BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 31081 – 31086]

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

In respect of

S. No.	Name	PAN
1.	CapitalVia Global Research Limited	AADCC5782H
2.	Rohit Gadia	AGXPG1899A
3.	Prem Prakash	AIAPP8261A
4.	Kiran Ravindra Kumar Choudhary	AAEPK1536D
5.	Aaruni Kumar Sharma	FGNPS3315G
6.	Anushika Shukla	HBJPS0767K

In the matter of CapitalVia Global Research Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted inspection of CapitalVia Global Research Limited (hereinafter referred to as "**Noticee 1**") for the period beginning April 01, 2020 to March 31, 2021 (hereinafter also referred to as **"Inspection period / IP**").

2. Pursuant to the inspection, the findings of inspection were communicated to Noticee 1 vide letter dated March 17, 2022 inter alia seeking

comments/explanations on the findings / irregularities/ violations observed during the inspection. Noticee 1 submitted its comments to the findings observed during the Inspection. Based on the analysis of response received and examination in the matter, SEBI observed certain alleged non-compliance to the SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**"), SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (hereinafter referred to as ("**CAPSM Regulations**"), SEBI (Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and SEBI (Research Analysts) Regulations, 2014 (hereinafter referred to as "**RA Regulations**") by Noticee 1, Mr. Rohit Gadia, Managing Director (hereinafter referred to as "**Noticee 2**", Mr. Prem Prakash (hereinafter referred to as "**Noticee 3**"), Mr. Kiran Ravindra Kumar Choudhary, Director (hereinafter referred to as "**Noticee 4**"), Mr. Aaruni Kumar Sharma, Compliance Officer (hereinafter referred to as "**Noticee 5**") and Ms. Anushika Shukla, former Compliance Officer (hereinafter referred to as "**Noticee 6**") (Noticee 1, Noticee 2, Noticee 3, Noticee 4 and Noticee 6 is collectively known as "**Noticees**")

3. The extracts of the violation alleged to have been committed by the Noticees and Noticee 5 and corresponding provision of the securities law are given in the tabulation below:

Sr. No.	**Alleged Violations (summarized)**	**Regulatory provisions**
A	Non compliance with the qualification and certification requirement	Regulation 7(2) r/w Regulation 15(9) r/w Clauses 1, 2, 3, 8 and 9 of Code of conduct specified in Schedule III of the IA Regulations and provisions of Regulation 3(1) of CAPSM Regulations r/w. Notification no. LAD- NRO/GN/13/6109 dated June 19,

Sr. No.	Alleged Violations (summarized)	Regulatory provisions
		2013 and No. LAD-NRO/GN/201-14/42/118 dated January 27, 2014
B	Guaranteed profits / returns to clients	Regulation 15(1) of IA Regulations and Clause 1,2, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations regulation 3, 4(2)(o) and 4(2)(s) of PFUTP Regulations
C	PAIA/representatives entered in to contrary transactions in their own accounts within 15 days of date of advice	Regulation 15(7) and 15(1) of IA Regulations and clauses 1, 2, 3, 8 and 9 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations Regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations
D	Limitations on Trading	Regulation 16(1), 16(2) and regulation 16(3) of RA Regulations read with 2(1)(u), 2(1)(w) and 3(1) of RA Regulations Regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations
E	Observations related to Public appearance of the Investment Adviser	Regulations 21(1), 16(1), 16(2) and 16(3) read with regulations 2(1)(q), 2(1)(r), 3(1) and 21(2) of RA Regulations Regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations
F	Charging unreasonable amount of fees to clients	Regulation 15(1) and regulation 15(9) r/w. clauses 1,2,6,8 and 9 of code of conduct as specified in Schedule III of IA Regulations

Sr. No.	Alleged Violations (summarized)	Regulatory provisions
G	Trying to manipulate the e-sign process of the service agreement	Regulation 15(1) of IA Regulations, 2013 and Clauses 1,2,3,8 and 9 of Code of conduct read with Regulation 15(9) of IA Regulations
H	Risk Profiling	Regulation 15(1), 16(b), 16(c) and 16(d)(ii) of IA Regulations and clauses 1, 2, 3, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations Regulation 16(b) and 16(c) of IA Regulations, 2013 r/w Clauses 1, 2, 3, 8 and 9 of Code of Conduct r/w Regulations 15(9) of IA, Regulations.
I	Suitability	Regulation 17 of IA Regulations r/w Clause 1, 2, 8 and 9 of Code of Conduct r/w regulation 15(9) of IA Regulations Regulation 4(2)(s)(iv) of PFUTP Regulations
J	Disclosure to clients	Regulation 18 (6) of IA Regulations and clause 5 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations Regulation 4(2)(s)(ii) of PFUTP Regulations
K	Indulging in fraudulent trade practice by trying to generate artificial volume	Regulation 15(1) and 15(9) of IA Regulations r/w clauses 1,2,3,8 and 9 as specified in third schedule of IA Regulations
L	Not abiding by the provisions of IA Regulations	Regulations 13(a) of IA Regulations

Sr. No.	Alleged Violations (summarized)	Regulatory provisions
M	Appointment of compliance officer	Regulation of 20 of IA Regulations
N	Responsibility of Senior Management	Regulation 15(9) r/w. clause 9 of Code of conduct specified in Schedule III of IA Regulations

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide order dated July 22, 2024, appointed the undersigned as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of sections 15EB and 15HA of the SEBI Act, the alleged violations committed by Noticees and also Noticee 5.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter being referred to as the "**SCN**") dated August 29, 2024 was issued to Noticees and Noticee 5 in terms rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be initiated against them and why penalty, if any, should not be imposed under sections 15EB and 15HA of SEBI Act on the Noticees and Noticee 5 for the aforesaid violations alleged to have been committed by them.

6. Noticee 5, vide letter dated October 31, 2024 replied to the SCN stating, inter alia, the following:
   - *"It is submitted that during the inspection period, i.e. from April 1, 2020 to March 31, 2021, Noticee 5 was not associated with CapitalVia Global Research Limited ("Company") in any capacity whatsoever. Noticee 5 joined the Company on 16th July 2021, at which point the Company had already received the inspection notice*

and had submitted its detailed response to the Inspection Questionnaire received from SEBI.

- *It is submitted that Noticee 5 was only appointed as Compliance Officer for the Company around the end of August 2021, following the departure of Ms. Anshika Shukla from the Company. It is further submitted that Noticee 5 is neither the current Compliance Officer of the Company nor is any longer associated with the Company.*
- *It is submitted that at the time of joining the Company, Noticee 5 was not aware of the ongoing SEBI inspection. It was only weeks after joining the Noticee 5 became aware of the inspection being undertaken by SEBI, which Noticee 5 considered a routine inspection of intermediaries.*
- *Post appoinement of Compliance Officer, Noticee 5 was still in the process of familiarizing himself with the Company's business, processes and practices and was merely co-ordinating with SEBI officials and facilitating the inspection by gathering historical information with respect to the Inspection Period from the management and various departments of the Company and forwarding it to SEBI.*
- *It is also submitted that, following the departure of Ms. Anshika Shukla (Noticee 6), Noticee 5 was majorly occupied with assisting SEBI in the conduct of the inspection and aiding the Company in responding to the Show Cause Notices issued for prior inspections conducted in 2015 and 2017. During the inspection, the data, information and clarifications with respect to the Inspection Period were sought by SEBI on almost daily basis.*
- *Furthermore, during the period of association with the Company, Noticee 5, along with other senior management, ensured that appropriate policies and practices were implemented to maintain compliance with regulations, circulars, notifications, guidelines, etc., issued by SEBI. Throughout this period, Noticee 5 found the Company's business processes to be in alignment with SEBI laws. It is important to highlight that the Company had a Service Verification Process (SVP) in place, through which all client information – including personal details (such as name, PAN, address, etc.), risk profiling responses provided by the client, service features (such as the required investment amount, mode of delivery and duration of service) and confirmation that no guaranteed returns were promised – was verbally verified*

with the client. The above SVP was in addition to the information which was shared to the client via email and the consent being obtained through email, e-signatures etc.

- *During Noticee 5's period of association with the Company, necessary actions – including terminations and issuance of warning letters – were taken against employees found to have violated company policies. It is respectfully submitted that any violations by employees should not be attributed to Noticee 5 or the Company."*

7. Noticees 1 to 4 and Noticee 6, vide letter dated November 21, 2024 replied to the SCN stating, inter alia, the following:

Alleged non-compliance with the qualification and certification requirements:

PRINCIPAL OFFICER

➢ *These amendments came into effect on September 30, 2020. Accordingly, Noticee No. 3 was appointed as the Principal Officer of Noticee No. 1 with effect from August 1, 2020. The first proviso to Regulation 7, sub-clause 1 provides that Noticee No. 1 had until September 30, 2023 to comply with the prescribed qualification and experience requirements. Further, it is evident from Table 1 of Paragraph 5, sub-paragraph (a)(i) itself that Noticee No. 3 and consequently Noticee No. 1 were in compliance with the requisite certification and qualification requirement even prior to such requirement coming into force i.e., September 30, 2020 and September 30, 2023, respectively. Evidently, Noticee No.1 and Noticee No.3 are in due compliance with the relevant IA Regulations and any observation of violation of qualification and certification requirement by the Principal Officer of Noticee No.1 is denied as being baseless and contrary to Table 1 of the SCN itself.*

PERSONS ASSOCIATED WITH INVESTMENT ADVICE

➢ *It is evident from Annexure A1 and A2 of Reply Email dated December 07, 2021 (Page 16- 22) read with Query no. 14 (page 2) and Annexure 12 of Reply to Inspection Questionnaire dated July 15, 2021 that the enlisted employees did not engage in rendering investment advice from the date of their appointment. Further, all the representatives rendering investment advice had complied with the requisite certification requirement, as prescribed by the IA Regulations [Prior to as well as post the SEBI (IA)(Amendment) Regulations, 2020 coming into effect on September 30, 2020].*

- *Assuming arguendo (without admitting) that the enlisted 19 employees at Table 2 (Pg. No. 4 of 55) of the SCN were engaged in rendering investment advice from the date of their employment, they were still not in violation of Regulation 7(2) of IA Regulations r/w Regulation 3(2) of the SEBI (CAPSM) Regulation. Regulation 3(2) of the SEBI (CAPSM) Regulation provides associated persons of a registered IA with a timeframe of 1 year from the date of their appointment to obtain the requisite certification as specified by SEBI. Evidently from Column 7 of Table 2 of the SCN, all (except Ms. Pratibha Shrotriya, whose NISM XB Certification was overdue by 4 days) the enlisted employees had complied with the certification requirement within 1 year from the date of their employment with Noticee No.1. However, so far as Ms. Pratibha Shrotriya's engagement is concerned, it is submitted that she was appointed as a CSAT Executive on June 18, 2018 and thereafter she was engaged as Research Analyst on July 01, 2019. Hence, it is submitted that in view of Table 2, read with Regulation 3(2) of SEBI (CAPSM) Regulations 2007, r/w SEBI (IA) Regulations, she was already qualified under Regulation 7(2).*

DISCONTINUITY IN COMPLIANCE WITH CERTIFICATION REQUIREMENT BY PAIA

- *It is submitted that prior to the aforesaid Amendment, Regulation 7(2) of the SEBI (IA) Regulations only mandated representatives of Registered Investment Advisers, who offered investment advice to comply with the prescribed certification requirements. It is evident that the 2 employees enlisted in Table 3 of SCN did not render any investment advice in the period in which they did not have the requisite certification.*

- *It is submitted that Mr. Kshitij Purohit, was appointed on March 08, 2018 as a C-SAT Manager, wherein his responsibilities primarily revolved around assessing overall customer satisfaction from the services of Noticee 1 and developing learning and development modules from such insights for training purposes. Subsequently, on October 15, 2019, Mr. Purohit was transferred to the Research Department, whereinafter he was engaged in rendering investment advice.*

- *It is submitted that Mr. Ashis Biswas, was appointed on February 08, 2016 as a C-SAT Executive, wherein his responsibilities primarily involved addressing customers queries, requests, concerns and/or support requests and assessing overall customer satisfaction with the services of Noticee 1. Thereafter, on April 01, 2017, Mr. Biswas was transferred to the Research Department, as the Product Manager. However, due to expiration of his certificates and his inability to renew the same well before time, Mr. Biswas was prohibited from rendering any investment advice in this period. In such a peculiar case, The Noticee No.1 taking into account his years of experience and service decided to re-transfer him to the Quality Support team, as the CSAT Manager, instead of terminating his employment on June 01, 2019.*

- *SEBI (CAPSM) Regulations, 2007 lays down the timeframe within which an associated person employed by an intermediary shall obtain the certification once such a certification requirement has been specified by the Board. Regulation 3, sub-clause 2 specifically provides the timeframe for those associated persons who are employed/engaged by an intermediary on or after the date of Notification issued by the Board specifying the certification requirement. In accordance with Regulation 3, sub-clause 2 of the SEBI (CAPSM) Regulations, 2007, since the enlisted 15 employees have been employed on or after October 2020, thus these enlisted employees had to obtain the certificate within one year from their respective date of employment with the Noticee No.1.*

- *It is submitted that based on the date of appointment (Column 4, Table 4 of the SCN) of the Employees mentioned at S.No. 3, 6,7,8,10,12, 13, 14 and 15, the Employees had time (even beyond the date on which the Inspection Report was received i.e., 17-03-2022) to obtain the necessary certification in accordance with Regulation 3(2) of SEBI (CAPSM), Regulations, 2007.*

- *Further, the employees mentioned at S.No. 1,2,4,5,9 and 11 of Table 4 (Pg. No. 6 of 55) of the SCN had either resigned or left/abandoned their employment with Noticee No.1 well before completing 1 year of their employment.*

- *It is submitted that all the employees enlisted in Table 5 of the SCN, except Mr. Vishwajeet Kumar at S.No.1 (Row 1,3 and 4 of Column 2-SCORES Compliant Number of Table 5 of the SCN), were appointed by Noticee No. 1 before SEBI vide Notification No. SEBI/LAD- NRO/GN/2020/22 dated July 03, 2020, introduced the SEBI (IA)(Amendment) Regulations, 2020. This Notification introduced a new category of associated persons i.e., persons associated with investment advice ('PAIA') who were required to obtain the requisite certification with effect from September 30, 2020. Thus, in accordance with the proviso to Regulation 3(1) of the SEBI (CAPSM) Regulations, 2007, the employees at Sr.No.2 to 8 and Sr. No. 1 (Mr. Vishwajeet Kumar Singh) (Row 2 of Column 2- SCORES Complaint Number of Table 5)had to obtain the requisite certification within 2 years from September 30, 2020 i.e, till September 30, 2022. As is clear from Column 3 of Table 5 of the SCN, all the complaints are received much prior to September 30, 2022. Further, only the employee at S.No.1(Row 2 of Column 2- SCORES Complaint Number of Table 5) was appointed after the aforementioned Notification, thus in accordance with Regulation 3(2) of the SEBI (CAPSM) Regulations, 2007, the employee was mandated to obtain the requisite certification within 1 year from the date of employment by Noticee No.1 i.e., till February 23, 2022. Evidently, the complaints (Column 3-Date of Receipt of Table 5 of the SCN) against him/referring him were also received prior to February 23, 2022.*

- *It is submitted that the Employees had time to obtain the necessary certification in accordance with Regulation 3(1) and 3(2) of SEBI (CAPSM), Regulations, 2007.*

- *Further, it is submitted that in accordance with the Client Facing Roles Policy dated October 27, 2020 of the Noticee No.1, the employees enlisted in Table 5 of the SCN were not eligible to interact with the clients w.e.f April 01, 2021.*

- *It is humbly submitted that introducing certification requirement (IACE-1 and IACE-2) for all employees of the investment adviser with customer/client facing roles, irrespective of the nature of interaction with customers/clients was onerous on its own.*

Alleged Act of providing guaranteed profits/returns to clients:

- *It is submitted that SEBI has erroneously observed that the Noticee No.1 has received a total of 60 complaints on SCORES from April 01, 2020 to January 17, 2022. It is submitted that during the period of 22 months, the Noticee No.1 had received a total of 58 complaints [(28 complaints from April 01, 2020 to March 31, 2021) and (30 complaints from April 01, 2021 to January 17, 2022)] on SCORES, including duplicate concerns by the same clients for the same service and also a complaint, which did not belong to the Noticee No.1. Thus, excluding such concerns, the Noticee No.1 has received a total of 44 complaints/concerns/requests/queries from April 01, 2020 to January 17, 2022.*

- *It is pertinent to note that in the period of 22 months (April 01, 2020 to January 17, 2022), Noticee No.1 had served a total of 17,249 clients [(6,904 clients in FY 2020-21) and (10,345 clients since April 2021 to December 2021)]. Therefore, the total no. of complaints i.e., 58, including the duplicate complaints, is a mere 0.3 percent of the total number of customers served by the Noticee No.1.*

- *With reference to the telephonic conversation referred at paragraph 5, sub paragraph (b) (i) (a) with Mr. Pradeep Valappil, it is humbly submitted that the service proposal discussed in the call in question (Annexure-2 to the SCN, from 11:52 to 13:28 minutes) i.e., Sigma Plus (Service Price: Rs.8,000/-) is not the service i.e., Alpha Equity Options (Service Price: Rs.3,000/-) availed by the said customer. It is submitted that the call in question was made in violation of the Policies adopted by the Noticee No.1, which was duly identified by the call monitoring team of the Quality Assurance Department and hence, the service i.e., Sigma Plus did not fructify for the customer. In addition to this, taking into account the employee's apology, he was issued a stern warning with imposition of monetary penalty to discourage any violation in the future and directions to attend the training sessions on Business Do's and Don'ts conducted by Noticee No.1.*

- *With reference to the telephonic conversation referred at paragraph 5, sub-paragraph (b) (i) (c), it is submitted that the Quality Assurance department had already taken requisite action upon Mr. Animesh Malviya for the deviation that was observed during the call monitoring process. It is submitted that Mr. Animesh Malviya was issued a stern warning alongwith an imposition of monetary penalty to ensure adequate course correction. Here, it is also pertinent to highlight that the customer (Mr. Shyam Sunder Sharma) himself in his email dated April 18, 2022 to the Noticee No.1 had accepted that the Noticee No.1 had provided him with all the relevant information and had also clarified that the Noticee No.1 does not provide any kind of assurance or guarantee of returns, only post receiving such information and clarification, he availed its services.*

- *With reference to the telephonic conversation referred at Paragraph 5, sub paragraph (b) (i) (b.), (d.) and (e.), it is submitted that there is no guarantee of profit being provided to the customers, but only probable/approachable profit has been informed/discussed to/with the customers in a generic sense. From the tone and tenor of the calls, it appears and is clear that the executive of the Noticee No. 1 is discussing and deliberating about how share market functions and profits are earned and how one should actually look at the market. It is no ones case, that the employee or this Noticee is marketing any assured returns or profits. Infact, all documentations and communications with clients and the subsequent SVP calls categorically inquire with clients whether any assured profits or guaranteed profits are promised by any executive/employee of the client. Infact, in such SVP calls, the clients confirms that no profits are assured by any employee, hence, drawing any adverse inference as against such calls, is uncalled for and illegal.*

- *It is submitted that the observation that the Noticee No.1 vide its service agreements and service verification calls prior to activation of services <u>issues the standard disclaimer inter alia stating there is no assurance of returns in securities market</u>, itself establishes that all the customers were well informed that there is no guarantee of profit and or assurance of return in securities market. Infact, there is no reason for addressing such calls as standard, rather such calls were precautionary and the service verification process calls by the Quality Assurance Department of the Noticee No.1 was an initiative over and above the guidelines issued by SEBI.*

- *It is also submitted that any adverse inference purely based on 5 call records, ignoring the overall process adopted by the Noticee No.1, in the backdrop of a total of 17,249 customers served in the period between April 01 2020 to January 17, 2022 amounts to unwarranted cherry-picking of data, which does not capture the true nature of the operations of Noticee No.1.*

- *The total number of unique clients served during FY 2020-21 i.e., 6904 has been erroneously equated with the total number of clients served by the Noticee No.1.*

It is submitted that the Noticee No.1 has served more than 1 lakh customers till the date of submission of this Reply. Further, in order to ensure full transparency with its customers, all the relevant details including the total number of customers served by Noticee No.1 was also disclosed on the website of Noticee No.1.

- *It is submitted that the Noticee No.1 had in place adequate safeguards to ensure that all customers were onboarded and their services activated only after the customer fully comprehending all the service features of the service availed by them, and the risks associated in the securities market and consenting to it. It is further submitted that there were no false statements made about the number of customers of Noticee No.1 and all the relevant information was also displayed on the website of the Noticee No.1. Further, Noticee No.1 had in place all the necessary checks and balances to ensure that any deviation from the established process is identified and rectified. It is submitted that the Noticee No.1 has always acted honestly, in a fiduciary capacity towards its clients taking into account their best interests.*

- *It is humbly submitted that all the material facts alongwith the associated risk of investing in securities market were duly informed to all the customers and were also hosted/available on the Noticee No.1's website for verification by the customers themselves. Even assuming that all the allegations made against the Noticee are true and correct, without getting into the merits of the same, even then imposition of the PFUTP Regulations is ex-facie illegal and baseless as even the bare allegations do not fit into the corpus ingredients of the provisions of the PFUTP Regulations. Infact, there is nothing on record to establish that there is any violation of PFUTP Regulations as alleged or otherwise. In view of the foregoing, the conclusion that the conduct of Noticee No.1 comes under the definition of "fraud" as per regulation 2(1)(c) of the PFUTP Regulations and is a violation of Regulation 3, 4(2)(o) and 4(2)(s) of PFTUP Regulations, Regulation 15(1) and Clauses 1,2,8 and 9 of the Third Schedule r/w Regulation 15(9) of the IA Regulations is denied as being unwarranted, unreasonable and baseless.*

Alleged Act of PAIA/ Representatives entering into contrary transaction in their own account within 15 days of date of advice:

- *It is humbly submitted that an intermediary such as Noticee No.1 cannot create a mechanism to control the demat accounts of the employees. Due to such constraints the Noticee No.1 follows a no- trading policy for its employees, which is duly incorporated in the Noticee No.1's Code of Conduct Policy. In order to ensure effective implementation of its Policies, the Noticee No.1 takes Undertaking and Indemnity Bond from its employees that provides for personal responsibility of the employee for any act or omission in contradiction of the Undertaking so furnished. It is further submitted that it is impossible for the Noticee No.1 to know about all the existing demat accounts of the employees until the same is voluntarily disclosed and therefore, through the undertakings and indemnity bond the said responsibilities are transferred to employees in their individual capacity to comply with IA Regulations, until a mechanism is introduced wherein* *a SEBI registered intermediary can independently monitor/verify the trading activities of its employees.*

- *In furtherance of the effective implementation of embargo on personal trading provided for in the Code of Conduct Policy of the Noticee No.1, the Noticee No.1 neither allows use of personal mobile phones within its office premises, nor does it permit access to online trading platforms of stockbrokers within its office premises.*
- *With reference to paragraph 5, sub-paragraph (c) (ii), it is submitted that the observation that 03 PAIA of Noticee No.1 engaged in contrary transactions is drawn on the basis of three parameters i.e., the date of advice; trade date by the PAIA and security in which advice was rendered. However, the observation does not take into account the fact that the advices enlisted in Table 6 at Pg. no. 13 of 55, Table 7 at Pg. No. 14-15 of 55 and Table 7 at Pg. No. 16 of 55 are all intraday advices i.e., the purchasing and selling of securities under advice takes place within the same day. In this regard, it is pertinent to note that all the 12 advices enlisted in the SCN, are rendered under the service HNI Equity-Silver, Gold, Platinum and Titanium, which fall under the Market Pro category meant for intraday traders.*

- *It is humbly submitted that the Noticee No.1 had no mechanism at its disposal which would enable and empower it to independently monitor and verify the trading activity undertaken by its employees. However, post receipt of the Inspection Report, the Noticee No.1 initiated an enquiry against Mr. Harsh Patidar and Ms. Chepa Likhita. Here, it is pertinent to note that Mr. Arpit Jain had already separated from the organization prior to the Noticee No.1 receiving the Inspection Report. The Internal Enquiry Committee, upon its investigation concluded that the aforementioned employees had engaged in trading in securities market in contravention of the Code of Conduct Policy of Noticee No.1, however the said contravention did not amount to violation of the provisions of IA and RA Regulations. In view of the apology furnished by the aforementioned representatives, they were relieved from their duties with immediate effect.*

- *With reference to paragraph 5, sub paragraph c (ii) (iii) and (iv) r/w Table 6 at Page 13 of 65 of the SCN, it is submitted that all the advice enlisted at Table 6 are intraday advices i.e., positions are entered and exited on the same day. Thus, selling the scrip in question, 5 days after the intraday advice was rendered does not amount to engaging in contrary transaction.*

- *With reference to paragraph 5, sub-paragraph (c) (b) (v- vii) and Table 7 of the SCN, it is humbly submitted that Mr. Arpit Jain had already separated from the Noticee No.1, prior to the Noticee No.1 receiving the Inspection Report. Further, all the advice enlisted at Table 7 are intraday advices i.e., positions are to be entered and exited on the same day by the customer. It is submitted that it is evident from Row 4 and 5 of Table 7 of the SCN that Mr. Arpit Jain executed transactions in his own account on September 21, 2020 i.e., 3 days after the position was exited by the customers, on*

September 18, 2020. Therefore, the alleged transaction cannot be considered contrary to the rendered investment advice.

- *With reference to paragraph 5, sub-paragraph (c) (c) (viii) and Table (repeated numbering in SCN as) 7 at pg. no. 14 of 55 of the SCN, it is again submitted that all the investment advice enlisted in Table 7 are intraday advice. It is submitted that the transactions executed by Ms. Likhita Chepa were 8 and 6 days after the date of rendering the investment advice. Since the transactions by Ms. Likhita Chepa were executed in her own account after the positions were closed/exited by the customers on November 11, 2020 and November 13, 2020, respectively, therefore, the alleged transactions cannot be considered contrary to the rendered investment advice.*

- *With reference to paragraph 5, sub-paragraph (c) (ix), it is submitted that the intermediaries such as Investment Advisers have not been provided with any mechanism by the Regulator to independently track, monitor and/or verify the involvement of its employees in the securities market. Therefore, in order to ensure compliance with the relevant regulations, the Noticee No.1 had incorporated internal policies such as no-trading policy, no phone policy and had additionally blocked access to all the online trading platforms within its premises for all its employees. The limitation faced by the Noticee No.1 in independently monitoring the involvement of its employees in the securities market was also brought to the notice of SEBI through its inspection team and in its Reply to the Inspection Report.*

Alleged Violation of Limitations on Trading

- *It is humbly submitted that Regulation 2(1)(w)(iv) of the RA Regulations itself explicitly excludes periodic reports or <u>other communications prepared for clients of investment advisers</u> from the ambit of research report.*

- *It is further submitted that SEBI in its 'Consultation Paper on Review of Regulatory Framework for Investment Advisers and Research Analysts' dated August 06, 2024, had in paragraph 24 (internal Pg No. 28 of 37) itself clarified that all trading calls provided after the risk profiling of the client and product suitability assessment, such trading calls are on "one to one" basis and shall come under the purview of IA Regulations and if the trading call is provided without any risk profiling of the client and product suitability assessment, such trading calls are on "one to many" basis and shall come under the purview of RA Regulations.*

- *Evidently, as on August 06, 2024, the understanding prevalent in the industry inclusive of the Regulator was that a trading call rendered by an Investment Adviser after the risk profiling and product suitability assessment of the client will fall under the purview of the IA Regulations and not RA Regulations.*

- *Irrespective of the above it is humbly submitted that Noticee has not violated RA Regulations as alleged or otherwise.*

Observations related to public appearance of the Investment Adviser

- *It is re-iterated that the intermediaries such as Investment Advisers have not been provided with any mechanism by the Regulator to independently track, monitor and/or verify the involvement of its employees in the securities market. Further, it is impossible for intermediaries like the Noticee No.1 to know about all the existing demat accounts of its employees until the same is voluntarily disclosed. Therefore, in order to ensure effective compliance with the relevant regulations, the Noticee No.1 had incorporated internal policies such as no- trading policy, no phone policy and had additionally blocked access to all the online trading platforms within its premises for all its employees. In addition to this, the Noticee No.1 also takes undertaking from its employees that they will not engage in any trading activity in securities market and an indemnity bond is also entered into with the employees to ensure seriousness towards adherence to the Company policies.*

- *It is humbly submitted that the Noticee No.1 had introduced and implemented the designation of 'Research Analyst' for all its employees whose primary responsibility involved conducting research (on either fundamental/technical or quantitative basis) and then rendering research-based investment advice/recommendation to the client- on the basis of their risk profile and product suitability assessment. Therefore, the designation of 'Research Analyst' was merely a nomenclature (and ought not be read as Research Analyst defined under the SEBI (RA) Regulations) and was not an accurate title for the employees whose work profile involved rendering investment advice. This is also evident from the documents furnished to the Inspecting team of SEBI, wherein details of designations held since the date of joining by PAIA and details of work profile of designations held by PAIA since joining was provided.*

- *Further, it is pertinent to note that the 'research report' communicated through the publicly accessible media are published directly by individual IAs and are their personal opinion, the representatives/PAIA enlisted in Table 8 at Pg. No. 18-23 of 55 might have accidently traded on the scripts without any awareness of such recommendation being published on the public platform. In this regard, it is pertinent to note that Regulation 22(2) itself provides that if any director or employee of an investment adviser makes a recommendation or offers an opinion concerning securities or public offers through public media, <u>all the provisions of regulations 16 and 17 shall apply mutatis mutandis to him</u>. Therefore, evidently the intention of the drafters of the Regulation were to place restrictions only on the trading activities of the employee of an investment adviser, who rendered specific opinion/recommendation on securities through public media.*

- *With reference to paragraph 5, sub-paragraph (e) (ii) and Table 8 (at Pg. No. 18 and 19 of 55) of the SCN, it is submitted that an observation of violation of RA Regulations is made against Mr. Naveen Mishra, based on his trading activity in the month of May and June of 2020. However, while observing so, it is completely ignored that Mr. Naveen Mishra was appointed as a Senior Research Analyst with the Noticee No.1 w.e.f. November 02, 2020.*

- *It is further submitted that the other 3 PAIAs i.e., Mr. Gursimran Singh, Mr. Arpit Jain and Mr. Vishal Balabhadruni had already separated from the Noticee No.1, prior to the Noticee No.1 receiving the Inspection Report dated March 17, 2022 and the fact that the PAIAs were engaging in any form of trading activity contrary to the code of conduct policy of the Noticee No.1 was revealed to it. Furthermore, an internal inquiry was set-up against Mr. Harsh Patidar pending its decision, he was prohibited from engaging in discharge of any duties/responsibilities including rendering of investment advice. The Internal Enquiry Committee, upon its investigation concluded that Mr. Harsh Patidar had engaged in trading in securities market in contravention of the Code of Conduct Policy of Noticee No.1, however the said contravention did not amount to violation of the provisions of IA and RA Regulations. In view of the apology furnished by Mr. Patidar, he was relieved from his duties with immediate effect.*

- *It is also submitted that the Noticee No.1 had implemented several procedures and policies to ensure effective compliance with the relevant regulations, as a result of its efforts only 4 out of the 48 PAIAs of the Noticee No.1 were found to be engaged in trading in securities within a period of 30 days before and 5 days after the date of public appearance. assuming that any of the employee has still violated any provision of law, then, given the facts and circumstances of the present case, no action be initiated against the Noticee No. 1 as this Noticee No. 1 had appropriate policies in place and violation, if any, is by the concerned employee.*

Alleged act of charging unreasonable amount of fees to clients

- *The inference is drawn merely on the basis of the <u>date</u> of service agreement and in complete disregard of the <u>start and end date</u> of the service period. The Noticee No.1 has clarified that the CRM software 'HASH' used by Noticee No.1 did not allow same services to be sold for the same time period to the same client. There is no overlap in tenure of the advisory services, thus the inference that during the overlap period the client will have two advisory services of same nature is denied as being wholly erroneous and devoid of any merit.*

- *The observation that the amount charged for quarterly tenure (Rs. 70,802/-) is more than the amount charged for half yearly tenure (Rs. 48,676/-) is wholly misconstrued, as it only takes into consideration the amount paid by the client for the said service and the fee matrix of the Noticee No.1. In accordance with the fee matrix of the Noticee No.1, The subscription fee for monthly, quarterly and half yearly tenure of HNI*

Commodity Gold (Inclusive of GST) is Rs. 59,000/-, Rs.1,18,000/-, and Rs. 2,36,000/-, respectively. Here, it is pertinent to note that occasionally a customer availing a service/product of the Noticee No.1 may wish to avail another service/upgrade to a service with better service features, even prior to the expiration of the tenure of the service already being availed. In such circumstances, the Noticee No.1 caters to the said customer by shifting him/her to the service so desired, subject to the risk profiling and product suitability assessment. However, in such scenarios due to the unexpired tenure of the previously availed service, the customer would have a sum of unutilized amount remaining from the said service, which is then adjusted, by Noticee No.1, from the listed price of the desired service.

- *It is humbly submitted that Mr. Indraneel had availed the service of HNI Commodity Silver for a tenure of 9 months on March 18, 2020. However, Mr. Indraneel wanted to shift from HNI Commodity Silver to HNI Commodity Gold service and therefore, the said service was delivered (ended) within a month on April 18, 2020, even though the tenure of his current service was 9 months. The Noticee No.1 had furnished the start and end date of the said as Annexure G-3 to its Reply to the Inspection Report. Thus, the unutilized amount of this service was adjusted from the listed price of the desired service i.e., HNI Commodity Gold and hence the customer was required to pay only Rs. 48,676/- [Rs.2,36,000/- {(Rs.1,87,324/-) –(Rs.0/-)}] for the half yearly tenure. Further, Mr. Indraneel paid Rs. 70,802/- to continue availing the same service for a further quarterly period. Here too, the listed price for the quarterly tenure of the service was Rs.1,18,000/-. However, post adjusting the unutilized service fee of Rs. 40,202/- for a previous service and a discount of Rs.6,996/-, the service was activated by the Noticee No.1.*

- *It is further submitted that the Noticee No.1 had a well calibrated fee structure. The Noticee No.1 did not charge any arbitrary fees from its customers. Since the amount paid by the customer has been considered in isolation without taking into account other relevant factors such as the listed price of the service/product, requisite deductions such as discounts, convenience fees and/or unutilized amount from any previous service availed by a customer (in case of shifting to another service prior to expiration of the on-going service), hence an adverse inference that arbitrary fees had been charged by Noticee No.1 has been drawn.*

- *It is further submitted that, the specific allegation in paragraph viii, ix and x, that the Noticee No. 1 has charged exorbitant fees relative to the annual income mentioned in the risk profile. It is submitted that there is no provision of law wherein an IA was expected to calibrate its fees with the annual income of the client. Neither was there any capping on the fees up until April 2021. Hence, first and foremost, it is submitted that the Ld. AO/CGM may consider that the fees were paid voluntarily and out of free will and hence the issue is primarily of a contractual relationship between parties. Any variation in fees for a same set of service provided to two different individuals may have various external factors like, business pitch of the Noticee No.1, stand on discounts, customer relationship, ongoing discounts, concessions, request from customers for discounting of fees, negotiations between the parties. Hence, a* *contractual relationship between independent parties ought not be read as arbitrary unless there is cogent evidence on record to suggest anything to that effect.*

- *It is also submitted that charging of any fee whether arbitrary, exorbitant or not ought not be related to the quality of service especially in the realm of honesty and fairness. Infact, it cannot be anyone's argument that only because a fee is charged either high or low to a client, hence, the Noticee has not been honest or fair in providing services. It is no ones case that after charging a fee this Noticee has not provided quality or promised services.*

Alleged act of trying to manipulated the e-sign process of the service agreement

- *It is humbly submitted that the observation in the SCN that the process followed by Noticee No.1 is susceptible to manipulation by its own PAIA is an unfair criticism and is liable to be rejected as being devoid of any merit. It is submitted that the Noticee No.1 had introduced a transparent and fool-proof mechanism wherein it was getting the service agreements signed by its customers through an Aadhaar-based e-sign process. It is also significant to note that post signing of the service agreement by the customer, a document audit trail is also generated for verification purposes. Thus, it is evident that the Noticee No.1 had implemented a meticulous and fool-proof process. Further, there is no way that this Noticee could manipulate the Aaadhar Portal, thus the concerned PAIA was merely trying to understand the root of the issue as client was not receiving the OTP. Further, it is humbly submitted that the SCN itself records in paragraph 5(g)(iii), that the subsequent call recording shows that the client did receive the OTP. Hence, reading the call recording out of context and to draw any such adverse inference is ex-facie illegal and improper.*

- *It is submitted that the observation that by urging the client to enter another person's Aadhaar details, the PAIA was trying to manipulate the e-sign process of the service agreement is wholly erroneous and misconceived. It is submitted that the PAIA was merely trying to figure out the root cause of issue/error faced by the customer by suggesting a few ways to check if the issue is specific to the customer or the platform used, or the agreement link shared via email. This is further substantiated from the fact that the Service Agreement has been signed by the customer with his own Aadhaar number and can also be verified from the document audit trail. Therefore, there is no violation of the provisions of Regulation 15(1) and clauses 1,2,3,8 and 9 of the CoC r/w Regulation 15(9) of IA Regulations.*

Risk Profiling

- *It is submitted that the Noticee No.1 has made its best efforts to ensure that the RPM deployed by it is best suitable to assess the risk appetite of the customers. It is* *important to note that all the details submitted by the customers are also consented by them over email, in case a customer wishes to make modifications, he may choose to do so and the modified details are then re-verified from the customer during the service verification process, which is undertaken by the Noticee No.1 prior to activation of the customer's service. In addition to this, in its Reply to Inspection Report, the Noticee No.1 had also requested SEBI to issue a SEBI approved Risk Profiling Questionnaire (**"RPQ"**) with exact questions, weightage and methodology that could be adopted by the IAs such as the Noticee No.1 on an 'as-is' basis. However, as on date no model risk profiling methodology has been issued by SEBI for Investment Advisers.*

- *It may further be pointed out that, the SCN is completely silent on as to how the marking/scoring system assigned by the Noticee No. 1 is incorrect or prejudicial or inappropriate in any manner OR how such scoring system would lead to an incorrect assessment. It is submitted that assessment of risk appetite is designed based upon the business wisdom, field expertise of the Noticee No. 1 and it may not be appropriate for the Regulator to question the business wisdom of Noticee No. 1 under a Show Cause, especially when the IA regulations and the circulars issued are silent on the scoring aspect of Risk Profiling.*

- *It is evident from the complete transcription of the call record that the customer had asked the PAIA to select any option for the question on total value of assets owned. However, the PAIA duly informed the customer that he could not do so. Further, the PAIA enquired about the kind of assets that the customer owned, so the customer could understand the question better and answer it based on his understanding. Therefore, it is apparent from the call record itself that the intention of the PAIA was not to mislead or make him choose an option with a higher risk score, if it was so, the PAIA could have also chosen the option with the highest risk score without further explaining the question with examples to the customer. Thus, it appears that a genuine mistake was made by the PAIA in providing all the options to the customer.*

- *It is humbly submitted that in accordance with the customer onboarding process of the Noticee No.1, prior to service activation, the service verification team specifically informs the customer of the investment amount required to avail the service opted by the customer and seeks the customer's consent on his ability to maintain such an amount. It is only after a customer confirms with the SVP Team that he will be able to maintain the minimum investment amount required for the service, that the service is activated. It is noteworthy that in this case as well, the customer had confirmed that he would be able to maintain the minimum investment amount required for the service.*

- *It is humbly submitted that a leading question is one that tends to suggest what the answer should be. In the transcripts in questions, the answers are nowhere suggested to the customer and the customer is required to choose the most suitable option on the basis of all the options available to him. Therefore, the observation is wholly denied as being erroneous.*

- *It is humbly submitted that the terms such as panic or patience is used to merely understand/gauge the temperament of the customer. Gauging the temperament from the action of the customer in case of a drop in value of his/her investment helps the PAIA determine the risk tolerance of the customer. Evidently, the usage of such terms were not meant to unduly influence and lead the customer into choosing any option. Therefore, the observation is wholly denied as being misconstrued.*

- *Here it is significant to highlight that as per the recent clarifications of SEBI, the Noticee No.1, which would fall within the definition of 'trading call providers' should fall under the RA Regulations instead of IA Regulations. Thus, as per this clarification of SEBI, the Noticee No.1 was infact never required to conduct risk profiling and suitability assessment of its customers, as provided under Regulation 16 and 17 of the IA Regulations, since the RA Regulations do not mandate any such requirement.*

Suitability

- *It is humbly submitted that the observation completely disregards the 3 step-customer onboarding process deployed by the Noticee No.1 to ensure that the services of a customer are activated only after a customer is well informed of the exact service features of the availed service and his/her risk profile details are cross-verified, even though the customer has consented to these details digitally. In addition to this, the customer is also inquired, if the customer has been provided with any kind of guarantee or assurance of return from anyone from Noticee No.1 and whether the customer is consenting to the details on the SVP call under any form of force or pressure or out of his/her own free will. It is pertinent to note that it is only after the customer confirms that he/she will be able to maintain the minimum required investment amount in their demat account for the services availed, is the service of the customer activated. Therefore, the observation that Noticee No.1 misled the customer and enrolled him in to a high-risk service is denied as being misconceived. It is submitted that the Noticee No.1 always ensured that the service being sold to its customers were consistent with his experience and knowledge of the markets.*

- *It is humbly submitted that the minimum investment amount required to be maintained in the customer's demat account for opting the service was communicated clearly to the customer and he agreed to maintaining the same. It is only post such confirmation in the SVP call, the customer's service was activated. Therefore, it is submitted that had the customer not provided his confirmation towards being able to maintain the required minimum investment amount in his demat account, his service wouldn't have been activated. Therefore, the observation that the customer was misled and enrolled into a high-risk service is denied as being erroneous and drawn in blatant disregard of the 3 step customer onboarding process especially the SVP call. Therefore, the Noticee No.1 ensured that the service entered into was such that the customer was able as well as willing to bear the investment related risks of that service.*

- *It is humbly submitted that the risk profiling was undertaken at the request of the customer and was solely based on the response furnished by the customer. The risk profile assessments of the customer were duly consented to by the customer. Further, the service of the customer was activated post completion of the 3-step customer onboarding process. Furthermore, the IA Regulations nowhere prescribes the number of risk profile that can be conducted for a customer. Therefore, in absence of any observation that the investment advice provided to the customer (Mr. Dakshesh Joshi) was not in accordance with his risk profile, no violation of Regulation 17 of IA Regulation is made out. It is also noteworthy that the customer was satisfied with the services provided by the Noticee No.1 and had availed its services several times.*

Disclosure to clients

- *In view of the observation that upon visiting the link wherein the performance track record of the services of Noticee No.1 have been published, there is no information available of the previous performance of its products, it is pertinent to note that the same has been removed in accordance with Clause (c)- Prohibitions in the advertisement, sub- point (xii) of SEBI Circular dated April 05, 2023 bearing no. SEBI/HO/MIRSD-PoD-2/P/CIR/2023/51, wherein any reference to past performance of the IA in advertisement is prohibited. In view of such a directive, the performance track record of Noticee No.1's services had been removed from its website.*

- *It is humbly submitted that prior to the SEBI Circular dated April 05, 2023, the performance track record of the Noticee No.1's services were published on its website for all to view i.e., prospective as well as existing customers. It is further submitted that sometimes due to technical glitches/configuration issues, the performance dashboard of the Noticee No.1 may become un-available or sometimes a specific customer/prospective customer may also face some glitch/issue in accessing the performance track record of the Noticee No.1. In such cases, the Noticee No.1 has proactively attempted to resolve the technical glitch, as and when it comes to its knowledge and as an alternative in such cases, the Noticee No.1 also shares past performance of its services through emails.*

Alleged Act of Indulging in Fraudulent Trade Practice by Trading to Generate Artificial Volume

- *It is humbly submitted that the observation that the Noticee No.1 did not deny that the call was made by Mr. Kumar Ankit of the Noticee No.1 is wholly misplaced and unwarranted. It is pertinent to note that from the very outset, the Noticee No.1 had unequivocally denied any affiliation with the call recording furnished by the complainant. The said call recording is neither verified, nor there is any report from the*

Telecom provider, nor there is any certification and/or verification of the said call recording as required under Indian Evidence Act. Hence, such recording ought not be relied upon. Further, the said call recording is being relied upon merely on the basis of specious and omnibus allegations of a disgruntled client, there is nothing on record to show that the said client was examined on oath and call recordings were taken on record after following due process of law. Hence, it is humbly submitted that the said call recording be dropped from evidence and the allegations thereto be dropped for being exfacie illegal, baseless and devoid of any substance. In view of the fact that the Noticee No.1 was in no way affiliated to the impugned call recording, the Noticee No.1 did not have any means or expertise to confirm with any certainty as to who the individual's in the impugned call actually were? Further, the Noticee No.1 also had no means to verify whether the call between the individual's were genuine or fabricated/staged. Therefore, the Noticee No.1 did not find it appropriate or necessary to either confirm or deny as to who the participants in the impugned call were. Such non-denial must not be used to draw adverse assumptions/inference against the Noticee No.1.

- *It is submitted that the complainant's version that he received calls from the concerned person from the Noticee No.1's numbers must not be considered as the gospel truth. It is rather liable to be rejected in view of his glaring change in stance, wherein at one instance he admits that the concerned person may have called him from some other line/not from CapitalVia and at other instance, in order to extract higher refund from Noticee No.1, alleged that he had received calls from the concerned employee from Noticee No.1's numbers. This inconsistency in the complainant's stance was time and again brought forward by the Noticee No.1.*

- *It is humbly submitted that in discharge of its fiduciary responsibility, the Noticee No.1 conspicuously displays its contact numbers on its website through which it contacts its customers. It is also pertinent to note that taking into account its fiduciary responsibility towards its customers, the Noticee No.1 resolved all his concerns and refunded the entire subscription amount to the complainant.*

Alleged act of not abiding by the provisions of IA Regulations

- *It is humbly submitted that the Noticee No.1 has adhered to all the enlisted provisions of IA Regulations. Thus, the allegation that Noticees have violated the provisions of Regulation 13(a) of IA Regulations is denied as being devoid of any merit.*

Appointment of Compliance Officer and Responsibility of Senior Management

- *in view of the foregoing submissions, it is evident that the Noticee No.1 complied with all the relevant Regulations. Therefore, the observation that the compliance officer of the Noticee No.1 failed to monitor compliances in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board is wholly denied. Further, Regulation 20 of IA Regulations merely provides for appointment of* *a compliance officer, who shall be responsible for monitoring the compliances of the Noticee No.1. In the present case, the Noticee No.1 had duly appointed well-qualified compliance officers, therefore the allegation of violation of provisions of Regulation 20 of IA Regulations is not made out. It is denied that Ms. Anshika Shukla or Mr. Aaruni Sharma failed to monitor the compliances. Infact, both Anshika Shukla and Aaruni Sharma have monitored the compliances well within their duties and have always endeavored to keep the Noticee No. 1 compliant. They have always taken corrective measures and have assisted and suggested measures against the erring employees in appropriate cases.*

- *It may further be pointed out that the Noticee No. 1 is a self-sufficient entity which is governed and its business is conducted by broad policies adopted by the board and Senior Management. There is nothing on record to establish that the Senior Management has adopted any incorrect policy or has actively participated in any violation as alleged or otherwise. Hence, in absence of any such conclusion in absence of cogent and admissible evidence is uncalled for ought to be treated as ex-facie illegal. No director can be impleaded in any proceedings merely on the purport of holding a position, unless there is a presumption in law in the present case, especially in the light of the alleged violations, there ought to be more cogent evidence on record to establish that the senior management if responsible for any violation as alleged or otherwise.*

8. In the interest of natural justice, an opportunity of personal hearing was given to Noticee 5 on November 19, 2024 vide notice dated November 12, 2024. Noticee 5 appeared on the scheduled date and reiterated the submissions made vide letter dated October 31, 2024. Further vide letter dated December 2, 2024 he made further submissions stating, inter alia, the following:

- *"It is submitted that the management of a company or its compliance officers can only establish policies and procedures to ensure compliance with applicable laws and take appropriate action against individuals who violate these policies. However, they cannot fully control wrongful actions committed by individual employees.*
- *It is submitted that the client onboarding process implemented by CapitalVia Global Research Limited (Noticee 1) ("Company") during Noticee 5's association ensured that all necessary information and disclosures were duly communicated to clients. The process was designed to ensure that, even if any false information, commitment or assurance was made by an employee, the client was made aware of the correct information both verbally and in writing before activating the services. If the client*

did not provide confirmation, the services were not activated, and an immediate refund could be processed.

- *It is further submitted that the Company conducted quarterly audits of its investment advisory business in compliance with SEBI (Investment Advisers) Regulations, 2013 and other applicable circulars ("IA Regulations"). These compliance audits were performed by "Fadni & Gupte L.L.P," a renowned audit firm, and no adverse observations were reported by the auditor. Since Noticee 5 is no longer associated with the Company, it does not have access to said reports. The copies of the said compliance audit reports were duly submitted to SEBI on a regular basis and can also be sought from the Company as well.*
- *With respect to risk profiling and assessment process, it is submitted that the process adhered to the provisions of the IA Regulations and has been in place since May 2017. This process was submitted to SEBI by the Company during the inspection in 2017. However, no observations similar to those highlighted in the current SCN were raised by SEBI at that time. Furthermore, the compliance auditor never reported any adverse observations regarding the risk profiling and assessment process. Therefore, it cannot be presumed that the process was not in compliance with the IA Regulations.*
- *Furthermore, a few SCORES complaints cannot be considered a representative basis for evaluating the processes prevalent at the Company. Moreover, most of these clients primarily raised complaints to seek refunds for services already availed.*
- *It is submitted that employees of the Company were only permitted to contact clients through the Company's recorded lines and were explicitly prohibited from using personal numbers for such communication. To ensure compliance, the Company maintained a call audit team that conducted random audits of calls. As a result of these audits, a couple of employees during Noticee 5 association with the Company, were identifies as having contacted clients personally and were promptly terminated."*

9. An opportunity of personal hearing was given to Noticees 1 to 4 and 6 on November 22, 2024 vide notice dated November 13, 2024. Vide email dated November 21,

2024 their Authorised Representative (hereinafter referred to as "**AR**") sought another date of personal hearing. Acceding to his request, another date of personal hearing was given to them on November 28, 2024. Vide email dated November 27, 2024 the AR expressed his inability to appear for hearing on the scheduled date. Accordingly, a final opportunity of personal hearing was given to them on December 10, 2024 vide email dated November 28, 2024.

10. The AR appeared on the scheduled date and reiterated the submissions made vide letter dated October 21, 2024. Vide letter dated December 12, 2024 he made further submissions stating, inter alia, the following:

- *Table 1: Had complied with all requirements prior to requirements coming into force.*
- *Table 2: Evident, all 19 persons who rendered investment advice <u>during</u> inspection period had complied with necessary certification requirement. Employees enlisted at Table 2(except 3 and 17) were employed after the date the Notification providing the certification requirement was notified.*
- *Mr. Ashis Biswas and Mr. Kshitij Purohit were not rendering IA in the period in which they did not have the relevant certification.*
- *All the employees at Table 4 had separated from the Noticee No.1 prior to completion of 1 year of service.*
- *The Call recordings ought to be heard in totem and any sentences not be cherry picked. Further, the call recordings must not be isolated and should be viewed within the context of the entire customer onboarding process.*
- *Service Agreement entered between client and Noticee No.1 clearly provides that there is no guarantee of return or assured profits.*
- *There is no guarantee of profit being provided but only probable profit has been discussed with the customers in a generic sense.*
- *Observation does not take into account the intra-day nature of recommendations.*
- *Erroneously equated investment advice rendered with research report.*
- *Intermediaries such as IA not been provided with any mechanism by the Regulator to <u>independently</u> track, monitor and/or verify involvement of its employees in the securities market.*
- *'Research Analyst'- merely a nomenclature for employees involved in rendering <u>investment advice</u> to clients after thorough research.*
- *Drafters intended to place restrictions only on trading activities of employee of an investment adviser, who rendered specific opinion/recommendation on securities through public media.*
- *There is no overlap in service period for the availed services. Inference drawn merely based on date of service agreement and tenure.*
- *Observation only takes into consideration the amount paid by the client for the said service and fee matrix of Noticee No.1. Does not take into account certain factors: Remaining fee of unexpired tenure (in case customer avails/upgrades to another service subject to RP and suitability), discounts, etc.*

- *Service fee, in absence of any fee cap, will depend upon both the service provider and the customer. If both agree upon a fee for a particular service- it means they consider it fair to them.*
- *Erroneous cross-verification of call log of Mr. Shankar with the RP of Mr. Sankar Biswas.*
- *Quality Assurance Dept. works towards enhancement of quality of interactions with the customers through training. Actions also taken against employees, if set standards are not met.*
- *Disregard to 3-step customer onboarding process. Only after customer confirms that he/she will be able to maintain minimum required investment amount in their demat account for the services availed. His service is activated.*
- *From the very outset, notice had unequivocally denied any affiliation with the call recording furnished by the Complainant.*
- *The Complainant's version cannot be considered as the gospel truth and should be rejected based on his glaring change in stance- where he himself admits that the call may have been received from some other line/not from CapitalVia.*
- *On account of fiduciary responsibility, Noticee No.1 resolved all the concerns and refunded the entire subscription amount to the Complainant.*

CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS

11. The facts and circumstances of the case and the material available on record are taken into consideration. The issues that arise for consideration in the present case are:

ISSUE I- Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

i. Non compliance with the qualification and certification requirement
ii. Promising guaranteed profits / returns to clients
iii. PAIA/representatives entered in to contrary transactions in their own accounts within 15 days of date of advice
iv. Limitations on Trading
v. Public appearance of the Investment Adviser
vi. Charging unreasonable amount of fees to clients
vii. Trying to manipulate the e-sign process of the service agreement
viii. Risk Profiling
ix. Suitability
x. Disclosure to clients
xi. Indulging in fraudulent trade practice by trying to generate artificial volume
xii. Not abiding by the provisions of IA Regulations
xiii. Appointment of compliance officer
xiv. Responsibility of Senior Management

ISSUE II- Does the violation, if any, attract monetary penalty under sections 15EB and 15HA of the SEBI Act?

ISSUE III- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding further, it will be appropriate to refer the provisions of law referred to in the SCN. The same are reproduced hereunder:

IA Regulations

7(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 fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:

Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.

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

(a) the investment adviser shall abide by the provisions of the Act and these regulations;

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

(7) An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.

Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a *transaction on its own account after giving such revised assessment to the client at least 24 hours in advance of entering into such transaction.*

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

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

(i) assessing a client's capacity for absorbing loss;
(ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;
(iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

16(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;

16(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.

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.

(a) Whenever a recommendation is given to a client to purchase of a particular complex financial product, such recommendation or advice is based upon a reasonable assessment that the structure and risk reward profile of financial product is consistent with clients experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

.

18(6) An investment adviser shall, while making an investment advice, make adequate disclosure to the client of all material facts relating to the key features of the products or securities, particularly, performance track record.

20. An investment adviser which is a body corporate or a partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance by the investment adviser in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board.

Code of Conduct

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. Professional Standard

Research analyst or research entity or its employees engaged in research analysis shall observe high professional standard while preparing research report.

8. Compliance

An investment adviser including its 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.*

9. 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.

CAPSM Regulations

3. (1) The Board may by notification in the Official Gazette require such categories of associated persons to obtain requisite certificate for engagement or employment with such classes of intermediaries and from such date as may be specified in the notification:

Provided that an associated person employed or engaged by an intermediary prior to the date specified by the Board may continue to be employed or engaged by the intermediary if he obtains the certificate within two years from the said date.

RA Regulations

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions shall be construed accordingly,–

(q) "public appearance" means any participation in a conference call, seminar, forum (including interactive and non-interactive electronic forum), radio or television or internet or web or print media broadcast, authoring a print media article or other public speaking activity in public media in which a research analyst makes a recommendation or offers an opinion, concerning securities or public offer:

Provided that it does not include a password protected webcast, conference call or such other events with the clients, if all of the event participants previously received the research report or other documentation that contains the required applicable disclosures and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading or no longer applicable;

(r) "public media" means any media source available to the general public and includes a radio, television, internet, web or print media;

u. "research analyst" means a person who is primarily responsible for,-

i. preparation or publication of the content of the research report; or *ii. providing research report; or*

iii. making 'buy/sell/hold' recommendation; or

iv. giving price target; or

v. offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Explanation.- The term also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above;

(w) "research report" means any written or electronic communication that includes research analysis or research recommendation or an opinion concerning securities or public offer, providing a basis for investment decision and does not include the following communications:-

(i) comments on general trends in the securities market;
(ii) discussions on the broad-based indices;
(iii) commentaries on economic, political or market conditions;
(iv) periodic reports or other communications prepared for unit holders of mutual fund or alternative investment fund or clients of portfolio managers and investment advisers;
(v) internal communications that are not given to current or prospective clients;
(vi) communications that constitute offer documents or prospectus that are circulated as per regulations made by the Board;
(vii) statistical summaries of financial data of the companies;
(viii) technical analysis relating to the demand and supply in a sector or the index;
(ix) any other communication which the Board may specify from time to time;

3. (1) On and from the commencement of these regulations, no person shall act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from the Board under these regulations:

Provided that any person acting as research analyst or research entity before the commencement of these regulations may continue to do so for a period of six months from such commencement or, if it has made an application for a certificate of registration under sub-regulation (2) within the said period of six months, till the disposal of such application:

Provided further that an investment adviser, credit rating agency, asset management company or fund manager, who issues research report or circulates/distributes research report to public or its director or employee who makes public appearance, shall not be required to seek registration under regulation 3, subject to compliance of Chapter III of these regulations.

16. (1) Personal trading activities of the individuals employed as research analyst by research entity shall be monitored, recorded and wherever necessary, shall be subject to a formal approval process.

16. (2) Independent research analysts, individuals employed as research analyst by research entity or their associates shall not deal or trade in securities that the research analyst recommends or follows within thirty days before and five days after the publication of a research report.

16. (3) Independent research analysts, individuals employed as research analysts by research entity or their associates shall not deal or trade directly or indirectly in securities that he reviews in a manner contrary to his given recommendation.

21. (1) Research analyst or research entity including its director or employee shall disclose the registration status and details of financial interest in the subject company, if he makes public appearance.

(2) If any person including a director or employee of an investment adviser or credit rating agency or asset management company or fund manager, makes public appearance or makes a recommendation or offers an opinion concerning securities or public offers through public media, all the provisions of regulations 16 and 17 shall apply mutatis mutandis to him and he shall disclose his name, registration status and details of financial interest in the subject company at the time of,-

(i) making such recommendation or offering such opinion in personal capacity;

(ii) responding to queries from audiences or journalists in personal capacity;

(iii) communicating the research report or substance of the research report through the public media.

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

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

(a) knowingly indulging in an act which creates false or misleading appearance of trading in the securities market;

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities;

(o) fraudulent inducement of any person by a market participant to deal in securities with the objective of enhancing his brokerage or commission or income;

(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

FINDINGS

13. On perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case the findings are recorded hereunder:

ISSUE I: (a)-Whether Noticee has violated provisions of securities law by not complying with regulatory provisions regarding:-

A) Non compliance with the qualification and certification requirement:

i) The Professional qualification, certification and experience details of the Principal Officer as submitted by Noticee 1 are mentioned below.

Table 1

S. No.	Name of the Principal Officer	Qualification	Certification	Experience	Certification validity	
					From	To
1	Mr. Prem Prakash (AIAPP8261A)	MBA	Investment Adviser Level-1	He is the CEO & Director of IA-CapitalVia. Previously, he was in leadership positions in firms such as IMC Global Business Pte Ltd, Consim Info Ltd etc.	04.03.2020	28.02.2023
			Investment Adviser Level-2		14.02.2020	13.02.2023

ii) <u>Non-compliance of IA-CapitalVia's 'persons associated with investment advice (PAIA)'/ representatives with Certification requirements</u>:

IA-CapitalVia vide its reply dated July 17, 2021 submitted that a total of 48 representatives have rendered investment advice during the inspection period. The following observations have been made on verifying the NISM certification details of the aforesaid PAIA on NISM Skills Registry website (certifications.nism.ac.in).

Table 2

S. No	Name	PAN	Date of Appointment	NISM XA Exam Date	NISM XB Exam Date	Non-compliance with Reg 7(2) (in days)	
						NISM XA	NISM XB
1	Aamir Mustansir Makda	CWNPM2102E	25 Feb 2019	8 Jun 2019	20 Jul 2019	103	145
2	Anjali Agarwal	BXYPA4525N	13 Jun 2019	22 Jan 2020	3 Aug 2019	223	51
3	Arpit Jain	ASVPJ1324M	26 Mar 2012	9 Feb 2015	18 Jul 2015	*	87
4	Ashis Biswas	AMKPB1496R	8 Feb 2016	25 Jun 2016	26 Nov 2016	138	292
5	Chepa Likhita	BLDPC5131M	13 Mar 2019	6 Apr 2019	11 May 2019	24	59
6	Gursimran Singh	IKXPS8304G	19 Feb 2018	9 Jun 2018	10 Mar 2018	110	19
7	Kshitij Pradeep Purohit	AORPP4377C	8 Mar 2018	23 Jun 2016	2 Mar 2019	-	359
8	Lekshmi Rose	CESPR6989D	5 Mar 2018	24 Mar 2018	7 Jul 2018	19	124
9	Manvi Deshlahara	CLRPD5170J	23 May 2019	24 Dec 2019	27 Jan 2020	215	249
10	Naveen Singampalli	EPIPS3125H	13 Jun 2019	31 Aug 2019	25 Jul 2019	79	42

S. No	Name	PAN	Date of Appointment	NISM XA Exam Date	NISM XB Exam Date	Non-compliance with Reg 7(2) (in days)	
						NISM XA	NISM XB
11	Pratibha Shrotriya	EIVPS1685G	18 Jun 2018	25 May 2019	22 Jun 2019	341	369
12	Rajdeep Singh Chawla	AVOPC3268R	17 Oct 2017	24 Apr 2018	10 Mar 2018	189	144
13	Ruchi Kalra	FPJPK6663C	1 May 2019	18 Jan 2020	5 Feb 2020	262	280
14	Samar Veer Kukar	DEIPK5351H	19 Feb 2018	7 Apr 2018	10 Mar 2018	47	19
15	Sitanshu Anil Gala	ATKPG2201J	6 Aug 2018	17 Oct 2018	27 Mar 2019	72	233
16	Sudhanshu Tiwari	AXGPT1936M	29 Apr 2019	12 Apr 2019	3 Aug 2019	-	96
17	Vijay Dhanotiya	ASYPD4014H	24 Jul 2013	23 Feb 2015	8 May 2015	*	16
18	Vikas Dilbag Bagdi	AMRPB4893P	18 Feb 2019	25 Jun 2019	16 Sep 2019	127	210
19	Vishal Balabhadruni	BLOPB2125F	13 Mar 2019	6 Apr 2019	11 May 2019	24	59

*NISM certification requirement came in to effect from 22 Apr 2015

iii) The above table presents the list of 19 out of 48 ‘persons associated with investment advice (PAIA)’/representatives who did not obtain requisite NISM certifications within the prescribed timelines. The delay in complying with the requirement of NISM certification ranges from 16 days to 369 days.

iv) For example, the PAIA ‘Ms. Pratibha Shrotriya’ obtained her NISM XB certification on 22 June 2019, more than a year after her joining date (18 June 2018). In essence, ‘Ms. Pratibha Shrotriya’ engaged in investment advisory service for a period of more than one year without being eligible for the same. Similar non-compliance is observed in the case of other PAIA mentioned in the above table.

v) <u>Discontinuity in compliance with Certification requirement by PAIA</u>:

S. No	Name	PAN	Certification	Previous Certificate		Current Certificate		Non-compliance with Reg 7(2) (in days)
				From	To	From	To	
1	Ashis Biswas	AMKPB1496R	NISM XA	25 Jun 2016	24 Jun 2019	10 Jan 2020	9 Jan 2023	200
			NISM XB	26 Nov 2016	25 Nov 2019	27 Jan 2020	26 Jan 2023	63
2	Kshitij Pradeep Purohit	AORPP4377C	NISM XA	23 Jun 2016	22 Jun 2019	5 Oct 2019	4 Oct 2022	105

vi) The above table presents the list of 2 'persons associated with investment advice (PAIA)'/representatives who failed to ensure continuity in compliance with NISM certification requirements. In the case of 'Mr. Ashis Biswas', the validity of NISM XA certification had expired on 24 June 2019 and the same was not renewed till 10 January 2020. In effect, Mr. Ashis Biswas was in non-compliance of Reg 7(2) of IA Regulations, 2013 for a period of 200 days.

vii) Additionally, regulation 2(1)(r) of IA Regulations w.e.f September 30, 2020 provides the definition of 'persons associated with investment advice (PAIA)' inter-alia as all client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called.

viii) Further, vide reply dated Jan 28, 2022 submitted a list inter alia of 147 employees who were employed as 'Client Acquisition Manager' and 'Senior Client Acquisition

Manager' from April 01, 2020 to December 31, 2021. It is observed from the submissions of Noticee 1 that their roles were inter-alia - Handholding while onboarding, Need Analysis, Risk Profiling, KYC, Product Suitability etc. The above mentioned description of the roles includes them under the definition of 'persons associated with investment advice (PAIA)' as per Regulation 2(1)(r) of IA Regulations. It is observed that of the aforesaid PAIA, 23 PAIA were such that their date of joining was in Oct 2020 and beyond.

ix) On analysis, it was observed that 11 PAIA of the said 23 PAIA possessed neither NISM XA nor NISM XB certification. Of the remaining PAIA there were 04 PAIA who only possessed NISM XA certification. The said details have been presented below and the same have been confirmed from the NISM Skills Registry website and from NISM vide email dated Feb 16, 2022.

Table 4

Sno	Name	PAN	DOA	Designation	NISM XA Exam Date	NISM XB Exam Date
1	Shweta Narwale	BCVPN0907K	07-Nov-20	Senior Client Acquisition Manager	-	-
2	Harshit Mistry	CATPM8276P	10-Oct-20	Client Acquisition Manager	-	-
3	Kaustubh Srivastava	OFRPS5682L	01-Dec-21	Client Acquisition Manager	-	-
4	Pradeep Kumar Mahto	AVTPM9645H	15-Oct-20	Senior Client Acquisition Manager	-	-
5	Prakhar shivkumar	DQXPP1480H	10-Oct-20	Client Acquisition Manager	-	-
6	Ayushi Jha	BNCPJ8906Q	21-Dec-21	Client Acquisition Manager	-	-
7	Neha Raghuwanshi	FKJPR2593P	10-Dec-21	Client Acquisition Manager	-	-
8	Sayali Shrikant Satpute	FYWPS2940N	06-Dec-21	Client Acquisition Manager	-	-

Sno	Name	PAN	DOA	Designation	NISM XA Exam Date	NISM XB Exam Date
9	Shubham Tyagi	AVVPT9713H	10-Oct-20	Client Acquisition Manager	-	-
10	Ganesh Tulshiram Dongare	BOWPD8854E	06-Dec-21	Client Acquisition Manager	-	-
11	Aishwarya Satish Kalbande	DYQPK1007Q	15-Oct-20	Client Acquisition Manager	-	-
12	Sumit Jayesh Vishwakarma	BSZPV4109B	01-Dec-21	Client Acquisition Manager	11-Jul-19	-
13	Arpit Singh Thakur	AWHPT4705E	25-Nov-21	Client Acquisition Manager	24-Aug-21	-
14	Pooja Jagdish Madame	EQIPM6555A	25-Nov-21	Client Acquisition Manager	29-Sep-21	-
15	Devendra Arya	CDKPA1847E	27-Sep-21	Client Acquisition Manager	14-Sep-21	-

x) Further, on analysis of a random sample of SCORES complaints against Noticee 1, it is observed that the complainants had mentioned in their complaints, names of certain employees of Noticee 1 with whom they had interacted. Thus including the said employees under the definition of 'persons associated with investment advice (PAIA)' as per Regulation 2(1)(r) of IA Regulations.

xi) On checking the certification details of the said PAIA from NISM vide email dated Feb 16, 2022 and from NISM Skills Registry website the following is observed,

Table 5

Sno	SCORES Complaint Number	Date of Receipt	Name of employee mentioned in the complaint	PAN	DOA	Designation	NISM XA Exam Date	NISM XB Exam Date
1	SEBIE/MH22/0000190/1	06-Jan-22	Vishwajeet Kumar	IQOPK5161E	23-Feb-21	Client Success Manager	19-Apr-21	-
	SEBIE/MH21/0011737/1	12-Sep-21						
	SEBIE/MH21/0015628/1	27-Dec-21						
	SEBIE/MH21/0015638/1	27-Dec-21						
2	SEBIE/MH21/0004012/1	01-Mar-21	Akhil Soni	JFFPS0327D	04-Oct-19	Senior Client Success Manager	27-Mar-21	-
	SEBIE/MH21/0009744/1	30-Jul-21						
3	SEBIE/MH21/0013458/1	25-Oct-21	Krishna Mohan Pandey	CVZPP8147B	15-Jan-18	Business Manager	19-Apr-21	-
4	SEBIE/MH20/0009313/1	03-Sep-20	Rahul Giri	BBCPG1112R	21-May-20	Client Acquisition Manager	22-Mar-21	-
5	SEBIE/MH20/0009313/1	03-Sep-20	Pawan Kumar Paigwar	BEVPP3669E	13-Mar-20	Business Manager	-	-

Sno	SCORES Complaint Number	Date of Receipt	Name of employee mentioned in the complaint	PAN	DOA	Designation	NISM XA Exam Date	NISM XB Exam Date
6	SEBIE/MH22/0000190/1	06-Jan-22	Ashutosh Kumar	BSIPA2794J	23-Jan-19	Business Manager	-	-
7	SEBIE/MH22/0000349/1	11-Jan-22	Abhishek Kushwaha	FWXPK5561C	12-Dec-18	Business Manager	31-Mar-21	-
8	SEBIE/MH20/0010247/1	15-Jun-20	Dipesh Gupta	BPRPG5917D	30-May-19	Management Trainee - Client Acquisition	-	-

xii) It is observed from the above table that all the PAIA who had interacted with the complainants were ineligible to do so. It is the responsibility of Noticee 1 to ensure that its PAIA/representatives/employees/associated persons, as the case may be, comply with the certification requirements under regulation 7(2) at all times.

<u>Notifications</u>:
SEBI vide notification no. LAD-NRO/GN/13/6109 dated June 19, 2013 has notified that with effect from the date of the notification, Investment Advisers and their associated persons, including their representatives and partners, offering investment advice, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-X-A: Investment Adviser (Level 1) Certification Examination.

SEBI vide notification no. LAD-NRO/GN/201-14/42/118 dated January 27, 2014 has notified 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.

xiii) By not ensuring that its associated persons/employees/representatives i.e. 'persons associated with investment advice (PAIA)' are in compliance with NISM certification requirements and by not ensuring the continuity of the said compliance, Noticee 1 has allegedly violated the provisions of regulation 7(2) r/w. regulation 15(9) r/w. Clauses 1, 2, 3, 8 and 9 of Code of conduct specified in Schedule III of IA Regulations and provisions of regulation 3(1) of CAPSM Regulations r/w. Notification no. LAD-NRO/GN/13/6109 dated June 19, 2013 and No. LAD-NRO/GN/201-14/42/118 dated January 27, 2014.

xiv) It is alleged that the Noticee 1 did not ensure that its associated persons/ employees/ representatives i.e. 'persons associated with investment advice ("PAIA")' are in compliance with NISM certification requirements and also did not ensure the continuity of compliance with NISM certification requirements.

xv) On account of failure to ensure compliance and continuity of compliance with NISM Certification requirement of its associated persons/ employees/ representatives i.e. 'persons associated with investment advice ("PAIA")', it is alleged that the Noticees have violated the provisions Regulation 7(2) r/w Regulation 15(9) r/w Clauses 1, 2, 3, 8 and 9 of Code of conduct specified in Schedule III of the IA Regulations and provisions of Regulation 3(1) of CAPSM Regulations r/w. Notification no. LAD-NRO/GN/13/6109 dated June 19, 2013 and No. LAD-NRO/GN/201-14/42/118 dated January 27, 2014.

xvi) It is submitted by the Noticees that as per regulation 3(2) of CAPSM Regulations the alleged list of 19 persons associated with investment advice' (hereinafter referred to as "**PAIA**") had a timeframe of 1 year from the date of appointment within which they can obtain the requisite certification as prescribed by SEBI. Therefore, all of them had obtained the requisite time except Ms. Pratibha Shrotriya who was over due by 4 days. However, it is submitted that Ms. Pratibha Shrotriya was appointed as SCAT Executive on June 18, 2018 and thereafter engaged as PAIA only on July 1, 2019. Therefore, she was already qualified under regulation 7(2) of IA regulations. Further, NISM-Series-X-A: Investment Adviser (Level 1) Certification Examination (**"IACE-1"**) and NISM-Series-X-B: Investment Adviser (Level 2) Certification Examination (**"IACE-2"**) read with proviso to Regulation 3(1) of the CAPSM Regulation effectively means that the already engaged/employed associated persons i.e., representatives of an Investment Advisers offering investment advice shall obtain IACE-1 till June 19, 2015 and IACE-2 till January 27, 2016.

xvii) Regulation 7(2) of the IA Regulations, only required representatives of registered IAs, who offer investment advice to comply with the certification requirement as prescribed in the said provision. Evidently, the alleged discontinuity in compliance with certification requirement for the employees mentioned in Table 3 lies in the period prior to the SEBI (IA) Amendment Regulations, 2020 coming into effect i.e prior to September 30, 2020. It was further submitted that Mr. Kshitij Purohit was appointed on March 8, 2018 as a C-SAT Manager wherein his responsibilities primarily revolved around assessing overall customer satisfaction from the services of Noticee 1 and developing learning and development modules from such insights for training purposes. Subsequently, on October 15, 2019, Mr. Purohit was transferred to the Research Department, whereinafter he was engaged in rendering investment advice. It is submitted that Mr. Ashis Biswas, was appointed on February 08, 2016 as a C-SAT Executive, wherein his responsibilities primarily involved addressing customers queries, requests, concerns and/or support requests and assessing overall customer satisfaction with the services of Noticee 1. Thereafter, on April 01, 2017, Mr. Biswas was transferred to the Research Department, as the Product Manager. However, due to expiration of his certificates and his inability to renew the same well before time, Mr. Biswas was prohibited from rendering any investment advice in this period. In such a peculiar case, The Noticee No.1 taking into account his years of experience and service decided to re-transfer him to the Quality Support team, as the CSAT Manager, instead of terminating his employment on June 01, 2019.

xviii) It was further submitted that regulation 3(2) of CAPSM Regulations provides timeframe of 1 year from their date of employment. Therefore, all the PAIA's who are still employees of Noticee 1 had time to obtain the certification.

xix) It is also submitted that employees were appointed before SEBI Notification No. SEBI/LAD- NRO/GN/2020/22 dated July 03, 2020 wherein a new category of PAIA were required to obtain requisite certification with effect from September 20, 2020. It is clear from column 3 of table 5 of the SCN PAIA'a mentioned at sr. no. 2 to 8 had time till September 30, 2022 to obtain certification and PAIA at sr. no. 1 had time till

1 year from his employment i.e. February 23, 2022 (as he joined after SEBI notification).

xx) After analysing the reply of the Noticees in this regard, Regulation 3(2) of CAPSM Regulations is perused which states that:

"3. Obligation to obtain certificate

(2) An associated person on being employed or engaged by an intermediary on or after the date specified by the Board shall obtain the certificate within one year from the date of being employed or engaged by the intermediary."

xxi) Therefore, it is clear that all the PAIAs mentioned at table 2 of the SCN had time of 1 year to obtain the requisite certification of NISM XA and NISM XB. Accordingly, it noted that except Pratibha Shrotriya (mentioned at pt. 11 of the table), everyone else had obtained the certification in due time. Further, it is noted that Pratibha Shrotriya obtained the certification of NISM XB after a delay of mere 4 days.

xxii) In regard to Table 3 of the SCN it is noted that Mr. Ashish Biswas was appointed as a C-SAT Executive on February 8, 2016 and subsequently transferred to the Research Department as Product Manager on April 1, 2017 after he obtained the requisite certification. On expiry of the certification he was re-transferred as CSAT Manager. Therefore, it is noted during the period where his certificate was not valid, he was not rendering investment advice to clients rather he was working in the Quality Support Department.

xxiii) In regard to Mr. Kshitij Pradeep Purohit, it is noted that he was appointed as CSAT Manager on March 8, 2018 and transferred to Research Department on October 15, 2019 only after obtaining the certification on October 5, 2019.

xxiv) In regard to PAIAs mentioned in Table 4 of the SCN, it is noted that the said PAIAs had time of one year to obtain the said certification. However, from the documents available on record, it is noted that all the said 15 PAIAs had left Noticee 1 before the completion of 1 year.

xxv) In regard to Table 5 of the SCN , it is noted that Name of employees mentioned at sl. no. 2 to sl. No. 8 were appointed before the amendment of Regulation 7 of IA Regulations i.e. September 30, 2020. In all such cases, the date of receipt of complaint in SCORES was before the expiry of the period of 2 years from September

30, 2020. Therefore, the employees had time of 2 years to comply with the certification requirement. Further, in regard to employee at sl. No. 1 , Vishwajeet Kumar, it is noted that he was appointed on February 23, 2021 and had time till February 22, 2022 to obtain the requisite certification. Even in his case, the date of receipt of complaints was prior to the said date.

xxvi) In view of the above, it is found that the allegation of violation of regulation 7(2) r/w regulation 15(9) r/w Clauses 1, 2, 3, 8 and 9 of Code of conduct specified in Schedule III of IA Regulations and provisions of regulation 3(1) of CAPSM Regulations r/w. Notification no. LAD-NRO/GN/13/6109 dated June 19, 2013 and No. LAD-NRO/GN/201-14/42/118 dated January 27, 2014 by the Noticees do no stand established.

B) <u>Guaranteed profits / returns to clients</u>:

i) On analysis of complaints against Noticee 1, it is observed that a total of 60 complaints were received on SCORES against Noticee 1 from April 1, 2020 to January 17, 2022. Of the said 60 complaints, it is observed that 19 of them inter alia pertain to allegations that Noticee 1 induced them in to opting their services by promising guaranteed profits/assured returns. On analysis of telephonic conversations between 'persons associated with investment advice (PAIA)' of Noticee 1 and some of the clients, the following is observed,

a. <u>Telephone conversation between PAIA of IA-CapitalVia and Mr. Pradeep Valappil</u>

Recording transcript from minute 14:05 in the audio clip:

<u>IA-CapitalVia's PAIA</u>: *"maan li jiye maine 3% ka return diya aapko, kitna percent sir? 3% sir, <u>that is the minimum</u> sir …… 3% <u>bare minimum</u> bhi expect karte hai na sir aap toh bhi hum kitna profit nikal ke de sakte hai … Rs. 24,000 ek mahine ka return ho sakta hai, 3 mahine ka sir kitna around Rs. 72,000. I'm not saying ke main aapko Rs. 72,000 nikal ke dunga, <u>main aapko minimum bol raha hoon ke Rs. 45,000 ka bare minimum profit aap kama sakte hai</u>. Rs. 8,000 aap company ka charge minus kar dijiye tab bhi aap Rs. 37,000 kama sakte hai ……… 30,000 is a good return sir <u>that is the minimum sir</u>".*

b. <u>Telephone conversation between PAIA of IA-CapitalVia and Mr. Sharvanu Dutta</u>:

Recording transcript from minute 13:30 in the clip:
<u>Mr. Shravanu Dutta</u>: *"3,500 for a month is very high yaar"*
<u>IA-CapitalVia's PAIA</u>: "…….<u>3000 ka profit main aapko single day mein bhi nikal de sakta hoon</u>."

Recording transcript from minute 1:05 in the clip:
<u>IA-CapitalVia's PAIA</u>: *"main zyada nahi bolunga sir, par market mein apan <u>kam se kam apan 5000 to 7000 profit araam se nikal sakte hai</u>"*

c. <u>Telephone conversation between PAIA of IA-CapitalVia and Mr. Shyam Sunder Sharma</u>

Recording transcript from minute 06:32 in the clip placed:
<u>IA-CapitalVia's PAIA</u>: *"hamara jo kaam rahega woh main bata deta hoon aapko, jo bhi working rahega usme <u>daily basis pe initial profit range rahega 5000 to 8000 rupees</u> sir"*

Recording transcript from minute 15:16 in the clip placed:
<u>IA-CapitalVia's PAIA</u>: *"….ye 3 se 4 din mein jo bhi aap pay karenge usse zyada hi main aapko recover karwake market se de sakta hoon."*

d. <u>Telephone conversation between PAIA of IA-CapitalVia and Mr. Sankar Biswas</u>

Recording transcript from minute 03:54 in the clip placed:
<u>IA-CapitalVia's PAIA</u>: *"…isme hain an sir aapko daily basis pe 1-2 trading recommendation aapko diye jayenge, un recommendation ko agar aap follow karte hai toh sir <u>aap araam se 2000 se 2500 rupay aap market mein bana sakte hai, monthly aap araam se 25000 se 30000 ki earning aap stock market se plan sakte hai</u>"*

e. <u>Telephone conversation between PAIA of IA-CapitalVia and Mr. Akshay</u>

Recording transcript of Mr. Akshay from minute 04:20 in the clip:
<u>IA-CapitalVia's PAIA</u>: *"… araam se aap daily basis pe average profit 800 se 1000 rupay nikal loge, at the end of the month araam se aap market ke andar 3000 aapne pay kiya tha <u>aap araam se 12000, 13000, 15000 nikal loge</u>."*

ii) It is alleged from the above conversations that the 'persons associated with investment advice (PAIA)' of Noticee 1 promise guaranteed profits/assured returns and induce the clients in to subscribing for their service by making the clients believe that they can earn regular profits from the market.

iii) It is also observed from the service agreements with the above mentioned clients that the service agreement dates range from Jan 2021 to Jan 2022. It is observed from the said service agreements and a verification call made by Noticee 1 to its clients that Noticee 1 issues the standard disclaimer, inter alia, stating that there is no assurance of returns in the securities markets. However, it is seen from the sample transcripts that the sales staff/PAIA of Noticee 1 have continued their practice of promising guaranteed profits/assured returns over a long period of time without rectifying it. Moreover, when this is seen in the context of the high number (19 of 60) of subsequent complaints filed by clients alleging promise of guaranteed profits/assured returns it appears that the standard disclaimer issued is only customary in nature with no intention of adhering to it by the sales staff/PAIA of Noticee 1.

iv) Recording transcript of Mr. Akshay from minute 01:15 in the clip:

> IA-CapitalVia's PAIA: *"hamari company ke saath abhi 1 lakh se zyada customer abhi actively kaam kar rahe hai sir"*

f. Recording transcript of Mr. Raj Kumar Jat from minute 02:50 in the audio clip:

> IA-CapitalVia's PAIA: *"hamari company ke 80,000 plus customers hai"*

v) It is observed from Noticee 1's reply dated Jul 17, 2021 that it has only 6904 unique clients. However, from the above conversations it is observed that the PAIA of Noticee 1 have repeatedly made false statements about the number of customers they service thereby concealing material facts about its business and hence misleading the clients in to enrolling into their service.

vi) From the above conversations between Noticee 1's PAIA and its clients it is observed that Noticee 1 has promised returns/profits if the clients availed its services, made false statements about the number of customers it services thereby making false and misleading representation to its clients/prospective clients. The partners, principal officer, PAIA and senior management of Noticee 1 failed to rectify the aforesaid fraudulent practices over a long period of time. Noticee 1 failed to act in a fiduciary capacity towards its clients. It also acted in a dishonest and an unfair manner and against the best interests of its clients.

vii) In view of the above, Noticee 1 indulged in mis-selling its services by concealing material facts, knowingly concealing the associated risk of investing in securities markets in calls by its sales staff/PAIA.

viii) By promising guaranteed profits/returns to its clients, and by knowingly making false and misleading statements, Noticees allegedly violated the provisions of regulation 15(1) of IA Regulations and Clause 1,2, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations.

ix) The above conduct of Noticee 1 comes under the definition of 'fraud' as per regulation 2(1)(c) of PFUTP Regulations. In view of the above, Noticees have also allegedly violated the provision of regulation 3, 4(2)(o) and 4(2)(s) of PFUTP Regulations.

x) It is submitted by the Noticees that excluding duplicate complaints, Noticee 1 had received 44 complaints between April 1, 2020 to January 17, 2022 and originally 58 complaints instead of 60 complaints as mentioned in the SCN which is mere 0.3 per cent of the total number of customers served by Noticee 1. Further, the Noticees submitted that it had a comprehensive client on boarding system wherein the customers are explicitly asked whether any guarantee or assurance of profit/ returns have been made to them. Noticee 1 also has Quality Assurance Department which ensures that appropriate actions are taken against any employee whose call quality does not meet the standards set by Noticee 1. Accordingly monetary penalty was imposed and stern warning was given to such employees who made the alleged calls to clients. They are also sent for appropriate training. Further, it was submitted that such calls did not guarantee profit but only discussed probable profit with the customers.

xi) It is noted that Noticee 1 has a Customer Onboarding Process which includes several stages including risk profiling, selection of services as per risk suitability, KYC verification and a final step, a service verification which is undertaken by

Quality Assurance Department wherein all the queries of the client is answered. It is observed that though Noticee 1 had a comprehensive system yet its employees tried to entice the customers with the assurance of guaranteed returns. It is clear from the transcripts mentioned in the SCN that the employees of Noticee 1 promised a return of Rs. 3000 on a single day or minimum "5000 to 7000 profit can be made easily." Further it is noted that employees of Noticee 1 gave false statements regarding number of clients they catered to give false impression of itself.

xii) The very fact that the PAIA s of Noticee 1 has been assuring profit on a single day or initial profit range, is not only assuring the client of a specified return but is also enticing the clients to avail the services by showing exaggerated return on initial investment amount that too within a short period of time. If Noticee 1 was not inducing its clients by the optics of high returns, then there would be no need for Noticee 1 to quantify the return. As noted above, the act of Noticee 1 of promising an assured return was not an isolated instance but a regular feature. In effect, Noticee 1 was making a representation to the clients that, irrespective of the dynamics of the securities market, a specified profit was achievable. Securities market returns are volatile and unpredictable.

xiii) Being a registered IA, Noticee 1 can be reasonably expected to know the fundamental principle of the securities market, that all investments in securities market are subject to market risks and that returns cannot be assured no matter how much and for how long the investment is made. Accordingly, Noticee 1 is expected to take due care in communication with its clients and should refrain from such communication which is misleading and may influence decision of investors. However, from, the above instances, it is clear that the Noticee 1 has been, in its communications with the clients, promised assured returns. Such promises are misleading and can be regarded as nothing but acts of inducing the clients.

xiv) Further it can be observed that 19 of the 58 complaints filed by clients allege promise of guaranteed returns and it is clear that their onboarding process was mere customary in nature. The practice of assured returns continued even after having a comprehensive process. Therefore, the effectiveness of their process is questionable. The fact that Noticee 1 had imposed monetary penalty and taken stern measure does not absolve it of its responsibility towards its customers. In view of the above it is clear that Noticee 1 did not act in an honest and diligent way and gave a false impression to its customers. Accordingly, the allegation of violation of section 15(1) of IA Regulations and clause 1, 2, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations stand established.

xv) In this context, reference is drawn to the Order of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of 24 Carat Financial Services vs. SEBI decided on January 18, 2023. Though the matter was related to Research Analyst, one of the issues involved in the matter was related to the employees of the appellant, promising guaranteed returns to the prospective clients on investment of certain amounts. The Hon'ble Tribunal while adjudicating the said issue, held as follows:

> *"…Further guaranteed returns were promised quoting profit percentage or certain amount either monthly or on a daily basis. The action of promising guaranteed returns is patently against the principles of the securities market and not only manipulative but also fraudulent and violative of Regulations 3 and 4 of the PFUTP Regulations…"*

xvi) Drawing parallel from the aforesaid Order of Hon'ble SAT, it is noted that the act of Noticee 1 of promising assured returns, is a misrepresentation of the truth. Neither there exists any grounds for belief of such returns nor can the assured returns be achieved with any certainty. An IA cannot make a false statement without reasonable ground for believing it to be true. The conduct of the Noticee 1 of not disclosing all the material aspect with respect to the investment made in the securities market especially the likelihood of erosion of capital shows the deceptive behavior of the Noticee 1. The same was done with the sole purpose of influencing the decision of the prospective clients to avail the services of the Noticee 1.

xvii) It is also noted that the employees of Noticee 1, while dealing with customers have assured returns to them and also gave false information knowingly regarding the number of customers, Noticee 1 catered to, hence, mis-selling its service with the object of enhancing its commission. Further with its employees promising assured returns to the clients, Noticee 1 also tried to induce them to trade without concealing the risk involved in such trades. This is clear misrepresentation of the truth and concealment of material fact in order to convince the customers. In view of the above, the allegation of violation of regulations 3, 4(2)(o) and 4(2)(s) of PFUTP Regulations stand established.

C) <u>PAIA/representatives entered in to contrary transactions in their own accounts within 15 days of date of advice</u>

i) On analyzing the trading activity received from BSE and NSE of the sample of top 20 PAIAs/representatives whose undertakings were submitted by Noticee 1, it was observed that 16 out of 20 PAIAs/representatives had engaged in a total of 930 transactions on BSE and NSE combined during the inspection period.

ii) Further, on analyzing the investment advice rendered by the sample PAIAs/representatives during the inspection period and their trading activity for the respective period, it was observed that 03 of the sample PAIA /representatives engaged in contrary transactions w.r.t the investment advice rendered within 15 days from the day of advice as illustrated below

a. <u>PAIA/representative - Harsh Patidar (CFAPP5721G)</u>:

<u>Table 6</u>

Date of Advice	Security in which Advice was made	Trade Date by the PAIA/rep	Security Name	Stock Exchange	Buy/Sell Position by PAIA/rep	Avg Buy/Sell Price	Period during which trading was prohibited in the Security
01 Apr 2020	BUY 300 SHARES OF HDFCAMC NSE CASH IN THE RANGE OF 2171.2 - 2171.8 WITH SL 2141 AND TGT 2221	01 Apr 2020	HDFCAMC	NSE	Sell	2,155.03	01 Apr 2020 to 15 Apr 2020
01 Apr 2020	BUY 200 SHARES OF HDFCAMC NSE CASH IN THE RANGE OF 2170.3 - 2170.8						

Date of Advice	Security in which Advice was made	Trade Date by the PAIA/rep	Security Name	Stock Exchange	Buy/Sell Position by PAIA/rep	Avg Buy/Sell Price	Period during which trading was prohibited in the Security
	WITH SL 2134.5 AND TGT 2220						
01 Apr 2020	BUY 200 SHARES OF HDFCAMC NSE CASH IN THE RANGE OF 2171.2 - 2171.8 WITH SL 2141 AND TGT 2221						
02 Jul 2020	BUY 2000 SHARES OF EXIDEIND NSE CASH IN THE RANGE OF 151.5 - 151.6 WITH SL 148.5 AND TGT 156.5	07 Jul 2020	EXIDEIND	NSE	Sell	155.40	02 Jul 2020 to 16 Jul 2020

iii) It is observed from the above table, that Mr. Harsh Patidar had given 3 separate investment advices on April 01, 2020 all advising the client to buy HDFCAMC. However, on the same date Mr. Harsh Patidar himself sold HDFCAMC much below the target price given to the clients.

iv) Similarly, on July 02, 2020, Mr. Harsh Patidar gave the investment advice of buying EXIDEIND. However, on July 07, 2020, Mr. Harsh Patidar sold the same scrip at price below the target price without giving any revised assessment to the clients thereby engaging in a contrary transaction w.r.t the advice given within 15 days from the day of such advice.

b. PAIA/representative - Arpit Jain (ASVPJ1324M):

Table 7

Date of Advice	Security in which Advice was made	Trade Date by the PAIA	Security Name	Stock Exchange	Buy/Sell position by PAIA	Avg. Buy Price	Avg. Sell Price	Period during which trading was prohibited in the Security
29 Sep 2020	BUY 2500 SHARES OF CHOLAFIN NSE CASH IN THE RANGE OF 250.2 - 250.3 WITH SL 247 AND TGT 258	29 Sep 2020	CHOLAFIN	NSE	Sell	-	251.10	29 Sep 2020 to 13 Oct 2020
14 Dec 2020	BUY 3000 SHARES OF CUB NSE CASH IN THE RANGE OF 179 - 179.1 WITH SL 176.8 AND TGT 183	14 Dec 2020	CUB	NSE	Intraday Square-off	178.99	179.10	14 Dec 2020 to 28 Dec 2020
14 Dec 2020	BUY 2500 SHARES OF CUB NSE CASH IN THE RANGE OF 179 - 179.1 WITH SL 177 AND TGT 183							
18 Sep 2020	BUY 250 SHARES OF ENDURANCE NSE CASH IN THE RANGE OF 1146 - 1146.1 WITH SL 1136 AND TGT 1170	21 Sep 2020	ENDURANCE	NSE	Sell	-	1,164.90	18 Sep 20202 to 02 Oct 2020

Date of Advice	Security in which Advice was made	Trade Date by the PAIA	Security Name	Stock Exchange	Buy/Sell position by PAIA	Avg. Buy Price	Avg. Sell Price	Period during which trading was prohibited in the Security
18 Sep 2020	BUY 500 SHARES OF ENDURANCE NSE CASH IN THE RANGE OF 1146 - 1146.1 WITH SL 1126 AND TGT 1170							
10 Feb 2021	BUY 3000 SHARES OF M&MFIN NSE CASH IN THE RANGE OF 188.2 - 188.3 WITH SL 186 AND TGT 196	10 Feb 2021	M&MFIN	NSE	Intraday Square-off	188.20	193.80	10 Feb 2021 to 24 Feb 2021

v) It is observed from the table above that Mr. Arpit Jain rendered an investment advice on September 29, 2020 advising the clients to buy CHOLAFIN. However, on the same day Mr. Arpit Jain sold CHOLAFIN much below the target price given to the clients.

vi) Similarly, on December 14, 2020 Mr. Arpit Jain advised twice to buy CUB to clients. However, on the same day Mr. Arpit Jain squared-off a trade in CUB at a price much below the target price given to the clients.

vii) The trades in ENDURANCE and M&MFIN in the above table show a similar pattern. Hence, it is observed from the above table that the Mr. Arpit Jain entered in to transactions that were contrary to the advice given within 15 days from the day of such advice.

c. <u>PAIA/representative - Likhita Chepa (BLDPC5131M)</u>:

Table 7a

<table>
<tr><th>Date of Advice</th><th>Security in which Advice was made</th><th>Trade Date by the PAIA</th><th>Security Name</th><th>Stock Exchange</th><th>Buy/Sell position by PAIA</th><th>Avg Buy/Sell Price</th><th>Period during which trading was prohibited in the Security</th></tr>
<tr><td>11 Nov 2020</td><td>BUY 400 SHARES OF AJANTPHARM NSE CASH IN THE RANGE OF 1546 - 1547 WITH SL 1532 AND TGT 1563</td><td rowspan="2">19 Nov 2020</td><td rowspan="2">AJANTPHARM</td><td rowspan="2">NSE</td><td rowspan="2">Sell</td><td rowspan="2">1,543.00</td><td>11 Nov 2020 to 25 Nov 2020</td></tr>
<tr><td>13 Nov 2020</td><td>BUY 400 SHARES OF AJANTPHARM NSE CASH IN THE RANGE OF 1545.1 - 1545.5 WITH SL 1530 AND TGT 1561</td><td>13 Nov 2020 to 27 Nov 2020</td></tr>
</table>

viii) It is observed from the above table that Ms. Likhita Chepa advised the clients on November 11 and November 13, 2021 to buy AJANTAPHARM. However, on November 19, 2021 Ms. Likhita Chepa sold AJANTAPHARM at price much below the target price given to the clients without giving a revised assessment to the clients thereby engaging in a contrary transaction w.r.t the advice given within 15 days from the day of such advice.

ix) From the above examples, it is observed that Noticee 1 failed to enforce its own policy related to trading by its ‘persons associated with investment advice’ (PAIA)/representative thereby casting a shadow on the genuineness and quality of the investment advice provided by its PAIA. Noticee 1 failed to enforce and monitor important procedures thereby putting the interests of its clients at risk.

x) In view of the above, it is alleged that Noticee 1 including its partners, principal officer and persons associated with investment advice failed to ensure compliance with regulation 15(7) and 15(1) of IA Regulations and clauses 1, 2, 3, 8 and 9 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations.

xi) The above conduct of Noticee 1 comes under the definition of 'fraud' as per Regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that the Noticees have violated Regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations.

xii) It is submitted by the Noticees that it is not possible to create a mechanism to control the demat accounts of the employees. Noticee 1 follows a no-trading policy for its employees which is incorporated in its Code of Conduct policy. It is further submitted that the advices given to customers were intraday services wherein purchasing and selling of securities under advice takes place on the same day. As Noticee 1 had no mechanism to know about the trading of its employees, it only came to know about the trades on receiving the Inspection Report of SEBI. Subsequently, an Internal Committee was set up and the employees were asked to furnish their apologies and they were relieved from their duties with immediate effect.

xiii) Regulation 15(7) of IA Regulations reads as under:

15 (7) An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.

Provided that during the period of such fifteen days, if the investment adviser is of the opinion that the situation has changed, then it may enter into such a transaction on its own account after giving such revised assessment to the client at least 24 hours in advance of entering into such transaction.

xiv) On perusal of regulation 15(7) of IA regulations, it is very clear that the IA (or its PAIAs in this case) cannot enter into transactions in its own account which is contrary to the advice given to its clients. The regulation makes no distinction between it being an intra-day trade or long term investment by the clients. It is noted that the PAIAs of Noticee 1 placed contrary orders to the advice provided:

Harsh Patidar

Date of advice	Security Name	Advice given	No. of instance	Trade date by PAIA	Buy/Sell position by PAIA
01/04/2020	HDFCAMC	Buy-Sell	3	01/04/2020	Sell
02/07/2020	EXIDEIND	Buy-Sell	1	07/07/2020	Sell

Arpit Jain

Date of advice	Security Name	Advice given	No. of instance	Trade date by PAIA	Buy/Sell position by PAIA
29/09/2020	CHOLAFIN	Buy-Sell	1	29/09/2020	Sell
14/12/2020	CUB	Buy-Sell	2	14/12/2020	Intra-day day square off
18/09/2020	ENDURANCE	Buy-Sell	2	21/09/2020	Sell
10/02/2021	M&MFIN	Buy-Sell	1	10/02/2021	Intra-day day square off

Likhita Chepa

Date of advice	Security Name	Advice given	No. of instance	Trade date by PAIA	Buy/Sell position by PAIA
11/11/2020	AJANTPHARM	Buy-Sell	1	19/11/2020	Sell
13/11/2020	AJANTPHARM	Buy-Sell	1	19/11/2020	Sell

xv) From the submission of the Noticees, it is observed that the trade executed by Harsh Patidar on April 1, 2020 in his own account was before the advice given to the client. However, in respect to Exide India the trade executed by him was after the advice given to the client. Moreover, in all the advices given by the said 3 PAIAs, it is noted that the PAIA in their own trade had sold the shares at a price which is lesser than the one advised to their clients. In view of the same, if we consider that the advices given by the PAIA were of intra-day wherein the stop loss price and the target price is provided, it is noticed that the PAIAs have sold the shares at a price which is lower than the target price. Hence they have clearly taken a contra position of the advice given within fifteen days of giving the advice.

xvi) The submission of Noticee 1 that it has no control on the trading account of its employees is not tenable. When one is registered with SEBI as Investment Advisor it is the duty of the registered entity to abide by all the rules and regulations that are prescribed for them. Therefore, when an employee of Noticee 1 acts in violation of any regulations, the violations is attributed to the registered intermediary. Noticee 1 should have been more diligent to ensure that its employees comply with all regulatory requirements. In view of the above, the allegation of violation of regulation 15(7) and 15(1) of IA Regulations and clauses 1, 2, 3, 8 and 9 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations stands established.

xvii) It was further alleged that such action by Noticee 1 comes under the definition of 'fraud' and by placing such contrary position of trades, Noticee 1 has also violated regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP regulations.

xviii) To establish a serious allegation of fraud, it is important to analyse the action of the PAIA. In this case, there is nothing on record to show that the PAIAs adviced the customers knowing that the advice is false or misleading or concealing certain material facts or risks. On the contrary the PAIAs took contrary position to take advantage of the effect of the trades done by the customers in the market. The main purpose of regulation 15(7) of IA Regulations was to stop such practice. Therefore, though it is observed that Noticee 1 is in violation of provisions of IA Regulations, there is not sufficient evidence against Noticee 1 in this case to establish the violation of regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations.

D) <u>Limitations on Trading</u>

i) It is observed that the 02 PAIAs i.e. Mr. Harsh Patidar and Mr. Arpit Jain had issued research recommendations/ advice in the securities mentioned in the respective tables and the said PAIAs/representatives also traded in the respective scrip within thirty days before and five days after providing the investment advice / research recommendation.

ii) The said investment advice rendered and the PAIAs/representatives comes under the definition of ‘research report’ and ‘research analyst’ respectively as per 2(1)(w) and 2(1)(u) of RA Regulations.

iii) In view of the above, it is alleged that Noticees have not acted in compliance with regulation 16(1), 16(2) and regulation 16(3) of RA Regulations read with 2(1)(u), 2(1)(w) and 3(1) of RA Regulations as the PAIAs employed by it have dealt in corresponding securities in which investment advice / research recommendations was issued by Noticee 1 within thirty days before and five days after providing the investment advice / research recommendation by Noticee 1.

iv) The above conduct of Noticee 1 comes under the definition of ‘fraud’ as per Regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that the Noticees have violated regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations.

v) Noticees submitted that SEBI in its ‘Consultation Paper on Review of Regulatory Framework for Investment Advisers and Research Analysts’ dated August 6, 2024clarified that all advices provided after the risk profiling of the client and product suitability assessment are on “one to one” basis and shall come under the purview of IA Regulations and if the advice is without any risk profiling and product suitability assessment, such trading calls are on “one to many” basis and shall come under the purview of RA Regulations. Therefore, it was submitted that Noticees have not violated provisions of RA Regulations.

vi) From the documents available on record, it is observed that the 02 PAIAs i.e. Mr. Harsh Patidar and Mr. Arpit Jain had conducted risk profiling of their clients and made trade recommendations accordingly. As per regulation 2(1)(w)(iv) of the RA Regulations, the recommendation given by a PAIA to the client of the investment adviser cannot be qualified as research report. Further, when Noticee 1 is charged for violation of provisions of IA Regulations due to the trading of its PAIAs within 15 days of giving advice, the same act cannot qualify for the violation of RA Regulations. The understanding that is prevalent in the market is that when an investment advice is given after risk profiling and product suitability assessment, the same shall fall under the purview of IA Regulations. In the present case both Mr.

Harsh Patidar and Mr. Arpit Jain had advised their clients after extensive individual profiling. Therefore, the allegation of violation of regulation 16(1), 16(2) and regulation 16(3) of RA Regulations read with 2(1)(u), 2(1)(w) and 3(1) of RA Regulations does not stand established. In view of the above, the allegation of 'fraud' by the Noticees does not stand.

E) <u>Observations related to public appearance of the Investment Adviser</u>

i) It is observed from the submissions of Noticee 1 that Noticee 1 and its PAIA/research analysts (RA) had made various public appearances across different public media (web, print, tv etc.) during the inspection period. Upon analyzing a sample of the information submitted, it is observed that Noticee 1 had authored web media articles under the name 'CapitalVia Global Research' making stock-specific recommendations on various occasions on the website (www.investing.com).

ii) Upon analyzing the recommendations given by Noticee 1 in public media with the trading activity of its PAIA/research analyst (RA), it is observed that 05 PAIAs - Mr. Gursimran Singh, Mr. Harsh Patidar, Mr. Naveen Mishra, Mr. Arpit Jain and Mr. Vishal Balabhadruni, who also form part of the research team engaged in trading of publicly recommended securities within a period of 30 days before and 5 days after the date of public appearance.

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
01-Jun-2020	Buy: Reliance Industries	https://in.investing.com/analysis/indices-	06-May-2020	RELIANCE	Intraday Square-off	NAVEEN MISHRA	02-May-2020 to

Date of Public Appearance	**Security in which recommendation was made**	**Public Media Link**	**Trade Date by the PAIA/RA**	**Security Name**	**Buy/Sell Position by PAIA/RA**	**Name of PAIA/RA who traded in the security**	**Period during which trading was prohibited in the security**
	Limited (Above Rs 1483) TGT: 1535 SL: 1440	rallied-further-for-third-consecutive-day-nifty-closed-above-9500-200440281	07-May-2020	RELIANCE	Intraday Square-off	NAVEEN MISHRA	06-Jun-2020
			08-May-2020	RELIANCE	Intraday Square-off	GURSIMRAN SINGH	
			13-May-2020	RELIANCE	Intraday Square-off	GURSIMRAN SINGH	
			22-May-2020	RELIANCE	Buy	NAVEEN MISHRA	
			01-Jun-2020	RELIANCE	Sell	NAVEEN MISHRA	
11-Jun-2020	Buy: The Federal Bank Limited (Above Rs.50.50) TGT 55 SL: 47	https://in.investing.com/analysis/top-stock-picks-for-thursdays-session-buy-federal-bank-and-jubilant-foodworks-200440660	10-Jun-2020	FEDERALBNK	Buy	HARSH PATIDAR	11-May-2020 to 16-Jun-2020
			15-Jun-2020	FEDERALBNK	Sell	HARSH PATIDAR	
15-Jun-2020	Buy: Escorts Limited (Above Rs.	https://in.investing.com/analysis/top-two-stock-	27-May-2020	ESCORTS	Intraday Square-off	GURSIMRAN SINGH	16-May-2020 to

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
	980) TGT: 1045 SL: 940	picks-for-mondays-session-buy-escorts-limited-and-apollo-hospitals-200440791					21-Jun-2020
17-Jun-2020	Buy: Biocon Limited (Above Rs. 400) TGT: 412, SL: 391	https://in.investing.com/analysis/two-stock-picks-for-thursdays-session-buy-lic-housing-finance-and-biocon-200440906	27-May-2020	BIOCON	Intraday Square-off	GURSIMRAN SINGH	18-May-2020 to 22-Jun-2020
17-Jun-2020	Buy: LIC Housing Finance Limited (Above Rs. 297) TGT: 310 SL: 290		10-Jun-2020	LICHSGFIN	Intraday Square-off	NAVEEN MISHRA	18-May-2020 to 22-Jun-2020
18-Jun-2020	Buy: Manappuram Finance Limited(Above Rs. 151) TGT: 156 SL: 148	https://in.investing.com/analysis/top-stock-picks-for-fridays-session-buy--beml-and-mannapuram-	02-Jun-2020	MANAPPURAM	Buy	HARSH PATIDAR	19-May-2020 to 23-Jun-2020
			08-Jun-2020	MANAPPURAM	Sell	HARSH PATIDAR	

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
		finance-200440963					
24-Jun-2020	Buy: Infosys Limited (Above Rs. 725) TGT: 745 SL: 709	https://in.investing.com/analysis/top-stock-picks-for-wednesdays-session-buy-infosys-and-hul-200441129	03-Jun-2020	INFY	Intraday Square-off	GURSIMRAN SINGH	25-May-2020 to 29-Jun-2020
29-Jun-2020	Buy: Cummins India Limited (Above Rs. 415) TGT: 425 SL: 407	https://in.investing.com/analysis/top-stock-picks-for-mondays-session-buy-bpcl-and-cummins-india-limited-200441308	03-Jun-2020	CUMMINSIND	Buy	HARSH PATIDAR	30-May-2020 to 04-Jul-2020
02-Jul-2020	Buy: Jindal Steel & Power Ltd (Above	https://in.investing.com/analysis/top-stock-picks-for-thursdays-	16-Jun-2020	JINDALSTEL	Buy	VISHAL BALABHADRUNI	02-Jun-2020 to 07-Jul-2020

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
	Rs.155) TGT: 160 SL: 152	session-buy-jindal-steel-and-tataconsumer-products-200441428					
02-Jul-2020	Buy: Tech Mahindra Limited (Above Rs. 563) TGT: 576 SL: 552	https://in.investing.com/analysis/top-stock-picks-for-fridays-session-buy-apollo-hospitals-and-tech-mahindra-200441477	24-Jun-2020	TECHM	Buy	HARSH PATIDAR	02-Jun-2020 to 07-Jul-2020
03-Aug-2020	Buy: Titan Company Ltd (Above 1083) TGT: 1150 SL: 1025	https://in.investing.com/analysis/top-stock-picks-for-the-week-200442731	27-Jul-2020	TITAN	Intraday Square-off	GURSIMRAN SINGH	04-Jul-2020 to 08-Aug-2020
18-Aug-2020	Buy: Jindal Stainless Ltd (Above	https://in.investing.com/analysis/top-stock-picks-	19-Aug-2020	JSL	Sell	ARPIT JAIN	19-Jul-2020 to

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
	93) TGT: 105 SL: 84.50	for-the-week-200443425					23-Aug-2020
23-Aug-2020	Buy: HDFC Bank Limited (HDFCBANK) Entry: 1085 TGT: 1150 SL:1040	https://in.investing.com/analysis/top-stock-picks-for-the-week-200443664	26-Aug-2020	HDFCBANK	Buy	GURSIMRAN SINGH	24-Jul-2020 to 28-Aug-2020
			27-Aug-2020	HDFCBANK	Sell	GURSIMRAN SINGH	
12-Oct-2020	Buy Axis Bank Ltd Entry: 470, TGT: 495, SL: 450	https://in.investing.com/analysis/stock-picks-for-the-week-200446117	17-Sep-2020	AXISBANK	Buy	GURSIMRAN SINGH	12-Sep-2020 to 17-Oct-2020
			18-Sep-2020	AXISBANK	Sell	GURSIMRAN SINGH	
			12-Oct-2020	AXISBANK	Intraday Square-off	GURSIMRAN SINGH	
12-Oct-2020	Buy Bajaj Auto Ltd Entry: 3115 TGT: 3195 SL: 3049		28-Sep-2020	BAJAJ-AUTO	Intraday Square-off	GURSIMRAN SINGH	12-Sep-2020 to 17-Oct-2020
20-Oct-2020	BUY: Bata India Ltd (ABOVE - 1405) TGT: 1490 SL: 1330	https://in.investing.com/analysis/stock-picks-for-the-week-200446482	21-Sep-2020	BATAINDIA	Intraday Square-off	HARSH PATIDAR	20-Sep-2020 to 25-Oct-2020

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
24-Oct-2020	BUY: Adani Port and Special Economic Zone Ltd (ABOVE - 370) TGT: 415 SL: 340	https://in.investing.com/analysis/top-stock-picks-for-the-week-200446733	25-Sep-2020	ADANIPORTS	Intraday Square-off	GURSIMRAN SINGH	24-Sep-2020 to 29-Oct-2020
			06-Oct-2020	ADANIPORTS	Intraday Square-off	GURSIMRAN SINGH	
			22-Oct-2020	ADANIPORTS	Intraday Square-off	GURSIMRAN SINGH	
25-Nov-2020	BUY: Asian Paints Ltd. DEC 2300 CE (42 - 43) TGT: 78.85 SL: 24.85	https://in.investing.com/analysis/option-picks-for-the-week-200448306	18-Nov-2020	ASIANPAINT	Intraday Square-off	GURSIMRAN SINGH	26-Oct-2020 to 30-Nov-2020
25-Nov-2020	BUY: Bajaj Auto Ltd DEC 3150 CE (100-102) TGT: 166.85 SL: 68.85		06-Nov-2020	BAJAJ-AUTO	Intraday Square-off	GURSIMRAN SINGH	26-Oct-2020 to 30-Nov-2020
			25-Nov-2020	BAJAJ-AUTO	Intraday Square-off	GURSIMRAN SINGH	
			27-Nov-2020	BAJAJ-AUTO	Intraday Square-off	GURSIMRAN SINGH	
30-Nov-2020	BUY: TCS DEC 2800 CE (40-42) TGT:	https://in.investing.com/analysis/option-	27-Nov-2020	TCS	Intraday Square-off	GURSIMRAN SINGH	31-Oct-2020 to

Date of Public Appearance	Security in which recommendation was made	Public Media Link	Trade Date by the PAIA/RA	Security Name	Buy/Sell Position by PAIA/RA	Name of PAIA/RA who traded in the security	Period during which trading was prohibited in the security
	86.85 SL: 28.85	picks-for-the-week-200448512					05-Dec-2020
14-Dec-2020	BUY: Bharti Airtel DEC 530 CE (8-8.5) TGT: 14.95 SL: 4.85	https://in.investing.com/analysis/option-picks-for-the-week-200449167	18-Nov-2020	BHARTIARTL	Intraday Square-off	GURSIMRAN SINGH	14-Nov-2020 to 19-Dec-2020
14-Dec-2020	BUY: Dr Reddy’s Laboratories Ltd DEC 5100 CE (160 -164) TGT: 228.85 SL: 129.65		17-Dec-2020	DRREDDY	Buy	GURSIMRAN SINGH	14-Nov-2020 to 19-Dec-2020

iii) It is alleged that Noticee 1 failed to act honestly, fairly and with due skill, care and diligence in the best interests of its clients. It failed to employ effective and appropriate procedures needed for the efficient performance of its business activities.

iv) Noticees failed to comply with 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. This is allegedly in violation of regulations 21(1), 16(1), 16(2) and 16(3) read with regulations 2(1)(q), 2(1)(r), 3(1) and 21(2) of RA Regulations.

v) The above conduct of Noticee 1 comes under the definition of 'fraud' as per Regulation 2(1)(c) of PFUTP Regulations. Therefore, it is alleged that the Noticees have violated Regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations.

vi) Noticee 1 submitted that it was not possible for it to independently monitor the involvement of its employees until the same is voluntarily disclosed. Therefore, Noticee 1 has incorporated internal policies such as no trading policy, no phone policy and blocked access to all online trading platforms within its premises. Noticee 1 submitted that 'Research Analyst' is a mere nomenclature and not an accurate title for the employees whose work profile involved rendering investment advice. Noticee 1 further submitted that the PAIAs may have traded in those scrips accidently without any awareness of such recommendation. Further it was submitted that Mr. Naveen Mishra was appointed as Senior Research analyst w.e.f. November 2, 2020 and his trading activity was in the month of May and June 2020. Further, Mr. Gursimran Singh, Mr. Arpit Jain and Mr. Vishal Balabhadruni had separated from Noticee 1 before receipt of the Inspection report. An internal inquiry was set up against Mr. Harsh Patidar and appropriate action was taken.

vii) It is noted that Noticee 1 had authored web-media articles under the name 'CapitalVia Global Research' and Noticee 1 submitted that the 5 PAIAs, viz. Mr. Gursimran Singh, Mr. Harsh Patidar, Mr. Naveen Mishra, Mr. Arpit Jain and Mr. Vishal Balabhadruni who were appointed as Research Analysts might have accidently traded without any awareness of such recommendation being published in the public forum. Noticees merely submitted that 3 of the 5 PAIAs i.e. Mr. Gursimran Singh, Mr. Arpit Jain and Mr. Vishal Balabhadruni had separated from Noticee 1 prior to the receipt of the inspection report and internal inquiry was set up against Mr. Harsh Patidar. Further, Mr. Naveen Sharma was appointed as Research Analyst w.e.f. November 2, 2020 but traded in the month of May and June 2020. However, from the above it is clear that Noticee 1 did not have any mechanism to monitor the trading of its employees and its PAIA's were free to trade in scrips and take contra positions which is in detriment to the interest of its clients. In view of the above, it is clear that the Research Analysts of Noticee 1 traded in the scrips wherein recommendation was given within 30 days before and 5 days after the publication. The fact that 3 Research Analysts left Noticee 1 be fore the receipt of the inspection report does not absolve Noticee 1 from its duty to monitor the trading of its employees. As a SEBI registered entity, it was the duty of Noticee 1 to ensure that it's employees comply with all the regulations including not trading in the scrips where recommendation has been given. In view of the above, the allegation of violation of regulations 21(1), 16(1), 16(2) and 16(3) read with regulations 2(1)(q), 2(1)(r), 3(1) and 21(2) of RA Regulations by the Noticees stand established.

viii) To establish a serious allegation of fraud, it is important to analyse the action of the PAIA. In this case, there is nothing on record to show that the PAIAs indulged in an act which creates false or misleading appearance of trading in securities market or mis-sold securities or services relating to securities market. Therefore, Noticees are in violation of provisions of IA Regulations, there is no evidence in this case to establish the violation of regulations 3, 4(1), 4(2)(a) and 4(2)(s) of PFUTP Regulations.

F) Charging unreasonable amount of fees to clients:

i) From the sample of 7 services based on the highest fees charged, it is observed that Noticee 1 has been selling same advisory product/service to the client before expiry of the tenure of the earlier service. It means that before the end of the earlier service period, same service has been sold to the client again. Therefore, during such period (overlap period) the client will have two advisory product/service of same nature. Such a practice was observed in 6 out of 7 services taken as sample. The details of which are presented below:

a. HNI Commodity Gold:

Table 9

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure
CUST-2020-00407	Indraneel	AKPPM3392Q	21/04/2020	48,676	Half-Yearly

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure
CUST-2020-00407	Indraneel	AKPPM3392Q	03/05/2020	70,802	Quarterly
CUST-2019-06955	Kumar	AJYPS7007E	15/01/2020	1,18,000	Quarterly
CUST-2019-06955	Kumar	AJYPS7007E	25/01/2020	1,18,000	Quarterly
CUST-2019-06955	Kumar	AJYPS7007E	05/03/2020	1,18,000	Quarterly
CUST-2020-00149	Banshidhar	AQJPV9373J	07/03/2020	51,048	Quarterly
CUST-2020-00149	Banshidhar	AQJPV9373J	12/03/2020	1,18,000	Half-Yearly
CUST-2020-00149	Banshidhar	AQJPV9373J	14/03/2020	55,247	Monthly
CUST-2020-00513	Kamal	CABPJ0432J	29/02/2020	1,06,200	Quarterly
CUST-2020-00513	Kamal	CABPJ0432J	17/03/2020	1,18,000	Quarterly
CUST-2020-00527	Ramakrishnan	AFHPR6468P	27/07/2020	1,18,000	Quarterly
CUST-2020-00527	Ramakrishnan	AFHPR6468P	31/07/2020	2,36,000	Half-Yearly

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure
CUST-2020-03770	Samrat	AFZPN1143D	09/12/2020	1,18,000	Quarterly
CUST-2020-03770	Samrat	AFZPN1143D	15/12/2020	1,18,000	Quarterly

ii) From the above table it can be seen that within a span of 12 days the client ‘Indraneel’ (AKPPM3392Q) was sold HNI Commodity Gold service for both half-yearly and quarterly tenures. It is also observed that the amount charged for quarterly tenure (Rs. 70,802/-) is more than the amount charged for half-yearly tenure (Rs. 48,676/-). Similarly, it is observed that within a span of just 7 days, a client ‘Banshidhar’ (AQJPV9373J) was sold the same service for 3 different tenures. Similar pattern can be seen for other clients in the above table.

iii) It is also observed from the above table that in the case of a client ‘Kamal’ (CABPJ0432J) for the same service and same tenure, different and arbitrary advisory fees was charged.

iv) From the above examples, it can be seen that Noticee 1 is selling same advisory services multiple times with overlapping subscription period. During such overlap period, the clients shall be receiving same tips/messages which is redundant to the clients. Further, from the above examples it can also be observed that for the same service and tenure and even from the same client different and arbitrary fees was charged.

b. HNI Equity Titanium

Table 10

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure
CUST-2019-04953	Bala	AEJPR9157A	01/01/2020	2,36,000	Quarterly
CUST-2019-04953	Bala	AEJPR9157A	14/01/2020	2,36,000	Quarterly
CUST-2019-06413	Hans	ANZPN2514L	27/11/2019	94,380	Half-Yearly
CUST-2019-06413	Hans	ANZPN2514L	27/11/2019	1,18,000	Monthly
CUST-2020-00439	Rahul	ACGPT6861N	07/03/2020	1,18,000	Monthly
CUST-2020-00439	Rahul	ACGPT6861N	07/03/2020	2,13,100	Quarterly
CUST-2020-00439	Rahul	ACGPT6861N	19/03/2020	1,18,000	Monthly
CUST-2020-00439	Rahul	ACGPT6861N	25/03/2020	2,36,000	Quarterly
CUST-2020-00627	Gaikwad	AOAPG9129E	12/03/2020	2,06,500	Quarterly
CUST-2020-00627	Gaikwad	AOAPG9129E	24/03/2020	2,36,000	Quarterly
CUST-2020-01784	Uppalapati	AAMPU1332K	29/06/2020	1,18,000	Quarterly

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure
CUST-2020-01784	Uppalapati	AAMPU1332K	02/07/2020	1,18,000	Monthly

v) From the above table, it is observed that Noticee 1 sold to the client 'Bala' (AEJPR9157A) HNI Equity Titanium service for the same tenure (quarterly) twice within a span of just 13 days. In the case of the client 'Hans' (ANZPN2514L), the same service was sold for monthly and half-yearly tenures on the same date. For the same client, fees charged for 'monthly' tenure (Rs. 1,18,000/-) is more than that for 'half-yearly' tenure (Rs. 94,380/-). Similarly, in the case of the client 'Rahul' (ACGPT6861N), the client was sold monthly and quarterly tenures of the same service twice each within a span of just 18 days. The same pattern can be seen for other clients in the above table.

vi) It is also observed from the above table that in the case of a client 'Gaikwad' (AOAPG9129E) for the same service and same tenure, different and arbitrary investment advisory fees was charged.

vii) Similar observations have been made in other services, the details of which are presented below,

Table 11

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-00295	Pawan	AQAPS7775C	24/04/2020	25,000	Monthly	HNI Commodity Silver
CUST-2020-00295	Pawan	AQAPS7775C	13/05/2020	29,500	Monthly	HNI Commodity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-00295	Pawan	AQAPS7775C	18/02/2020	59,000	Quarterly	HNI Commodity Silver
CUST-2020-00299	Niren	AERPA8902Q	09/05/2020	29,500	Monthly	HNI Commodity Silver
CUST-2020-00299	Niren	AERPA8902Q	02/04/2020	23,600	Monthly	HNI Commodity Silver
CUST-2020-00299	Niren	AERPA8902Q	23/03/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2020-00407	Indraneel	AKPPM3392Q	18/03/2020	2,10,368	9 Months	HNI Commodity Silver
CUST-2019-07099	Ranjeet	ARMPS3949K	01/02/2020	1,41,600	Half-Yearly	HNI Commodity Silver
CUST-2019-07099	Ranjeet	ARMPS3949K	01/02/2020	29,500	Monthly	HNI Commodity Silver
CUST-2019-07099	Ranjeet	ARMPS3949K	02/04/2020	27,501	Monthly	HNI Commodity Silver
CUST-2019-07627	Ohol	AALPO3157D	11/02/2020	59,000	Quarterly	HNI Commodity Silver
CUST-2019-07627	Ohol	AALPO3157D	14/02/2020	29,500	Monthly	HNI Commodity Silver
CUST-2019-07627	Ohol	AALPO3157D	06/03/2020	29,500	Monthly	HNI Commodity Silver
CUST-2019-07627	Ohol	AALPO3157D	31/01/2020	62,997	Quarterly	HNI Commodity Silver
CUST-2020-00344	Sushil	ENYPS7811G	23/02/2020	41,300	Quarterly	HNI Commodity Silver
CUST-2020-00344	Sushil	ENYPS7811G	28/02/2020	23,100	Monthly	HNI Commodity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-01087	Pandit	BXNPP0509C	22/05/2020	29,500	Monthly	HNI Commodity Silver
CUST-2020-01087	Pandit	BXNPP0509C	05/05/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2020-01094	Pankaj	DIMPP0982F	01/06/2020	29,500	Monthly	HNI Commodity Silver
CUST-2020-01094	Pankaj	DIMPP0982F	20/04/2020	61,440	Quarterly	HNI Commodity Silver
CUST-2020-01533	Rohit	EWUPS6124P	01/06/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2020-01533	Rohit	EWUPS6124P	02/07/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2020-01533	Rohit	EWUPS6124P	22/05/2020	29,500	Monthly	HNI Commodity Silver
CUST-2020-02527	Gautambhai	CZHPS9157G	28/08/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2020-02527	Gautambhai	CZHPS9157G	25/08/2020	64,900	Quarterly	HNI Commodity Silver
CUST-2020-02838	Oswal	AANPO2131M	08/09/2020	28,358	Monthly	HNI Commodity Silver
CUST-2020-02838	Oswal	AANPO2131M	08/09/2020	24,742	Monthly	HNI Commodity Silver
CUST-2020-02839	Baburao	BCLPP3204M	11/09/2020	29,500	Monthly	HNI Commodity Silver
CUST-2020-02839	Baburao	BCLPP3204M	07/09/2020	62,300	Quarterly	HNI Commodity Silver
CUST-2020-02958	Kamal	DWDPK6980D	23/10/2020	70,800	Quarterly	HNI Commodity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-02958	Kamal	DWDPK6980D	28/10/2020	70,800	Quarterly	HNI Commodity Silver
CUST-2019-04266	Rahul Tukaram	BIYPR2207P	16/01/2020	2,36,000	Half-Yearly	HNI Equity Gold
CUST-2019-04266	Rahul Tukaram	BIYPR2207P	28/01/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2019-04266	Rahul Tukaram	BIYPR2207P	09/07/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2019-06860	Bhuwan	AJIPT8335L	02/04/2020	59,000	Quarterly	HNI Equity Gold
CUST-2019-06860	Bhuwan	AJIPT8335L	12/05/2020	59,000	Monthly	HNI Equity Gold
CUST-2019-06598	Basani	BLVPB4518F	11/11/2019	1,18,000	Quarterly	HNI Equity Gold
CUST-2019-06598	Basani	BLVPB4518F	12/10/2019	2,36,000	Half-Yearly	HNI Equity Gold
CUST-2019-07199	Vijay	CQIPB0763P	27/01/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2019-07199	Vijay	CQIPB0763P	24/12/2019	1,18,000	Quarterly	HNI Equity Gold
CUST-2019-07386	Umesh	BCLPK0389L	01/02/2020	59,000	Monthly	HNI Equity Gold
CUST-2019-07386	Umesh	BCLPK0389L	23/01/2020	37,156	Quarterly	HNI Equity Gold
CUST-2019-07564	Tanay	ACJPW0350Q	03/02/2020	59,000	Monthly	HNI Equity Gold
CUST-2019-07564	Tanay	ACJPW0350Q	01/01/2020	2,38,360	Half-Yearly	HNI Equity Gold

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-00021	B S R	ENQPS6757D	14/03/2020	59,000	Monthly	HNI Equity Gold
CUST-2020-00021	B S R	ENQPS6757D	17/02/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2020-00268	Sevak	ASIPS2685K	05/03/2020	1,06,200	Quarterly	HNI Equity Gold
CUST-2020-00268	Sevak	ASIPS2685K	25/03/2020	59,000	Monthly	HNI Equity Gold
CUST-2020-00322	Dandale	AICPD7718A	19/02/2020	2,12,400	Half-Yearly	HNI Equity Gold
CUST-2020-00322	Dandale	AICPD7718A	14/03/2020	41,300	Monthly	HNI Equity Gold
CUST-2020-00339	Raju	BOXPV3607Q	29/02/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2020-00339	Raju	BOXPV3607Q	20/02/2020	1,18,000	Quarterly	HNI Equity Gold
CUST-2020-01952	Morisetti	BYWPR9778M	01/07/2020	2,87,868	Half-Yearly	HNI Equity Platinum
CUST-2020-01952	Morisetti	BYWPR9778M	02/07/2020	1,72,332	Quarterly	HNI Equity Platinum
CUST-2020-02263	Satish	AGAPB9931H	08/08/2020	61,565	Quarterly	HNI Equity Platinum
CUST-2020-02263	Satish	AGAPB9931H	26/08/2020	73,911	Monthly	HNI Equity Platinum
CUST-2019-00557	Rajesh	AOUPM3211R	21/02/2020	59,000	Half-Yearly	HNI Equity Silver
CUST-2019-00557	Rajesh	AOUPM3211R	12/03/2020	29,500	Monthly	HNI Equity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2019-00557	Rajesh	AOUPM3211R	11/02/2020	62,540	Quarterly	HNI Equity Silver
CUST-2019-06550	Mallireddy	BQSPM5222P	17/02/2020	70,800	Quarterly	HNI Equity Silver
CUST-2019-06550	Mallireddy	BQSPM5222P	06/02/2020	41,300	Quarterly	HNI Equity Silver
CUST-2019-06662	Sushila	BTOPT3351B	02/05/2020	11,800	Monthly	HNI Equity Silver
CUST-2019-06662	Sushila	BTOPT3351B	02/05/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-06662	Sushila	BTOPT3351B	16/01/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-06662	Sushila	BTOPT3351B	16/01/2020	70,800	Quarterly	HNI Equity Silver
CUST-2019-06841	Raju	CMAPR2997D	30/10/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-06841	Raju	CMAPR2997D	30/10/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-06841	Raju	CMAPR2997D	21/03/2020	7,738	Quarterly	HNI Equity Silver
CUST-2019-06860	Bhuwan	AJIPT8335L	13/03/2020	70,800	Quarterly	HNI Equity Silver
CUST-2020-00150	Praveen	AKYPP9220H	24/06/2020	59,000	Quarterly	HNI Equity Silver
CUST-2020-00150	Praveen	AKYPP9220H	18/07/2020	29,500	Monthly	HNI Equity Silver
CUST-2020-00150	Praveen	AKYPP9220H	28/01/2020	62,722	Quarterly	HNI Equity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2020-00299	Niren	AERPA8902Q	17/02/2020	1,41,600	Half-Yearly	HNI Equity Silver
CUST-2019-00793	Pradeep	CYXPK1990A	11/12/2020	1,29,800	Half-Yearly	HNI Equity Silver
CUST-2019-00793	Pradeep	CYXPK1990A	23/11/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-06705	Nusumu	AXAPN1337L	07/10/2019	1,41,600	Half-Yearly	HNI Equity Silver
CUST-2019-06705	Nusumu	AXAPN1337L	24/10/2019	70,800	Quarterly	HNI Equity Silver
CUST-2019-06948	Nandi	BBVPP4100P	01/01/2020	11,918	Quarterly	HNI Equity Silver
CUST-2019-06948	Nandi	BBVPP4100P	01/01/2020	71,508	Quarterly	HNI Equity Silver
CUST-2019-07099	Ranjeet	ARMPS3949K	25/01/2020	92,859	Half-Yearly	HNI Equity Silver
CUST-2019-07099	Ranjeet	ARMPS3949K	14/04/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-07121	Patan	BXNPP4737J	01/01/2020	11,918	Quarterly	HNI Equity Silver
CUST-2019-07121	Patan	BXNPP4737J	08/01/2020	71,508	Quarterly	HNI Equity Silver
CUST-2019-07159	Sreenivas	ANQPM7002H	03/12/2019	70,800	Quarterly	HNI Equity Silver
CUST-2019-07159	Sreenivas	ANQPM7002H	11/12/2019	63,201	Quarterly	HNI Equity Silver
CUST-2019-07169	Ramesh	AAMPL0565B	21/02/2020	29,500	Monthly	HNI Equity Silver

Customer ID	Customer Name	PAN	Date of Agreement	Amount in INR (including GST)	Tenure	Service Name
CUST-2019-07169	Ramesh	AAMPL0565B	02/01/2020	71,095	Quarterly	HNI Equity Silver
CUST-2019-07233	Sanjeet	AJXPY1745J	14/12/2019	71,508	Quarterly	HNI Equity Silver
CUST-2019-07233	Sanjeet	AJXPY1745J	14/12/2019	29,795	Monthly	HNI Equity Silver
CUST-2019-07233	Sanjeet	AJXPY1745J	23/12/2019	23,836	Monthly	HNI Equity Silver
CUST-2019-07285	Prabirkumar	AMUPB0718N	21/01/2020	29,500	Monthly	HNI Equity Silver
CUST-2019-07285	Prabirkumar	AMUPB0718N	01/01/2020	70,800	Quarterly	HNI Equity Silver
CUST-2019-07380	Venkata	AUPPM5076P	16/01/2020	70,800	Quarterly	HNI Equity Silver
CUST-2019-07380	Venkata	AUPPM5076P	01/02/2020	70,800	Quarterly	HNI Equity Silver

viii) Additionally, it is observed that for some clients it has charged exorbitant fees relative to their annual income mentioned in their respective risk profiles. The below table contains a list of some of the clients who were charged a fee of more than Rs. 7 Lakh for the investment advisory services rendered and their respective annual incomes as per their risk profiles.

S.no	Name	PAN	Fees charged (INR)	Annual Income (INR) as per Risk Profile
1	Tanay	ACJPW0350Q	7,56,773	3 to 5 Lakhs
2	Banshidhar	AQJPV9373J	7,35,796	3 to 5 Lakhs
3	Indraneel	AKPPM3392Q	8,82,739	5 to 7 Lakhs

S.no	Name	PAN	Fees charged (INR)	Annual Income (INR) as per Risk Profile
4	Kamal	CABPJ0432J	7,37,500	5 to 7 Lakhs
5	Basani	BLVPB4518F	8,79,100	Above 7 Lakhs
6	Kunj	AQNPG4049G	8,55,500	Above 7 Lakhs
7	Pavan	AKPPG7179P	7,78,800	Above 7 Lakhs
8	Manmohan	AMCPS6399G	9,57,664	Above 7 Lakhs
9	Rahul	ACGPT6861N	8,95,300	Above 7 Lakhs

ix) It is observed from the above table that in case of clients Mr. Indraneel, Mr. Tanay, Mr. Kamal and Mr. Banshidhar, whose annual incomes as per their risk profiles is between Rs. 3 Lakhs and Rs. 7 Lakhs have been charged fees greater than Rs. 7 Lakhs per annum which is in excess of their respective annual incomes

x) It is also observed from the sample risk profiles that the highest option available to the clients for the question 'What is your annual income' was 'Above 7 Lakhs'. The options provided do not encompass a wide range of income levels above Rs. 7 Lakhs that a client could fall under. Additionally, it is observed from Noticee 1's reply dated December 27, 2021 that it does not collect any documentary proof of the income of a client. Consequently, Noticee 1 is not in a position to determine as to how much more than Rs 7 Lakhs per annum is the income of the aforesaid clients.

xi) In view of the above, it is alleged that it is unfair and unreasonable for Noticee 1 to charge the clients presented in the above table such exorbitant amounts of fees relative to their annual income.

xii) Noticee 1 failed to act honestly, fairly and in the best interests of its clients. It also failed to act with due skill, care and diligence. Noticee 1 did not ensure that the fees charged to the clients was fair and reasonable thereby putting the best interests of its clients at risk.

xiii) In the previous inspection conducted for the period April 1, 2016 to September 12, 2017, Noticee 1 was found to be in violation of Clause 6 of Code of Conduct as specified in third schedule of IA Regulations inter alia for charging unreasonable fees to its clients wherein multiple products or same products were sold for same duration.

xiv) During the present inspection period, by selling same advisory service with overlapping service period to the same client thereby charging unreasonable fees to the clients and by charging exorbitant amounts of fees to its clients compared to their annual income, Noticees have allegedly violated the provisions of regulation 15(1) and regulation 15(9) r/w. clauses 1,2,6,8 and 9 of code of conduct as specified in Schedule III of IA Regulations.

xv) Noticees submitted that the above inference is drawn merely on the basis of the date of service agreement and in complete disregard of the start and end date of the service period. The observation that the amount charged for quarterly tenure (Rs. 70,802/-) is more than the amount charged for half yearly tenure (Rs. 48,676/-) is wholly misconstrued, as it only takes into consideration the amount paid by the client for the said service and the fee matrix of the Noticee No.1. It was submitted that occasionally a customer availing a service/product of the Noticee 1 may wish to avail another service/upgrade to a service with better service features, even prior to the expiration of the tenure of the service already being availed. In such circumstances, the Noticee 1 caters to the said customer by shifting him/her to the service so desired, subject to the risk profiling and product suitability assessment. However, in such scenarios due to the unexpired tenure of the previously availed service, the customer would have a sum of unutilized amount remaining from the said service, which is then adjusted, by Noticee 1, from the listed price of the desired service. It was further submitted that Noticee 1 had a well calibrated fee structure and did not charge any arbitrary fees from its customers. It is submitted that there is no provision of law wherein an IA was expected to calibrate its fees with the annual income of the client. Neither was there any capping on the fees up until April 2021.

xvi) In regard to Table 10, the copies of the agreements entered into by the clients with Noticee 1 is perused. It is noted that although the dates of the agreements were without much gap, the tenure covered in each agreement is distinct with no overlap.

xvii) In this case, Noticee 1 maintains a matrix of fees that is levied based on the services/ packages availed by the clients. Noticee 1 submitted that when a client shifted from one service to the other, the unutilised amount of fees is set off against the fees of the new service. However, Noticees did not provide any evidence to show that the said clients shifted/ upgraded its service with better service features. Moreover, in case of any client availing upgraded service detailed risk profiling is required. In this case, there is no documentary evidence provided by the Noticees that a fresh risk profiling has been conducted to upgrade the service and adjust the unutilised fee amount.

xviii) Therefore, the allegation of violation of regulation 15(1) and regulation 15(9) r/w. clauses 1,2,6,8 and 9 of code of conduct as specified in Schedule III of IA Regulations by the Noticees stands established.

G) <u>Trying to manipulate the e-sign process of the service agreement:</u>

i) From the Recording transcript from minute 0:20 in the audio clip

> <u>Mr. Akshay Mondol</u>: "*woh aadhaar ka e-sign nahi ho raha hai"*
> <u>IA-CapitalVia's PAIA:</u> "*kyun sir? Aap sahi aadhaar card daal rahe hai na?"*
> <u>Mr. Akshay Mondol</u>: "*haan sahi dala hai par message nahi aa raha hai"*
> <u>IA-CapitalVia's PAIA</u>: "*aapka koi relative hai sir, jinka aadhaar card link ho sir? Unka ek baar daal ke dekho"*
> <u>Mr. Akhsay</u>: "*wahi haal hoga na"*
> <u>IA-CapitalVia's PAIA</u>: "*arey daal ke toh dekho na sir shayad aajaye"*
> …….
> <u>IA-CapitalVia's PAIA</u>: "*ek baar try karlo na sir, main baitha hoon toh aapki process complete kar deta hoon …. Kisi aur ka daal ke dekhlo ek baar"*

ii) It is observed that the service agreement gets signed by its clients through an Aadhaar-based e-signature process. The agreement is sent on the registered email ID of the client through 'Digio' (noreply@digio.com) and for signing the agreement, the client is directed to the NSDL portal. The customer then enters his/her Aadhaar number and on entering the OTP received the document is signed.

iii) It is observed from the above transcript that Noticee 1's PAIA repeatedly urged the client to enter Aadhaar details of another person in order to complete the service agreement signing process. From subsequent call recording it appears that the client received the OTP on his number. However, this instance has shown that the process followed by Noticee 1 is susceptible to manipulation by its own PAIA. The inspection was done on a sample basis and since there is an apparent loophole in the process, the aforesaid malpractice appears to be prevalent in the functioning of Noticee 1.

iv) By urging the client to enter another person's Aadhaar details thereby trying to manipulate the e-sign process of the service agreement, Noticees have allegedly violated the provisions of regulation 15(1) of IA Regulations and Clauses 1,2,3,8 and 9 of Code of conduct read with Regulation 15(9) of IA Regulations.

v) Noticees submitted that in the call recording, it is apparent that the PAIA is merely trying to figure out the root of the issue/error faced by the customer by suggesting a few ways to check if the issue is specific to the customer or the platform used, or the agreement link shared via email. The customer was not asked or requested to e-sign any service agreement with another Aadhaar number. It is further submitted that if the entire audio clip had been transcribed, it would be evident that the PAIA also suggested sending a new agreement link to the customer to fix the issue faced by him.

vi) It is noted that the process of seeking signatures of clients on agreements between IA/ RA and client through Digilocker enabled Aadhaar based e-signatures is most secured way. In such a process, chance of misusing the system is minimised. The OTP is sent to the registered mobile number of the client and on entering the same, the document is signed. From the transcript provided in the SCN, it seems that the client was facing technical difficulty and the PAIA was merely trying the understand the root of the issue by suggesting ways to check if the issue was was specific to the customer or the platform. The conversation between the PAIA and the client was not sufficient to show that the system was manipulated by the PAIA. In view of the above, the allegation of violation of regulation 15(1) of IA Regulations and Clauses 1,2,3,8 and 9 of Code of conduct read with Regulation 15(9) of IA Regulations by the Noticees does not stand established.

H) Risk Profiling

i) It is observed from the risk profiling methodology of Noticee 1 that it risk profile questionnaire consists of 13 questions wherein 12 questions carry an equal weightage of 7.14 each and 01 question carries a weightage of 14.29. The question with weightage of 14.29 is a hypothetical question wherein the client is asked – 'What would you do if there is a drop of in value in one of your investments?' The options to the said question range from selling the investment immediately to buying more to capitalize on the cheaper price. Prima facie, it appears that it is inappropriate to assign twice the weightage (14.29 as compared to 7.14 assigned to other questions) to a hypothetical question than for questions on annual income, investment amount, amount of assets etc. By doing so, Noticee 1 is not appropriately interpreting the client responses and is attributing inappropriate weight to certain answers.

ii) On analysis of complaints against Noticee 1 on SCORES, it is observed that vide complaint SEBIE/MH21/0001623/1 dated Feb 04, 2021, Mr. Sankar Biswas alleged that Noticee 1 had conducted wrong risk assessment while selling their service to him. In this regard, complainant's risk profile questionnaire and recordings of telephonic conversation between Noticee 1's employee and the complainant submitted by Noticee 1 vide reply dated Feb 16, 2022, were analysed.

iii) The extract of the recording and its comparison with the answers entered by Noticee 1's PAIA in the risk profile questionnaire (RPQ) is as follows:

a. <u>Recording Transcript 1</u>:
IA-CapitalVia's PAIA: "*married hai ya single hai*?"
Complainant: "*married hai sir*"
IA-CapitalVia's PAIA: "*young family ko lead kar rahe hai ya mature family ko lead kar rahe hai?"*
Complainant: *"young family hai sir"*

<u>Relevant Extract of RPQ</u>:
Which of the options best describes your current stage of life?
Option chosen by IA-CapitalVia's PAIA: '*Single with few financial burdens. Ready to accumulate wealth for future short term and long-term goals.'*

b. Recording Transcript 2:
IA-CapitalVia's PAIA w.r.t question on investment horizon: *"kaunsa option choose karu sir – below 2 years, 2-5 years, 5-10 years or above 10 years?"*
Complainant: "2-5 years"

Relevant extract of RPQ:
What is your investment horizon? How long can you keep your money invested in the market before needing access to it?
Option chosen by IA-CapitalVia's PAIA: '*Above 10 years*'

c. Recording Transcript 3:
IA-CapitalVia's PAIA: *"What is your annual income? 3-5 lacs, 5-7 lacs and above 7 lacs?"*
Complainant: *"3-5 lacs"*

Relevant extract from RPQ:
What is your annual income?
Option chosen by IA-CapitalVia's PAIA: '*Above 7 lacs*'

d. Recording Transcript 4:
IA-CapitalVia's PAIA: *"Investment amount sir kitna maintain kar sakte hai demat mein?"*
Complainant: *"Sir abhi toh small budget 10,000"*
IA-CapitalVia's PAIA: *"dekhiye sir services mein kaam karne ke liye 60,000 ke investment ki requirement hoti hai, yahan pe jo mera first option hai 40,000 se 1.5 lacs woh hame select karna hoga"*

Relevant extract from RPQ:
What is your investment amount?
Option chosen by IA-CapitalVia's PAIA: '*3 to 6 lacs*'

e. Recording Transcript 5:
IA-CapitalVia's PAIA: "*Sir asset value kitna hoga?..... 3-10 lacs, 10-30 lacs and above 30 lacs ……….*"
IA-CapitalVia's PAIA: *"3-10 lacs ka sir sabsa chota option hai"*
Complainant: *"ok"*

Relevant extract from RPQ:
What is the total value of assets that you own?
Option chosen by IA-CapitalVia's PAIA: '*10-30 lacs*'

iv) It is observed from the above that the employee/PAIA of Noticee 1 entered wrong options in the risk profile questionnaire even after receiving clear answers from the complainant. Moreover, on analysing the above conversation with the write-up on its risk profiling methodology submitted by Noticee 1, it is observed w.r.t point (e) above that the lowest option for the question "What is the total value of assets that you own?" is "< 3 lacs". However, Noticee 1's PAIA did not disclose this to the complaint and misled the complainant in to believing that the lowest option available is only "3-10 lacs" thereby making the complainant choose an option with a higher risk score.

v) Further, it is observed from the service agreement entered between Noticee 1 and the complainant that the service opted was for 'Alpha Equity Options'. From the transcript above and the website of Noticee 1 it is observed that the minimum investment amount required to avail the said service is Rs. 60,000. The complainant had clearly mentioned that he has a small budget of only Rs. 10,000, thereby making him ineligible for the service. However, it is observed that the PAIA misled the complainant by not disclosing to the complainant that the lowest option for the question "What is your investment amount?" is '0-0.4 lacs'. This led to the complainant being enrolled in to a high-risk service for which he was ineligible.

vi) On further analysis of telephonic conversations between PAIA of Noticee 1 and certain other clients, the following is observed,

<u>Risk profiling of Mr. Sharvanu Dutta</u>:
<u>Recording transcript from minute 22:45</u>
PAIA of IA-CapitalVia: *"market mein appko understanding kitna hai?"*
Client: *"basic, wahi buy aur sell"*
PAIA of IA-CapitalVia: *"khudse buy sell kar lete hai….?"*
Client: *"haan khudse buy sell"*
PAIA of IA-CapitalVia: *"experienced hai aap"*

<u>Relevant extract from RPQ</u>:
How well do you understand investing in the markets?
Option chosen by IA-CapitalVia's PAIA: '*I am an experienced investor. I have invested in different markets and understand different investment strategies. I have my own investment philosophy.'*

vii) From the above, it is observed that the description given in the option of 'experienced investor' depicts someone who has a deep understanding of the markets and different investment strategies. However, the PAIA of Noticee 1 did not completely explain the options to the client thereby suggesting to the client that merely buying and selling on his own is enough to be categorised as an experienced investor. This led to a situation where the PAIA of Noticee 1 misled the client by categorising him as an experienced investor even after the client had answered that he has only basic understanding of the markets.

> Risk profiling of Mr. Shyam Sunder Sharma
> Recording transcript from minute 11:05
> PAIA of IA-CapitalVia: *"Investment amount, toh abhi jo main investment amount aapka select kar raha hoon, woh select kar raha hoon 1.5 se 3 lacs ke beech mein……"*
> Client: *"ye 1.5 se 3 lacs karne mein mujhe 15 din lag jayega"*
>
> Relevant extract from RPQ:
> What is your investment amount?
> Option chosen by PAIA of IA-CapitalVia: *1.5-3 lacs.*

viii) It is observed from the service agreement entered between Noticee 1 and the complainant that the service opted was for 'Alpha Premium Options'. From the website of Noticee 1 it is observed that the minimum investment amount required to avail the said service is Rs. 2,00,000.

ix) Further, from the above transcript, it is observed that Noticee 1's PAIA while asking a question on the investment amount did not even provide the options to the client to choose from. The said PAIA unilaterally told the client that he is choosing the option 1.5-3 lacs even after the client had expressed that he currently does not have the said amount. Consequently, the client was enrolled in to a high-risk service for which he was ineligible thereby misleading the client in order to charge a higher fee.

> Risk profiling of Mr. Himanshu Chaturvedi, Mr. Sunil Kumar Pandey and Mr. Akshay Mondol.
>
> a. Recording transcript of Mr. Himanshu Chaturvedi from minute 14:15

PAIA of IA-CapitalVia: *"What is your investment horizon? Maan ke chalo market mein paisa laga hai aur sab kuch sahi chal raha hai toh kitne lambe samay tak aap share bazaar mein bane rahoge bhai aap?...."*

b. Recording transcript of Mr. Sunil Kumar Pandey from minute 8:10
PAIA of IA-CapitalVia: *"investment horizon kya hai apna? Maan ke chalo sir bazaar mein paisa lagaya tha aur sab kuch sahi chal raha hai toh kitne samay tak stock market mein bane rahoge….?"*

c. Recording transcript of Mr. Akshay Mondol from minute 20:48 in the audio clip
PAIA of IA-CapitalVia: *" … suppose aapne BANKNIFTY ka ek lot buy kiya hai sir aur uske value mein aapko giravat aati dikh rahi toh woh situation mein aap kya karoge? Pehla option hai ke thodi si giravat aayegi toh aap panic hojaoge market se loss leke nikal jaoge aap, dusra option hai aap patience se wait karoge aap shanti se wahan bane rahoge…"*

x) Regulation 16(d)(ii) inter alia states that the questions shall not be framed in a way that they lead the respondents in to choosing a particular option. From the above transcripts (a) and (b) it is observed that while asking the question 'What is your investment horizon?', the PAIAs of Noticee 1 unduly influenced the clients by telling the clients to assume that the markets will perform well in the future. This was a leading question that made the clients choose an option ('above 10 years') that has the highest risk score for this particular question.

xi) Moreover, from transcript (c) it is observed that in response to the question 'What would you do if there is a drop in value of one of your investments?', the PAIA of Noticee 1 characterized the options by associating them with words such as 'panic' and 'patience' thereby unduly influencing and leading the client in to choosing an option associated with the word i.e., 'patience' which was assigned a higher risk score.

xii) From the above transcripts, it is observed that majority of the discussion between Noticee 1's PAIA and clients happens in Hindi language. However, the questionnaire used to assess the client's risk profile is in English language. This leads to a situation wherein the PAIA tend to translate the questions in to Hindi language while speaking to the clients thereby leaving a room to include personal biases and interpretations of Noticee 1's PAIA and unduly influence the client's response.

xiii) From the above examples, it is observed that PAIA of Noticee 1 did not disclose all the options to the clients, they asked leading questions to the clients, they chose wrong options even after getting clear answers from the clients etc. thereby misleading the clients in to choosing the options with high-risk scores.

xiv) The above conduct shows that Noticee 1 acted in an unfair and dishonest manner and did not act in the best interests of its clients. It did not ensure that due skill, care and diligence is taken while conducting the risk assessment process. Noticee 1, its partners, principal officer and its persons associated with investment advice failed to maintain appropriate standards of conduct while dealing with clients.

xv) By not appropriately attributing weights to client's answers, by not disclosing all the options of a question to its clients, by asking leading questions to its clients, by choosing wrong options even after getting clear answers from a client, Noticee 1 has allegedly violated the provisions of regulation 15(1), 16(b), 16(c) and 16(d)(ii) of IA Regulations and clauses 1, 2, 3, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations.

xvi) It is observed from the sample risk profiles and write-up of risk profiling submitted by Noticee 1 that the options provided for the question 'What is your annual Income?' are limited in range and hence misleading. The highest option available for the aforesaid question that a prospective client can select is 'Above 7 Lakh'. Because of this limitation, an identical risk score w.r.t this question is assigned to a prospective client who earns just above 7 lakhs and also to a prospective client who earns multiple times that amount. It appears that the highest option having such a low threshold of Rs. 7 Lakhs was done in order to assign the highest risk score w.r.t this particular question to prospective clients. The same is apparent from the sample 04 clients who are in the income bracket of above 07 Lacs and have been assigned the highest risk category.

xvii) It is also observed from the write-up submitted by Noticee 1 that as part of its literature review it has studied different risk profiling methods/tools inter-alia Finametrica, Morgans etc. and then developed its risk profiling methodology. However, it is observed by studying publicly available risk profiling questionnaires of Finametrica and Morgans that more categories encompassing larger income levels where the threshold for the option with the highest risk score is much higher are provided to a prospective client thereby correctly interpreting the income level of a prospective client. The tool used by Noticee 1 fails to do the same.

xviii) Additionally, it is observed from the submissions of Noticee 1 vide its reply dated December 27, 2021 that it does not collect any document to assess the income of a client. By providing limited set of options and by not collecting any document wr.t income of a client, Noticee 1 is unable to assess the true income level of a client. This inability leads to incorrectly assigning a high-risk score to a client in regard to the question on annual income. Noticee 1 failed to obtain documents in support of the income of the client thereby failed to have a process to assess the ability of the client to accept the risk of loss of capital.

xix) The tool used by Noticee 1 has limitations which were not identified and mitigated. This led to incorrectly interpreting the income levels of a prospective client thereby affecting his/her risk score. Noticee 1 failed to act with due skill, care and diligence in the best interests of its clients.

xx) On perusal of the risk profiles of one of the clients Mr. Dakshesh Joshi (ATGPJ0836Q), it is observed that the risk profiling was done thrice for the said client within a span of just 13 days (Oct 6 to Oct 19, 2020). On further examination of the risk profiling questionnaires of the said client, the details of services sold to the client and the risk category of those services, the following observations have been made,

Date of Risk Profiling (RP)	Risk category assigned	Service Name	Risk category of service	Date of Agreement	Tenure	Fees Charged (INR)
06-Oct-20 (RP1)	Moderately High	HNI Equity Silver	Moderately High	17-Nov-20	Quarterly	70,800
08-Oct-20 (RP2)	Medium	HNI Commodity Silver		27-Nov-20	9 Months	1,03,208
		HNI Equity Silver		06-Jan-21	Monthly	25,871

Date of Risk Profiling (RP)	Risk category assigned	Service Name	Risk category of service	Date of Agreement	Tenure	Fees Charged (INR)
19-Oct-20 (RP3)	Moderately High	HNI Equity Silver		06-Jan-21	9 Months	28,682

xxi) From the above table. It is observed that the risk category of Mr. Joshi was changed from Moderately High to Medium and then again to Moderately High within a span of 13 days. On perusal through the risk profile questionnaires it is observed that the variation in certain answers across the three questionnaires do not seem consistent/logical. For instance, the answer to the question on the value of assets owned changed from '10-30 lakhs' in RP1 to '3-10 lakhs' in RP2 to 'above 30 lakhs' in RP3 in a matter of 13 days; the annual income changed from 3-5 Lakhs in RP2 to 5-7 Lakhs in RP3; client's age changed from 26-40 years in RP2 to 41-55 years in RP3 within a span of 11 days etc.

xxii) Noticee 1 did not act honestly, fairly and with due skill, care and diligence thereby putting the best interests of its clients at risk.

xxiii) In the previous inspection conducted for the period April 1, 2016 to September 12, 2017, Noticee 1 was found to be in violation of Regulation 16 of IA Regulations, 2013 inter alia for not doing risk profiling of the clients.

xxiv) During the present inspection period, by not adequately capturing the income details of a client thereby affecting the risk score provided to the client, by not obtaining documents in support of the income of the client thereby failing to have a process to assess the ability of the client to accept the risk of loss of capital and by changing the risk category of a client multiple times within a short period of time, Noticees are allegedly in violation of Regulation 16(b) and 16(c) of IA Regulations, 2013 r/w Clauses 1, 2, 3, 8 and 9 of Code of Conduct r/w Regulations 15(9) of IA, Regulations.

xxv) Noticees submitted that as per the detailed 'Risk Profiling Methodology' (hereinafter referred to as "**RPM**"), weightage is assigned as per 7 parameters such as age, existing investments/ assets, income details, investment experience, investment objective, liability/ borrowing details and risk appetite/ tolerance. It was further submitted that assessment of risk appetite was designed based on business wisdom and field expertise and IA Regulations and circulars are silent on the scoring aspect of risk profiling. It was also submitted that PAIA did not enter any wrong options but risk profile details of one customer was being verified with the call recordings of another customer. In accordance with the customer onboarding process, service verification team specifically informs the customer of the investment amount required to avail the service opted by the customer and seeks customer's consent on his ability to maintain such amount. The inference that the customer was misled by the PAIA is wholly erroneous and are drawn solely based on selective portions of audio clip and in disregard to the 3 step customer onboarding process. It is submitted that the Noticee 1 completely relies upon the information furnished by the prospective customer for the risk assessment of the customer, therefore any change in the risk assessment of a customer is on account of change in response furnished by the said customer and any attempt to categorise such a change as inconsistent or illogical without any finding that the said change is not on account of the customer changing its response in subsequent risk profiles is baseless and devoid of any merit.

xxvi) It is noted that the Noticees could not provide any clarification as to why the weightage of a hypothetical question "What would you do if there is a drop of in value in one of your investments?" is 14.29 which is double of the weightage of other questions. However, a benefit of doubt may be given to the Noticees considering their business wisdom and field expertise in analysing the answers provided by the clients.

xxvii) Further, the submission of the Noticees that the transcripts mentioned in the SCN records the conversation between Mr. B Shankar and PAIA and not Mr. Sankar Biswas is acceptable. On perusal of the Risk Profile of Mr. B Shankar, it is noted that the profile correspond with the answers given in the transcript. However, it is observed that Noticee 1 should have been more careful while submitting information to the regulator during inspection. Such mistakes committed by a registered intermediary during inspection should not be taken lightly.

xxviii) It is noted that in accordance to the customer onboarding process, prior to service activation, the verification team seeks customer's consent. However, from transcripts it is noted that the PAIA did not disclose the lowest option available in regard to total value of assets and hence forced the client to choose a higher grade. The same is repeated in the question "What is your investment amount?". Therefore, it is noted that in such a scenario the client is not even aware that they could have chose a lower grade.

xxix) It is also noted that a limited range is provided in the risk profiles for the question "What is your annual income?" The highest possible option is 'above 7 lakh' which has the highest risk score. Therefore, any client earning 8 lakh or multiples of that figure shall have the same risk score. This is an inaccurate way to assess the risk profiles of varied clients.

xxx) Further, in regard to the risk profile of Mr. Dakshesh Joshi, it is noted that risk profiling was done thrice for the said client within a span of just 13 days and each time the risk category assigned to him was different from Moderately High to Medium and then again to Moderately High. On perusal through the risk profile questionnaires it is observed that the variation in certain answers across the three questionnaires do not seem consistent/logical. For instance, the answer to the question on the value of assets owned changed from '10-30 lakhs' in RP1 to '3-10 lakhs' in RP2 to 'above 30 lakhs' in RP3 in a matter of 13 days; the annual income changed from 3-5 Lakhs in RP2 to 5-7 Lakhs in RP3; client's age changed from 26-40 years in RP2 to 41-55 years in RP3 within a span of 11 days etc. Noticees submitted that the risk profile is made completely based on the answers given by the clients. However, as a SEBI registered intermediary it was the duty of Noticee 1 is ensure that proper information is captured so that the risk profile is not made in a way that there is such blatant mistake in capturing the answers. Further, Noticee 1 was found to be in violation of regulation 16 of IA Regulations for not doing risk profiling of its clients in previous inspection conducted for the period April 1, 2016 to September 12, 2017. The main purpose of inspection is to ensure regulatory compliances by the registered intermediary and give them chance to rectify the non-compliances pointed out during the inspection. In spite of SEBI holding Noticee 1 in violation of not doing risk profiling of its clients, it did not enforce a proper system of risk profiling of its clients. Moreover, Noticee 1 has a mandatory obligation to assess the client's financial situation, his investment objectives and his risk appetite before advising / selling a product / service to him. The risk profiling is required to be a guiding factor before the product is chosen consistent with the risk profile of the client. In the present case, it failed to do so.

xxxi) In view of the above, the allegation of violation of regulation 15(1), 16(b), 16(c) and 16(d)(ii) of IA Regulations and clauses 1, 2, 3, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations stands established.

I) Suitability

i) It is observed that Mr. Sankar Biswas was sold a service that required a minimum investment of Rs. 60,000. This was done even after he had clearly mentioned to Noticee 1's PAIA that he has a budget of only Rs. 10,000. Noticee 1 misled him and enrolled him in to a high-risk service for which he was ineligible. Noticee 1 failed to ensure that the service entered into was such that the client is able to bear investment related risks of that service.

ii) From the observations made at para h(vi), it is apparent that Mr. Sharvanu Dutta was categorized as an experienced investor even after he had clearly mentioned that he only has a basic understanding of the markets. Noticee 1 failed to ensure that the service being sold to the client was consistent with his experience and knowledge of the markets.

iii) It is observed that Mr. Shyam Sunder Sharma was sold a service that required a minimum investment amount of Rs. 2 Lacs. This was done by not providing the client adequate information w.r.t other options to the question 'What is your investment amount' and unilaterally choosing the option '1.5 – 3 Lacs'. Moreover, the client expressed that he currently does not have the said amount. By concealing relevant information from the client and by disregarding the client's apprehensions of his inability to bring in the minimum investment amount, Noticee 1's PAIA misled and enrolled the client in to a high-risk service for which he was ineligible. Noticee 1 failed to ensure that the service entered into was such that the client is able to bear investment related risks of that service.

iv) It is observed that Noticee 1 does not provide appropriate options for the question 'What is your annual income?' and does not collect any document that would help assess the income of a prospective client.

v) This results in Noticee 1 not having the required details of income of a prospective client and thereby affecting the risk score provided to the said client. Ultimately, this leads to a situation where Noticee 1 does not have a reasonable basis to believe that the income of a client is such that the client is able to bear investment risks related to the recommendation provided.

vi) It is observed that the risk category of a client Mr. Dakshesh Joshi (ATGPJ0836Q) was changed multiple times within a period of just 13 days wherein the client's risk category was changed from 'Moderately High' to Medium' to 'Moderately High' again.

vii) The aforesaid practices defeat the purpose of regulation 17 of IA Regulations which inter-alia states that the investment advice provided shall be appropriate to the risk profile of the client and should be such that the client is able to bear investment related risks.

viii) Noticee 1 failed to correctly interpret the income details of a client, it also changed the risk profile of a client multiple times thereby not ensuring the suitability of an investment service recommended to the client leading the client to act to his own detriment. Noticee 1 failed to act honestly, fairly and did not take due care and diligence thereby putting the best interests of its clients at risk.

ix) By selling services to ineligible clients, failing to ensure that the client is able to bear investment related risks of the service sold, not adequately capturing the income details of a client thereby affecting the risk score provided to the client and by changing the risk profile of client multiple times, Noticee 1 has allegedly failed to ensure the suitability of the investment advice rendered. Hence, Noticees are alleged to be violation of regulation 17 of IA Regulations r/w Clause 1, 2, 8 and 9 of Code of Conduct r/w regulation 15(9) of IA Regulations.

x) The above conduct of Noticee 1 comes under the definition of 'fraud' as per regulation 2(1)(c) of PFUTP Regulations. In view of the above, Noticees have allegedly violated the provision of regulation 4(2)(s)(iv) of PFUTP Regulations.

xi) Noticees submitted that it had a 3 step onboarding process to ensure that the services of the customer are activated only after a customer is well informed of the exact service features of the availed service and his risk profile details are cross-verified. Therefore, the observation that Noticee No.1 misled the customer and enrolled him in to a high-risk service is denied as being misconceived. Noticees also ensured that the service being sold to its customers were consistent with his experience and knowledge of the markets. It is submitted that had the customer not provided his confirmation towards being able to maintain the required minimum investment amount in his demat account, his service wouldn't have been activated. Therefore, the observation that the customer was misled and enrolled into a high-risk service is denied as being erroneous and drawn in blatant disregard of the 3 step customer onboarding process especially the SVP call. The IA Regulations nowhere prescribes the number of risk profile that can be conducted for a customer. Therefore, in absence of any observation that the investment advice provided to the customer was not in accordance with his risk profile, no violation of Regulation 17 of IA Regulation is made out.

xii) As already discussed at pt. H of the order, Noticees were not aware of the lowest option available to them hence forcing them to choose an option with higher risk. Further, it is noted that the questionnaire of Noticee 1 does not capture correct picture regarding the annual income of the clients. In such a situation, the 3 step customer onboarding system will not be effective. Further, in a scenario where the risk profile of a client (Mr. Dakshesh Joshi) changes thrice within a span of 13 days questions the veracity of the system of suitability of Noticee 1.

xiii) It is observed that Noticee 1 has failed to act with due skill, care and diligence as Noticee 1 has been selling advisory services / products without ensuring suitability of advice to the clients in accordance / appropriate to their risk profile. In the instant matter, it is observed that that the recommendation that Noticee 1 was giving to the clients was inconsistent with the client's investment objectives, his ability to bear related investment risks, his risk appetite and his capacity to absorb loss. The aforesaid actions of the Noticee 1 shows that the Noticee 1 has failed in its responsibility to act in a fiduciary capacity towards the clients which was entrusted upon it.

xiv) In view of the above, the allegation of violation of regulation 17 of IA Regulations r/w Clause 1, 2, 8 and 9 of Code of Conduct r/w regulation 15(9) of IA Regulations by the Noticees stand established.

xv) The act of the PAIA to induce investors in availing higher risk option is "a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment". Noticee 1 knowingly induced its clients to avail services which was not be suitable to client's investment objective. Therefore, it clearly falls under the definition of "fraud" as mentioned in regulation 2(1)(c) of PFUTP Regulations. Further, by not taking care to analyst the suitability of the service provided by Noticee 1 to its clients, Noticees have clearly violated regulation 4(2)(s)(iv) of PFUTP Regulations.

J) <u>Disclosure to clients</u>

i) It is observed from the website of Noticee 1 that it has uploaded the Disclosures, Terms and conditions and Disciplinary history on its website. Further, it claims to have published the performance track record of its services on www.capitalvia.com/dashboard. However, upon visiting the said link, there is no information available of the previous performance of its products.

ii) By not disclosing information on the performance track record of its services, Noticees are concealing material information about performance of its services from its prospective as well as existing clients and thereby inducing them in making an un-informed investment decision thereby allegedly violating regulation 18 (6) of IA Regulations and clause 5 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations.

iii) The above conduct of Noticee 1 comes under the definition of 'fraud' as mentioned in regulation 2(1)(c) of PFUTP Regulations. In view of the above, Noticees have violated provisions of regulation 4(2)(s)(ii) of PFUTP Regulations.

iv) Noticees submitted that in accordance with clause (c) *Prohibitions in the advertisement*, sub- point (xii) of SEBI Circular dated April 05, 2023 bearing no. SEBI/HO/MIRSD-PoD-2/P/CIR/2023/51, any reference to past performance of the IA in advertisement is prohibited. It is further submitted that sometimes due to technical glitches/configuration issues, the performance dashboard of the Noticee No.1 may become un-available or sometimes a specific customer/prospective customer may also face some glitch/issue in accessing the performance track record of the Noticee No.1. In such cases, the Noticee No.1 has proactively attempted to resolve the technical glitch, as and when it comes to its knowledge and as an alternative in such cases, the Noticee No.1 also shares past performance of its services through emails. Further, it is submitted that the conduct of Noticee No.1 does not fall under the definition of fraud as per Regulation 2(1)(c) of the PFUTP Regulations and therefore any violation of Regulation 4(2)(s)(ii) of the PFUTP Regulations is denied as being ill conceived.

v) It is noted that Noticees submitted that prior to SEBI circular dated April 5, 2023 which prohibited advertisements, the performance track record of Noticee 1 was published on the website. In case a client faced any difficulty in accessing the same due to some technical error, emails were sent to the clients. The main intent of making the performance track record of any IA known to clients or prospective clients is to make them aware of the past overall performance of the IA. Admittedly if there is a technical glitch in the website, the client will be unable to get an overview of the total performance of Noticee 1. On perusal of the emails sent to clients, it is noted that only the track record of a specific plan is provided to the client on his request. This defeats the main purpose of the regulatory provision. Further being a SEBI registered intermediary, Noticee 1 cannot take the defence that its system is wrought with technical glitches and as a result sending emails to specific queries raised by the clients is the only option available with it. In view of the above, the allegation of violation of regulation 18 (6) of IA Regulations and clause 5 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations by the Noticees stand established.

vi) Though the Noticees failed to make disclosures to its clients, there is no sufficient evidence to establish a seious charge like ‘fraud’. Hence, though it is established that the Noticees have violated regulation 18 (6) of IA Regulations and clause 5 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations, allegation if violation of regulation 4(2)(s)(ii) of PFUTP Regulations by Noticees does not stand established.

K) <u>Indulging in fraudulent trade practice by trying to generate artificial volume</u>

i) It is observed from SCORES complaint SEBIP/MH20/0002697/1 that Mr. Sunil Rana had inter alia alleged that Noticee 1 creates artificial volume in the market. Mr. Sunil Rana vide email dated Oct 25, 2020 provided a call recording of his conversation with Mr. Kumar Ankit of Noticee 1. On analysis of the said audio recording, the following is observed,

<u>Recording transcript from minute 0:38 in the audio clip</u>
Mr. Kumar Ankit of IA-CapitalVia: *"(speaking to third person)arey sharmaji se volume banvao jaldi, volume banvao sharma ji se jaldi, Asian paint main volume banvao na jaldi sharma ji se. Arey ek minute sir"*
Mr. Sunil Rana (complainant): *"Ha 1461"*.
Mr. Kumar Ankit of IA-CapitalVia: "*Ha, ek minute ruk jao sir, ek minute ruk jao. Arey sir actually kya hua, ek investor ko tabiyat kharab ho gayi vaha pe volume nahi ban paya thoda, dikkat isliye. Subah main volume ban gaya tha ek investor ka tabiyat kharab ho gayi sir".*
Mr. Sunil Rana (complainant): "*Aise"*
Mr. Kumar Ankit of IA-CapitalVia: "*Ha to wohi isi karan thoda dikkat ho raha tha. Abhi ek aur dekh rahahu 62 aa gaya"*
Mr. Sunil Rana (complainant): "*62 aa gaya"*
Mr. Kumar Ankit of IA-CapitalVia: "*Ha karo karo book kara, unka aur unka volume banao jaldi se (speaking to third person). Ek minute sir. Aap kya target lagaye hue ho"*
……
Mr. Kumar Ankit of IA-CapitalVia : *"Ha ha, thoda aur push karo thoda aur push karo (speaking to third person). Ek minute sir"*
…..
Mr. Kumar Ankit of IA-CapitalVia : *"ha ha thoda sa dikkat aa raha hai ek jo main investor hai na sir wohi nahi hai dikkat is baat ki aa rahi hai. Jo main investor hai na wohi nahi hai"*

ii) It is observed that Mr. Kumar Ankit was a Senior Client Acquisition Manager with Noticee 1 with his date of appointment being August 16, 2017.

iii) It is observed from the above conversation that Mr. Kumar Ankit of Noticee 1 was instructing another person to create artificial volume in the market. It is also observed from Noticee 1's replies that it has not denied that the call was made by Mr. Kumar Ankit of Noticee 1. However, Noticee 1 in its email dated September 17, 2020 has stated that the aforesaid call was not made from their premises.

iv) The complainant in his email interactions has submitted that he received calls from Mr. Kumar Ankit of Noticee 1 from the numbers 07313816140 and 07316736140. It is observed from the website of Noticee 1 that the above two numbers are among the numbers used by Noticee 1 to contact its clients.

v) Irrespective of whether the aforesaid call was made from Noticee 1's premises or not, it may be noted that the said calls were made by Noticee 1's employee from numbers present on Noticee 1's website and the same has not been denied by Noticee 1 in its replies.

vi) Noticee 1 did not act in a fiduciary manner towards its client and it did not have appropriate resources and procedures for the efficient performance of its business activities. In view of the above, Noticee 1 manipulated the client in to dealing in securities by making a fraudulent claim of generating artificial volume in the market.

vii) By manipulating the clients in to dealing in securities by making deceptive and fraudulent claim of generating artificial volume in the market, Noticees have allegedly violated the provisions of regulation 15(1) and 15(9) of IA Regulations r/w clauses 1,2,3,8 and 9 as specified in third schedule of IA Regulations.

viii) The above conduct of Noticee 1 comes under the definition of 'fraud' as per regulation 2(1)(c) of PFUTP Regulations. In view of the above, Noticees are in violation of regulation 3, 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations.

ix) Noticees denied the authenticity of the call recording provided by the complainant who is making omnibus allegations being a disgruntled client. Noticees had no means to verify the genuineness of the call. The concerned PAIA has already left Noticee 1 and Noticee 1 refunded the entire subscription amount to the complainant. Therefore, it is submitted that Noticee 1 never manipulated the customer into dealing in securities by making a fraudulent claim of generating artificial volume in the market.

x) It is noted that the entire allegation was based on one particular complaint of Mr. Sunil Rana received on SCORES wherein a call recording of his conversation with Mr. Kumar Ankit, a PAIA of Noticee 1 was attached. Further it is noted from the email correspondence dated August 14, 2020 of the complainant with Noticee 1 wherein the complainant has stated "*My forwarded call record is a true, but Capital Via trace the all call & they mentioned that this type of call record is not received in your record/ system and told that this call is not us/ may be possible to other line (without CapitalVia landline). So it may be possible Kumar Ankit calls to other line on that day*." Therefore, it is noted that the complainant himself was unsure whether the call was made from the landline of Noticee 1.

xi) It is also noted that the said PAIA, Mr. Kumar Ankit had already left the employment of Noticee 1. Nevertheless, it is observed that Noticee 1 had refunded the subscription amount of Rs.2,75,000/- received from the complainant and resolved all his concerns in exercise of his fiduciary duty. In view of the above, benefit of doubt may be given to Noticee 1. Therefore, the allegation of violation of regulation 15(1) and 15(9) of IA Regulations r/w clauses 1,2,3,8 and 9 as specified in third schedule of IA Regulations and regulation 3, 4(1), 4(2)(k), 4(2)(o) and 4(2)(s) of PFUTP Regulations by the Noticees does not stand established.

L) Appointment of Compliance Officer and Responsibility of Senior Management

i) During the inspection period, Ms. Anshika Shukla was appointed as Compliance Officer by Noticee 1 who was responsible for monitoring the compliance by the investment adviser in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board. Subsequently, Shri Aaruni Kumar Sharma was appointed as Compliance Officer of Noticee 1. In the inspection report various non-compliances/violations have been observed to be committed by Noticee 1. Ms. Anshika Shukla and Shri Aaruni Kumar Sharma being Compliance Officer/s failed to monitor compliances by Noticee 1 in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board

ii) In view of the various violations mentioned in this report, Ms. Anshika Shukla, then Compliance Officer and Shri Aaruni Kumar Sharma, current Compliance Officer of Noticee 1 failed to monitor compliances by Noticee 1 in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the Board. In view of the same, the Noticees allegedly violated the provisions of regulation of 20 of IA Regulations.

iii) As per the information submitted by Noticee 1 following is the detail of senior management / Directors of Noticee 1:

S. No.	Name	Designation	PAN	Date of Joining	DIN
1.	Rohit Gadia	Managing Director	AGXPG1899A	06/01/2009	02175342
2.	Prem Prakash	Whole-time Director & Principal Officer	AIAPP8261A	01/04/2016	07529429
3.	Kiran Ravindra Kumar Choudhary	Director	AAEPK1536D	30/09/2009	01789786

iv) The senior management is responsible for the overall functioning of the business and operations of Noticee 1. In the notice, various non-compliances/violations have been alleged to be committed by Noticee 1. It was the primary responsibility of the senior management of Noticee 1 i.e. Shri Rohit Gadia, Shri Prem Prakash and Shri Kiran Ravindra Kumar Choudhary to ensure maintenance of appropriate standards of conduct and adherence of proper procedures by Noticee 1. However, the senior management of Noticee 1 failed to ensure maintenance of appropriate standards of conduct and adherence of proper procedures. Failure to ensure compliance with the said provisions by the senior management resulted in violations of various provisions of Regulations.

v) In view of the various violations mentioned in this notice, Shri Rohit Gadia, Managing Director, Shri Prem Prakash, Whole Time Director and Principal Officer and Shri Kiran Ravindra Kumar Choudhary, Director of Noticee 1 have violated the provisions of regulation 15(9) r/w. clause 9 of Code of conduct specified in Schedule III of IA Regulations for failing to ensure maintenance of appropriate standards of conduct and adherence of proper procedures by Noticee 1.

vi) Noticees submitted that Noticee 1 had duly appointed well-qualified compliance officers, therefore the allegation of violation of provisions of Regulation 20 of IA Regulations is not made out. It is denied that Ms. Anshika Shukla or Mr. Aaruni Sharma failed to monitor the compliances. Infact, both Anshika Shukla and Aaruni Sharma have monitored the compliances well within their duties and have always endeavored to keep the Noticee No. 1 compliant. It is further submitted that Noticee No. 1 is a self-sufficient entity which is governed and its business is conducted by broad policies adopted by the board and Senior Management. There is nothing on record to establish that the Senior Management has adopted any incorrect policy or has actively participated in any violation as alleged or otherwise. It is also submitted that the compliance officers alongwith the top management have duly ensured that the Noticee No.1 is in full compliance of all the relevant regulations.

vii) From the material available on record, it is noted that Ms. Anshika Shukla (Noticee 6) was the Compliance Officer during the inspection period and accordingly was responsible for monitoring the regulatory compliance by the IA. In view of the violations established by the Noticees in preceding paragraphs, it is concluded that Ms. Anshika Shukla did not perform her duty in a diligent manner. It is the duty of the Compliance Officer to monitor the regulatory compliance of the investment adviser. In the present case, it is noted that Noticee 1 has failed to comply with the regulatory requirements in many occasions. Regulation 20 of IA Regulations mandates appointment of Compliance Officer by an IA who shall be responsible for the monitoring the compliance by the IA in respect of the various requirements issued by SEBI. Therefore, the allegation of violation of regulation 20 by the Noticees including Noticee 6 stands established. It is further noted that Mr. Aaruni Kumar Sharma (Noticee 5) was appointed as the Compliance Officer only at the end of August 2021 which is subsequent to the inspection period. Therefore, he cannot be held responsible of the acts of the IA prior to his appointment in Noticee 1. Therefore, no allegations against Noticee 5 as stated in the SCN stand established.

viii) A non-individual IA is a juristic person and cannot function on its own. It requires individuals to make policies and implement the same for it to run smoothly without any violation. In this case Noticee 2 (Rohit Gadia) was the Managing Director, Noticee 3 (Prem Prakash) was Whole Time Director and Principal Officer and Noticee 4 (Kiran Ravinrda Kumar Choudhary) was Director of Noticee 1 who was instrumental in taking all major decisions for Noticee 1. They constitute senior management who is responsible for the overall functioning of the business and operations of Noticee 1. It was their responsibility to ensure regulatory compliance. In this case, it is noted that Noticee 1 had failed to comply with various provisions of securities law. Therefore, the allegation of violation of regulation 15(9) read with clause 9 of Code of conduct specified in Schedule III of IA Regulations by the Noticees stand established.

M) Not abiding by the provisions of IA Regulations

i) It is alleged that the Noticees have, inter alia,:

a. Not complied with the qualification and certification requirement
b. Promised guaranteed profits/ returns to clients
c. PAIA/ representatives entered into contrary transactions in their own accounts within 15 days of date of advice
d. Dealt in corresponding securities in which investment advice/ research recommendation was given
e. Authored web media articles making stock specific recommendation
f. Charged unreasonable amount of fees to clients
g. Tried to manipulate the e-sign process of the service agreement
h. Had improper risk profiling methodology
i. Provided unsuitable investment advice not appropriate to the risk profile of the client
j. Not made proper disclosure to clients
k. Indulged in fraudulent trade practice by trying to generate artificial volume
l. The compliance officers failed to monitor compliances

m. Senior management failed to ensure maintenance of appropriate standards of conduct and adherence of proper procedure

ii) In view of the above, by not abiding by the various provisions of IA Regulations, the observations of which have been placed under respective sections in this notice, Noticees are allegedly violated the provisions of regulations 13(a) of IA Regulations.

iii) Noticees denied all the aforesaid allegations.

iv) From the aforesaid paragraphs it is noted that Noticees have: inter alia:

a. Promised guaranteed profits/ returns to clients
b. PAIA/ representatives entered into contrary transactions in their own accounts within 15 days of date of advice
c. Authored web media articles making stock specific recommendation
d. Charged unreasonable amount of fees to clients
e. Had improper risk profiling methodology
f. Provided unsuitable investment advice not appropriate to the risk profile of the client
g. Not made proper disclosure to clients
h. The compliance officers failed to monitor compliances
i. Senior management failed to ensure maintenance of appropriate standards of conduct and adherence of proper procedure

v) In view of the above, it is observed that the Noticees have not abided by the above provisions of IA Regulations and therefore, it has also not abided by regulation 13(a) of IA Regulations which specifies conditions with respect to granting of the certificate to the IA. Thus, the Noticees 1, 2, 3, 4 and 6 has not acted with due skill, care and diligence, has not observed high professional standard, has not complied with all regulatory requirements, and has not adhered to proper procedures, thereby violating the provisions of regulation 13(a) of IA Regulations.

ISSUE II- Does the violation, if any, attract monetary penalty under sections 15EB and 15HA of the SEBI Act?

14. From the foregoing, it is observed that Noticees are in violation of:-

a) Regulation 15(1) of IA Regulations and Clause 1,2, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations, regulation 3, 4(2)(o) and 4(2)(s) of PFUTP Regulations
b) Regulation 15(7) and 15(1) of IA Regulations and clauses 1, 2, 3, 8 and 9 of Code of Conduct as specified in Third Schedule read with regulation 15(9) of IA Regulations
c) Regulations 21(1), 16(1), 16(2) and 16(3) read with regulations 2(1)(q), 2(1)(r), 3(1) and 21(2) of RA Regulations
d) Regulation 15(1) and regulation 15(9) r/w. clauses 1,2,6,8 and 9 of code of conduct as specified in Schedule III of IA Regulations
e) Regulation 15(1), 16(b), 16(c) and 16(d)(ii) of IA Regulations and clauses 1, 2, 3, 8 and 9 of third schedule read with regulation 15(9) of IA Regulations
f) Regulation 17 of IA Regulations r/w Clause 1, 2, 8 and 9 of Code of Conduct r/w regulation 15(9) of IA Regulations; regulation 4(2)(s)(iv) of PFUTP Regulations
g) regulation 18 (6) of IA Regulations and clause 5 of code of conduct as specified in Schedule III read with regulation 15(9) of IA Regulations;
h) regulation of 20 of IA Regulations
i) regulation 15(9) r/w clause 9 of Code of conduct specified in Schedule III of IA Regulations
j) regulations 13(a) of IA Regulations

15. In context of the above, the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361}* are referred to wherein the Hon'ble Court had observed: "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

16. Therefore, the aforesaid violations committed attract monetary penalty under sections 15EB of the SEBI Act for violations (a) to (j) of para 14 and section 15HA of SEBI Act for violation (a) and (f) of para 14. The text of provision is reproduced hereunder:

> ***Section 15EB of SEBI Act - Penalty for default in case of investment adviser and research analyst:***
>
> *Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board, such investment adviser or research analyst shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.]*
>
> ***Section 15HA of SEBI Act - Penalty for fraudulent and unfair trade practices:***
>
> ***15HA****.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 102[which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

ISSUE III- If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

> *Factors to be taken into account by the adjudicating officer under SEBI Act*
>
> *15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default

18. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its failure nor has it been alleged by SEBI. It is pertinent to note that Noticee 1, 2 and 4 had been penalised vide AO order/s dated May 31, 2023 and October 19, 2022. Further, it is noted that registration of Noticee 1 as an investment adviser under the IA Regulations has expired as on April 8, 2024 and the same has not been renewed by Noticee 1. The role of an investment adviser is crucial to the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs. In this regard, the role of an IA is crucial as a facilitator of small investors into the securities market. So, it is of utmost importance that every IA takes all necessary steps to comply with all the provisions, Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and to promote ethical conduct in the securities market. The non-compliances on the part of the Noticee as brought out in the preceding paragraphs clearly shows that it has failed in its fiduciary duties owed to its clients and attracts penalty. Noticee 1 being a registered intermediary is expected to take the statutory compliances seriously and take extra care to maintain a high degree of professionalism in the conduct of their business. From the findings arrived at in this Order and the overall modus operandi discussed in this Order, it can be inferred that the PAIAs of Noticee 1 would lure innocent investors by promising assured returns / profits. Moreover, the Noticee had paid scant regard to the risk profile of the clients before selling products to them and investment advice in the form of various packages was given to the clients without paying any heed to the principles of suitability as envisaged under IA Regulations. Further, by promising abnormally high and quick returns to the clients, Noticees not only defrauded the clients but also placed the interest of the clients at great risk. Hence, the violations as established above certainly deserve imposition of penalty.

ORDER

19. Having considered the facts and circumstances of the case, the factors mentioned in section 15J of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules the following penalty is being imposed jointly and severally on Noticees 1-4 and 6:

Under section	**Penalty Amount**
15EB of SEBI Act	Rs.25,00,000/- (Rupees Twenty Five Lakh only)
15HA of SEBI Act	Rs.8,00,000/- (Rupees Eight Lakh only)
TOTAL	Rs.33,00,000/- (Rupees Thirty Three Lakh only)

The said penalty is commensurate with the lapse/omission on the part of the Noticees.

20. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

21. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to Securities and Exchange Board of India.

BARNALI MUKHERJEE

Digitally signed by BARNALI MUKHERJEE
Date: 2024.12.27 17:40:42 +05'30'

DATE: December 27, 2024 **BARNALI MUKHERJEE**

PLACE: MUMBAI **ADJUDICATING OFFICER**