred upon me under Section 12(3) read with Section 19 of the SEBI Act and Regulation 27 of the Intermediaries Regulations, hereby restrain Ayushi Chauksey (SEBI Registration No. INA000008075) from taking up any new assignment or contract i.e. onboarding new clients for a period of one month from the date of this Order.

20. The Noticee shall, after receipt of this order, immediately inform its existing clients about the aforesaid direction.
21. This Order shall come into force with immediate effect.
22. A copy of this Order shall be served on the Noticee and upon all recognized stock exchanges, depositories and BSE Administration and Supervision Ltd. (BASL).

DATE: SEPTEMBER 20, 2023

PLACE: MUMBAI

-Sd-

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA