**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SM/S./2022-23/20529-20532]**

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**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**

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In respect of

| Noticee No. | Noticee Name | PAN |
|---|---|---|
| 1. | **CapitalVia Global Research Limited** | **AADCC5782H** |
| 2. | **Mr. Kiran Ravindra Kumar Choudhary (Director)** | **AAEPK1536D** |
| 3. | **Mr. Rohit Gadia (Director)** | **AGXPG1899A** |
| 4. | **Mr. Ansul Mansingka (Director)** | **AGRPM3025A** |

(*"hereinafter referred to as **Noticees***")

**In the matter of CapitalVia Global Research Limited**

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## FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI')** had received a complaint from one Mr. Mahadeo Sadafule against M/s. CapitalVia Global Research Limited (hereinafter referred to as **'CapitalVia/Noticee 1'**), an investment adviser ("**IA**") registered with SEBI (SEBI Registration No. INA200001512). The complainant alleged that CapitalVia charged a fee of Rs. 25,00,000 (approx.) for investment advisory services wherein he was promised an assured return of 10%. The complainant further alleged that he was not provided with any knowledge and guidance in respect of his active services and the bifurcation of the fee charged for various services. Therefore, SEBI conducted an inspection of CapitalVia from July 02-03, 2015, at its office located at NRK Business Park, Indore, to verify the compliance of CapitalVia with regulatory requirements prescribed in SEBI (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**") including KYC requirements, risk profiling and suitability of advice and

maintenance of records. The period covered in the inspection was from April 01, 2013 till July 02, 2015 (hereinafter referred to as **'Inspection Period').** Pursuant to inspection, it was alleged that Noticees had violated various provisions of IA Regulations.

**APPOINTMENT OF ADJUDICATING OFFICER**

2. Vide order dated December 21, 2020, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'Adjudication Rules')** to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the violations of IA Regulations alleged to have been committed by the Noticees.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A common Show Cause Notice dated September 28, 2021 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15HB of SEBI Act for the violations of Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule Ill of IA Regulations alleged to have been committed by them.

4. The SCN was duly served on Noticees 1-3 by Speed Post Acknowledgement Due ('**SPAD**'), through Digitally Signed Emails dated September 29, 2021. Subsequently, Noticees 1-3 filed settlement applications under SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as "**Settlement Regulations**"), in the matter on November 26, 2021, which was received by SEBI on November 30, 2021. Thereafter, vide letter dated January 25, 2022, Noticees 1-3 submitted their common reply to the SCN. In the interest of natural justice, vide Hearing Notices dated May 25, 2022, which were duly served on Noticees 1-3 via SPAD and via Digitally Signed Email, Noticees were granted an opportunity of hearing on June 08, 2022. Noticees 1-3 appeared for the hearing on the scheduled date through their Authorised Representatives ("**AR**") Adv. Sagar Ghogre and Adv. Deepak Lad. During the course of the hearing, ARs of Noticees 1-3 reiterated the submissions made in their reply dated January 25, 2022. Since settlement applications under Settlement Regulations were filed by Noticees 1-3, the final order with respect to them was kept in abeyance till the disposal of settlement applications filed by them.

Subsequently, vide email dated August 29, 2022, the concerned department informed that the settlement application of Noticees 1-3 had been rejected and therefore I now proceed to adjudge the alleged violations qua Noticees 1-3.

5. I note that in respect of Noticee 4, the aforesaid SCN and Hearing Notice could not be served by SPAD as the aforesaid Noticee had left its last known address, and the same had been served through Digitally Signed Email. Therefore, in the interest of natural justice, the aforementioned SCN and Hearing Notice was served on Noticee 4 by way of newspaper publication of Show Cause Notice-cum-Hearing Notice in Times of India (Indore edition, October 07, 2022) and Nai Duniya (Indore edition, October 07, 2022) by which an opportunity of hearing was granted to Noticee on October 18, 2022. However, Noticee 4 has neither filed any reply to the SCN nor availed of the opportunity of a personal hearing despite the service of the SCN and Hearing Notices, as stated above. Thus, in the facts and circumstances as noted above, I am, therefore, of the view that in respect of Noticee 4 the principles of natural justice have been complied with in the instant proceeding and Noticee 4 has nothing to submit in respect of allegations made in the SCN.

6. In regard to the allegations made in the SCN, the summary of the Noticees' submissions made by Noticees 1-3 in their reply dated January 25, 2022, is as under:

   (a) *KYCs of clients were not being maintained by Noticees 1-3 prior to April 01, 2015. Noticees 1-3 were under a bona fide belief that the aforementioned SEBI circulars pertaining to KYC were not applicable to them as the aforementioned circulars did not specifically state that they were applicable to Investment Advisers*.
   (b) *Noticees 1-3 contended that Risk Profiling was not done by them with respect to certain clients on account of human error. Noticees 1-3 have contended that such failure to do risk profiling had occurred only w.r.t. 10 clients and Noticee 1 had 35,000 clients whose risk profiling had been done by them*.
   (c) *Noticees 1-3 have contended that the aforesaid lapse w.r.t. risk profiling was a minor lapse which did not necessitate an adjudication proceeding against them*.
   (d) *Noticees 1-3 have contended that there was no certainty that an advice provided to a client would necessarily succeed in generating returns for the client. Noticees 1-3 have contended that disclaimers were made to clients stating that the success of the advice was subject to many market factors*.
   (e) *Noticees 1-3 have contended that they firmly believed in the formula with regards to the performance track record of CapitalVia and that there were no specific allegations*

*with regard to its disclosures and all requisite information about Noticee 1 was displayed on its website*.

(f) *W.r.t. the SCORES complaint of Mr. Mahadeo Sadafule, Noticees 1-3 have submitted that the aforesaid complaint had been resolved by Noticee 1 and refund had been issued to Noticees 1-3 in this regard*.

*(g) Noticees 1-3 have contended that there was no regulatory requirement for an investment adviser to have a written agreement with its clients prior to April 01, 2021. Noticees 1-3 stated that there was no written agreement with its clients and that records of certain clients were not maintained due to human error.*

(h) *Noticees 1-3 have contended that IA Regulations do not prescribe any ceiling on the maximum amount of fees which can be charged from a client*.

(i) *Noticees 1-3 have contended that there was no regulatory requirement to disclose all details of an investment adviser in its online advertisements. Noticees 1-3 have also contended that it had disclosed all material information during telephonic conversations with clients*.

(j) *Noticees 1-3 in their reply dated January 25, 2022 have contended that they had substantially complied with the aforesaid regulation as the employees of Noticee 1 had obtained NISM certification even though the same was not completely adequate.*

(k) *Noticees 1-3 have contended that the information pertaining to its "Advisory team" was uploaded on the website based on its understanding that the said term includes all employees of CapitalVia. W.r.t. the number of clients, Noticee stated that the number of clients of Noticee 1 keeps on changing continuously and information was not updated due to human error.*

7. I further note that Noticee 4 has neither filed any reply nor availed of the opportunity of a personal hearing despite the service of the SCN and Hearing Notices, as stated above. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal ('**Hon'ble SAT'**) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has *inter-alia*, held that, *"…the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"…appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges levelled against them in the show cause notices..."* Thus, placing reliance on the aforesaid SAT judgement, I am of the view that

Noticee 4 has admitted to the allegations made in the SCN and the matter is fit for being proceeded with ex-parte in respect of Noticee 4 in terms of Rule 4(7) of the Adjudication Rules based on material available on record. Thus, the matter is being proceeded with ex-parte based on material available on record, in respect of Noticee 4.

## CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticees in the SCN, reply filed by Noticees 1-3 and other documents/evidence available on record. The issues that arise for consideration in the present case are:

    1) Whether Noticees have violated Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule Ill of IA Regulations?

    2) Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

    3) If the answer to the aforesaid issues is in the affirmative, then what should be the quantum of monetary penalty?

9. I note from the SCN that the allegations against the Noticees, *inter alia*, pertain to the failure of the Noticees to comply with Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule Ill of IA Regulations

10. Before proceeding to examine the matter, I find it pertinent to reproduce the aforesaid regulatory provisions, which are as under:

***Relevant provisions of IA Regulations:***

***"7. Qualification and certification requirement***

*(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"*

***"13. Conditions of certificate.***

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

*…*

*(c) the investment adviser, not being an individual, shall include the words 'investment adviser' in its name:*

*Provided that if the investment advisory service is being provided by a separately identifiable department or division or a subsidiary, then such separately identifiable department or division or subsidiary shall include the words 'investment adviser' in its name*

***"15. General Responsibility***

*(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.*

*…*

*(8) An investment advisor shall follow Know Your Client procedure as specified by the Board from time to time.*

*…*

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

***"16. Risk Profiling***

*Investment adviser shall ensure that:-*

(a) *it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following:-*

   (i) *age;*

   (ii) *investment objectives including time for which they wish to stay invested, the purposes of the investment ;*

   (iii) *income details;*

   (iv) *existing investments/ assets;*

(v) *risk appetite/ tolerance;*

(vi) *liability/borrowing details.*

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

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

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

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

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

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

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

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

(e) *risk profile of the client is communicated to the client after risk assessment is done;*

(f) *information provided by clients and their risk assessment is updated periodically."*

***"17. Suitability***

*Investment adviser shall ensure that-*

(a) *All investments on which investment advice is provided is appropriate to the risk profile of the client;*

(b) *It has a documented process for selecting investments based on client's investment objectives and financial situation;*

(c) *It understands the nature and risks of products or assets selected for clients;*

(d) *It has a reasonable basis for believing that a recommendation or transaction entered into:*

(i) *meets the client's investment objectives;*

(ii) *is such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance;*

(iii) *is such that the client has the necessary experience and knowledge to understand the risks involved in the transaction.*

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

***"18. Disclosures to clients***

*(1) An investment adviser shall disclose to a prospective client, all material information about itself including its business, disciplinary history, the terms and conditions on which it offers advisory services, affiliations with other intermediaries and such other information as is necessary to take an informed decision on whether or not to avail its services.*

*(2) An investment adviser shall disclose to its client, any consideration by way of remuneration or compensation or in any other form whatsoever, received or receivable by it or any of its associates or subsidiaries for any distribution or execution services in respect of the products or securities for which the investment advice is provided to the client.*

*(3) An investment adviser shall, before recommending the services of a stock broker or other intermediary to a client, disclose any consideration by way of remuneration or compensation or in any other form whatsoever, if any, received or receivable by the investment adviser, if the client desires to avail the services of such intermediary.*

*(4) An investment adviser shall disclose to the client its holding or position, if any, in the financial products or securities which are subject matter of advice.*

*(5) An investment adviser shall disclose to the client any actual or potential conflicts of interest arising from any connection to or association with any issuer of products/ securities, including any material information or facts that might compromise its objectivity or independence in the carrying on of investment advisory services.*

*(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.*

*(7) An investment adviser shall draw the client's attention to the warnings, disclaimers in documents, advertising materials relating to an investment product which it is recommending to the client."*

***"19. Maintenance of records.***

*(1) An investment adviser shall maintain the following records,-*

(a) *Know Your Client records of the client;*

(b) *Risk profiling and risk assessment of the client;*

(c) *Suitability assessment of the advice being provided;*

(d) *Copies of agreements with clients, if any;*

(e) *Investment advice provided, whether written or oral;*

(f) *Rationale for arriving at investment advice, duly signed and dated;*

(g) *A register or record containing list of the clients, the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice;*

*(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:*

*Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.*

*(3) An investment adviser shall conduct yearly audit in respect of compliance with these regulations from a member of Institute of Chartered Accountants of India or Institute of Company Secretaries of India."*

***"22. Client level segregation of advisory and distribution activities.***

*Investment Advisers which are banks, NBFCs and body corporate providing distribution or execution services to their clients shall keep their investment advisory services segregated from such activities:*

*Provided that such distribution or execution services can only be offered subject to the following:*

*(a) The client shall not be under any obligation to avail the distribution or execution services offered by the investment adviser.*

*(b) The investment adviser shall maintain arms length relationship between its activities as investment adviser and distribution or execution services.*

*All fees and charges paid to distribution or execution service providers by the client shall be paid directly to the service providers and not through the investment adviser."*

**<u>Issue No. 1 - Whether Noticees have violated Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule III of IA Regulations?</u>**

11. I have carefully perused the charges levelled against Noticees in the SCN, reply filed by Noticees 1 to 3, SEBI's inspection report and other documents/evidence available on record. On the basis of the aforesaid records, I proceed to deal with the allegations against the Noticees in the subsequent paragraphs.

**<u>Alleged violation of Regulation 15(8) of IA Regulations</u>**

12. It has been alleged in the SCN that Noticees had failed to comply with KYC procedures specified by SEBI and thereby violated Regulation 15(8) of IA Regulations.

13. I note that as per Regulation 15 (8) of IA Regulations it is mandated that *"an investment adviser shall follow Know Your Client procedure as specified by the Board from time to time*." I further note that as per SEBI circular no. MIRSD/SE/Cir-21/2011 dated October 05, 2011, "*the KYC form, specified as Annexure-I of the said circular, shall be filled by an investor at the account opening stage while dealing with SEBI registered intermediaries".* I also note that as per SEBI circular no. MIRSD/Cir- 26 /2011 dated December 23, 2011, "*after doing the initial KYC of the new clients, the intermediary shall forthwith upload the KYC information on the system of the KRA and send the KYC documents i.e. KYC application form and supporting documents of the clients to the KRA within 10 working days from the date of execution of documents by the client and maintain the proof of dispatch".*

14. I note from the available records of inspection that CapitalVia was not following the Know Your Client **("KYC")** procedures specified by SEBI. I further note that CapitalVia, vide its undated letter received by SEBI on July 07, 2015, had itself submitted that prior to April 01, 2015, there were no KYCs maintained by them as they were unaware of the KYC procedures. It was also observed in the inspection that CapitalVia had not submitted a plausible explanation for not maintaining KYC records. I also note from the inspection records, that Noticees started maintaining KYC records of the clients only from April 2015 onwards.

15. I observe that though CapitalVia obtained registration as an investment adviser on April 10, 2014, it chose to ignore the KYC procedure specified by SEBI and did not follow the KYC procedure as specified by SEBI before April 2015. Thus, I observe that it was

providing investment advice without obtaining KYC information from clients and without doing client due diligence, as required by SEBI as part of the KYC procedure, before providing investment advisory services.

16. I note that Noticees 1-3 in their reply dated January 25, 2022, have admitted that KYCs of clients were not being maintained by them prior to April 01, 2015. In the aforesaid reply, Noticees 1-3 have contended that it was their bona fide belief that the aforementioned SEBI circulars pertaining to KYC were not applicable to them as the aforementioned circulars did not specifically state that they were applicable to Investment Advisers. In this regard, I note that Noticee 1 had, vide its undated letter received by SEBI on July 07, 2015, stated that the KYCs of clients were not maintained by them as they were unaware of the KYC procedures. Pertinently, in the aforesaid letter, Noticees 1-3 had not raised any dispute w.r.t. the applicability of the aforementioned SEBI circulars at that point of time. The aforesaid contention which has now been submitted in their reply dated January 25, 2022, to the SCN therefore appears to be an afterthought. I note that the aforesaid SEBI circulars pertaining to KYC were applicable to Investment Advisers by virtue of Regulation 15 (8) of IA Regulations as stated above. Therefore, I find no merit in the aforesaid contention of Noticees 1-3. I also find that Noticees 1-3 have conceded that KYCs of clients were not being maintained by them prior to April 01, 2015, and thereby have admitted to the violation of Regulation 15 (8) of IA Regulations as alleged against them. As noted earlier, Noticee 4 has not submitted any reply in respect of the aforesaid allegation.

17. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 15(8) of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1, also stands established.

**Alleged violation of Regulation 16 of IA Regulations**

18. It has been alleged in the SCN that Noticees had not conducted Risk Profiling of clients before providing them investment advice and thereby violated Regulation 16 of IA Regulations.

19. I note that as per Regulation 16 of IA Regulations, investment adviser shall ensure that:-

(a) *it obtains from the client, such information as is necessary for the purpose of giving investment advice, including the following*:-

(i) *age*;

(ii) *investment objectives including time for which they wish to stay invested, the purposes of the investment;*

(iii) *income details;*

(iv) *existing investments/ assets;*

(v) *risk appetite/ tolerance;*

(vi) *liabilities/borrowing details*

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

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

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

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

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

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

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

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

*(e) risk profile of the client is communicated to the client after risk assessment is done;*

*(f) information provided by clients and their risk assessment is updated periodically.*

20. I note from the risk profiling questionnaire of CapitalVia that it contained the following heads in relation to clients:

- Investment of Customer
- the degree of losses the customer is willing to take
- Liability/ Borrowing details
- Existing Investments/ Assets :
- Segment:
- Date of Birth
- PAN Number
- Time Horizon of Investment
- Trading Experience
- Account Info
- Trading Time
- Profile
- Advisory Services (If taken earlier or not)

- No of Lots/ Shares, Customer trades
- Exposure / Leverage on Capital Investment

21. I note from the available records of inspection that the risk profiling questionnaire pertaining to the clients of Noticee 1 did not contain the basic information necessary for the purpose of providing investment advice to clients such as the investment objectives, and client's capacity for absorbing loss as specified in the IA Regulations. Further, I note that many of the fields in the risk profiling questionnaire were not filled up and CapitalVia was not obtaining information from clients pertaining to the same. As an illustration, I note that in the case of one client, Mr. Dinesh Chaudhary, a few fields in the questionnaire such as investment of clients, the degree of losses the client is willing to take, and the investment objective of the client, were left empty. I further note that no risk assessment of clients was done by Noticee 1 in respect of their ability and willingness to take risks based on information collected from them. Thus, I find that Noticee 1 neither conducted/updated proper risk profiling of its clients nor communicated the risk profile of the client after completing/updating such risk assessment.

22. In this regard, Noticees 1-3 in their reply dated January 25, 2022, have admitted that Risk Profiling was not done by them with respect to certain clients and have stated that the aforesaid lapse on their part was on account of human error. I note that Noticee 4 has not filed any reply to the SCN. Noticees 1-3 have further contended that such failure to do risk profiling had occurred only w.r.t. 10 clients and Noticee 1 had 35,000 clients whose risk profiling had been done by them and thus the aforesaid lapse w.r.t. risk profiling was a minor lapse which did not necessitate an adjudication proceeding against them. In this regard, I note that Noticee 1, vide its undated letter received by SEBI on July 07, 2015, had admitted that it had not done Risk Profiling of its clients as per IA Regulations. I also note that apart from a mere statement that they had done the risk profiling of 35,000 clients, Noticees have not furnished substantiating evidence in respect of the aforesaid claim. Risk profiling of all clients by an Investment adviser is mandatory under Regulation 16 of IA Regulations which does not allow any exception. Therefore, I find no merit in the aforesaid contention of Noticees 1-3. I also find that Noticees 1-3 have also admitted to the violation of Regulation 16 of IA Regulations alleged against them.

23. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 16 of IA Regulations, stands

established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1, also stands established.

**Alleged violation of Regulation 17 of IA Regulations**

24. It has been alleged in the SCN that Noticees had failed to conduct suitability assessment of investment advice provided to clients in accordance with Regulation 17 of IA Regulations and thereby violated Regulation 17 of IA Regulations.

25. I note that in terms of Regulation 17 of IA Regulations, an 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.*

*(h) 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.*

26. I note from the available records of inspection that as per the website of Noticee 1 and the product policy of Noticee 1, the business model of Noticee 1 involved the sale of investment products if the investor/client opted for the investment product irrespective of the risk profile of the client. I also note that Noticee 1 has admitted vide its undated letter received by SEBI on July 07, 2015, that complete product details of specific investment products were not disclosed by Noticee 1 in writing unless the clients made a specific request for the same. I also note from the emails dated July 01, 2015, between Noticee 1 and its clients, that Noticee 1 did not obtain relevant information from its clients for the

purpose of risk profiling and many of the fields in the risk profiling questionnaire were not filled up by its clients and as per available records of inspection, there was no record which showed CapitalVia had obtained the requisite information from clients pertaining to the blank fields in risk profiling questionnaire. As an illustration, I note that in the case of one client, Mr. Dinesh Chaudhary, a few fields in the questionnaire such as investment of the client, the degree of losses the client is willing to take, the investment objective of the client were left empty and as per the records of inspection Noticee 1 did not obtain fully filled up risk profiling questionnaire from Dinesh Chaudhary before selling its investment products to him. Thus, I find that Noticee 1 did not conduct an independent assessment of suitability of their advice to their clients on the basis of their risk profile, and that their advice was not based on a reasonable assessment that the structure and risk reward profile of products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. From the perusal of the product policy Noticee 1 and the details of clients and fees, as submitted by Noticee 1 and placed in the inspection records, I observe that Noticee 1 sold its investment products and provided investment advice to clients, on the basis of client's interest in the products, without obtaining full details pertaining to risk profile and without conducting assessment of suitability of their advice to their clients. I note from the aforesaid records that Noticee 1 gave recommendations to the clients in respect of high-risk complex products such as Bullion Metal Combo, Bullion Pack, Agri Pack, etc. (as per the website of Noticee 1), on the basis of the client's interest in the products and not on the basis of its own independent assessment of suitability of its advice to its clients.

27. I note that Noticee 4 has not submitted any reply to the SCN. I note that Noticees 1-3 in their reply dated January 25, 2022, have not disputed the aforesaid allegation. However, Noticees 1-3 have contended that there was no certainty that advice provided to a client would necessarily succeed in generating returns for the client. They have further contended that disclaimers were made to clients stating that the success of the advice was subject to many market factors. In this regard, I note that Noticee 1, vide its undated letter received by SEBI on July 07, 2015, had admitted that it had not made any assessment of suitability of their advice to their clients as per IA Regulations. I also note that the assessment of the suitability of advice by the investment adviser is a mandatory requirement under Regulation 17 of IA Regulations. As already noted earlier, Noticee had not conducted risk profiling of its clients as per the IA Regulations which was necessary for ensuring that suitable investment advice is provided to clients based on the financial

position of clients, investment objectives, risk appetite, capacity for absorbing loss etc. Thus, I find no merit in the aforesaid contention of Noticees 1-3.

28. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 17 of IA Regulations, stands established and therefore, the aforesaid allegations against Noticees 2-4, as Directors of Noticee 1, also stands established.

**Alleged violation of Regulation 18 r/w clause 5 of Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations**

29. It has been alleged in the SCN that Noticees had failed to make requisite disclosures to clients in terms of Regulation 18 of IA Regulations and thereby violated Regulation 18 read with clause 5 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations.

30. I note that in terms of Regulation 18 of IA Regulations, an investment adviser is required to make disclosures to its clients as specified in Regulation 18 which, *inter alia,* includes all material facts relating to the key features of the products or securities, particularly, performance track record.

31. I note from available records of inspection that Noticee 1 has vide its letter dated July 03, 2015, submitted that the following disclosures were being provided by them to the clients:

- CapitalVia for your well-informed investment decisions. CapitalVia encourages you to strictly follow principles of disciplined trading and stop loss.
- Moreover, CapitalVia strictly follow trading principles and stop loss policy wherein customer by default agree to not do/ enter any trade without pre informed/ defined stop loss.
- Capita/Via is not liable for any losses in any case.
- Investments/ Trading in financial markets is subject to market risk.
- We have NO REFUND POLICY under any circumstances
- We don't offer any guaranteed return products.
- Performance track record methodology was as follows:

Accuracy= No. of Profitable recommendations/Total number of recommendation*100

32. In this regard, I note from CapitalVia's letter to SEBI dated July 02, 2015, and the website of Noticee 1 that CapitalVia's method of calculation of performance track record (in terms of "accuracy") was based on only advice provided on profitable calls and not advice provided on loss-making calls made by Noticee 1 when ideally it should have taken into

consideration advice made on all the calls provided by Noticee 1, irrespective of the profit or loss. Thus, I note that Noticee 1 had followed an erroneous method of calculation of performance track record. Therefore, the performance track record shown by Noticee 1 to its clients vide its letter dated July 02, 2015, and as appearing its website was also erroneous as it was based on the aforesaid erroneous method of calculation. Thus, I find that Noticee had disclosed an erroneous accuracy rate w.r.t. its performance to clients. I also note that though Noticee 1 was required to calculate performance track record on a monthly basis, it had admitted in its undated letter, received by SEBI on July 07, 2015 that the accuracy rate disclosed on the website (which was 70% as per the website of Noticee 1) was static and was not being updated on a monthly basis. I also note that Noticee 1 has admitted vide the aforesaid undated letter received by SEBI on July 07, 2015, that complete product details of specific investment products were not disclosed by it in writing unless the clients made a specific request for the same. Therefore, I find that Noticees had not made full disclosure in respect of all material information about the terms and conditions on which it offers advisory services, key high-risk features of its products, performance track record, specific disclaimers and warnings pertaining to its high-risk products, in documents and advertising materials relating to its investment products which it recommended to the client. I also find that not only was the calculation of performance track record by Noticee 1 erroneous, but Noticee 1 also failed to update the same on a monthly basis.

33. I note that Noticees 1-3 in their reply dated January 25, 2022, have not disputed the aforesaid allegation. I further note that Noticee 4 has not filed any reply to the SCN. In their submission, Noticees 1-3 have sought to explain the alleged violation by stating that they firmly believed in the formula with respect to the performance track record of CapitalVia. I also note that apart from a mere assertion that it firmly believed in its formula of calculating performance track record, Noticee 1 has not been able to furnish substantiating evidence to dispute the allegation that its method of calculation of performance track record was erroneous and that it had not updated its performance track record on a monthly basis. Noticees 1-3 have further contended that there were no specific allegations with regard to its disclosures and all requisite information about Noticee 1 was displayed on its website. In this regard, I note that the SCN did state the specific allegation, i.e., Noticee 1 had not made disclosures of all material facts relating to the key features of the products or securities, particularly, performance track record. As noted above, Noticees have not disputed the aforesaid allegation. Thus, I find no merit in the aforesaid contention of Noticees made in their reply dated January 25, 2022.

34. Therefore, in view of the foregoing findings and given the fact that Noticees have not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 18 read with clause 5 of Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1, also stands established.

**Alleged violation of Regulation 22 of IA Regulations**

35. It has been alleged in the SCN that Noticees had failed to segregate their advisory services from distribution or execution services and thereby violated Regulation 22 of IA Regulations.

36. I note that in terms of Regulation 22 of IA Regulations, Investment Advisers are required to segregate their advisory services from distribution/execution services. I further note that an investment adviser should maintain an arms-length relationship between the advisory services and other services provided to the clients. In this regard, I note from the available records of inspection that Noticee 1 had admitted in its letter received by SEBI on July 07, 2015 that its executives were in direct contact with brokers and were also trading based on trading recommendations provided to clients. Thus, I find that the employees of Noticee 1 were providing advisory and execution services at the same time. I further note from the available records of inspection that in respect of 8 clients, Noticee 1 had obtained client authorization to trade on their behalf. This demonstrates that Noticees were not maintaining arms-length relationship between the advisory services and other services provided to clients.

37. I note that Noticees 1-3 in their reply dated January 25, 2022, have stated that execution services were provided by it to advisory clients based on requests made by them. Thus, Noticees 1-3 have not disputed the aforesaid allegation and have merely sought to explain the aforesaid violation by contending that clients had requested them to provide execution services. I note that Noticee 4 has not filed any reply to the SCN. In terms of Regulation 22 of IA Regulations, Investment Advisers are required to segregate their advisory services from distribution/execution services and the same does not allow for any exception. Thus, I find no merit in the aforesaid contention of Noticees 1-3.

38. Therefore, in view of the foregoing findings and given the fact that Noticees have not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 22 of IA Regulations, stands established and therefore, the

aforesaid allegation against Noticees 2-4, as Directors of Noticee 1, also stands established.

**Alleged violation of Regulations 15(1) and 15(9) of IA Regulations r/w clauses 2 and 4 of Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations**

39. It has been alleged in the SCN that Noticees had not complied with fiduciary obligations and responsibilities and failed to act with due skill, care and diligence towards clients and thereby violated Regulations 15(1) and 15(9) of IA Regulations read with Clauses 2 and 4 of the Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations.

40. I note that in terms of regulation 15(1) of IA Regulations, *"an investment adviser shall act in a fiduciary capacity towards its clients".* I further note that in terms of Regulation 15(9) of IA Regulations, *"an investment adviser shall abide by code of conduct as specified in third schedule".* In terms of clause 2 of the Code of Conduct for Investment Advisers specified under schedule Ill of IA Regulations, *"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".* In terms of clause 4 of code of conduct for investment adviser specified under schedule Ill of IA Regulations, *"an investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information"*

41. As established above, Noticees had not done Risk Profiling of clients, in terms of Regulation 16 of IA Regulations, and had not conducted an assessment of suitability of their advice to their clients on the basis of their risk profile, as required under Regulation 17 of IA Regulations, before providing investment advice and selling investment products/services to clients. Thus, I note that Noticee 1 was providing advisory services before risk profiling its clients and without conducting assessment of suitability of their advice to their clients.

42. In this regard, I have perused the SCORES complaint of Mr. Mahadeo Sadafule against Noticee 1. I note from the materials submitted as part of the said complaint that the subscription confirmation email sent by Noticee 1 mentioned the following:

*"…thank you for choosing Capital Via for your well-informed investment decisions ......... CapitalVia is not liable for any losses in any case…"the risk of loss in trading any financial markets including equity, commodity and FOREX can be substantial. These are leveraged*

*products that carry a substantial risk of loss upto your invested capital and may not be suitable for even1one. You should therefore carefully consider whether such trading is suitable for you in light of your financial condition. Please ensure that you understand fully the risks involved and do invest money you cannot afford to lose."*

43. I have also perused email communications exchanged between Noticee 1 and its clients between April 01, 2013 and July 02, 2015. I note from the aforesaid emails that CapitalVia was asking its clients to carefully consider whether the trading advice provided is suitable for them in light of their financial condition. I note that CapitalVia was also putting a disclaimer in its emails sent to clients stating that its products carry a substantial risk of loss and may not be suitable for everyone. I further note that CapitalVia did not conduct independent assessment of suitability of their advice to its clients made to clients. Thus, I note that CapitalVia was putting the onus of investment decisions and the suitability of its investment advice on its clients. Thus, I observe that CapitalVia was not taking any fiduciary responsibility in respect of the advice provided to clients. Therefore, I conclude that Noticee 1 did not act in a fiduciary capacity and with due skill, care and diligence towards its clients by providing advice before conducting risk profiling of its clients.

44. I note that Noticees 1-3 in their reply dated January 25, 2022, have not provided any explanation, or made any submissions in respect of the aforesaid allegation. I also note that Noticee 4 has not submitted any reply to the SCN. Thus, I note that Noticees have not disputed the aforesaid allegation. W.r.t. the SCORES complaint of Mr. Mahadeo Sadafule, Noticees 1-3 have submitted that the aforesaid complaint had been resolved by Noticee 1 and a refund had been issued to the complainant. However, I note from available records of inspection that Noticees 1-3 have not been able to dispute the allegations made in the SCN with reference to the aforesaid SCORES complaint. I further note that the aforesaid refund issued to Mr. Mahadeo Sadafule demonstrated that the Noticees had accepted the violations as alleged in the aforesaid SCORES complaint.

45. Therefore, in view of the foregoing findings and given the fact that Noticees have not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulations 15(1) and 15(9) of IA Regulations read with Clauses 2 and 4 of the Code of Conduct specified for Investment Advisers under Schedule Ill of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

## Alleged violation of Regulation 19 of IA Regulations

46. It has been alleged in the SCN that Noticees had failed to maintain records pertaining to investment advisory services as required in terms of Regulation 19 of IA Regulations and thereby violated Regulation 19 of IA Regulations.

47. I note that in terms of Regulation 19 of IA Regulations, *an investment adviser shall maintain the following records:-*
    *(a) Know Your Client records of the client;*
    *(b) Risk profiling and risk assessment of the client;*
    *(c) Suitability of assessment of the advice being provided;*
    *(d) Copies of agreements with clients, if any;*
    *(e) Investment advice provided, whether written or oral;*
    *(f) Rationale for arriving at investment advice, duly signed and dated;*
    *(g) A register or record containing list of the clients; the date of advice, nature of the advice, the products/securities in which advice was rendered and fee, if any charged for such advice.*

48. I note that Noticee 1 had stated vide its undated letter received by SEBI on July 07, 2015, that it had started obtaining Know Your Client records of its clients from April 2015 onwards only. I further note that Noticee 1 was not maintaining the risk profile of its clients and consequently no records were maintained in this regard. I also note from the available records of inspection that neither did Noticee 1 enter into any formal agreements with its clients nor did it maintain a register or record listing the clients, date of advice, nature of advice, the rationale for providing particular investment advice, the products/securities in which advice was rendered and the fee charged, if any. Thus, it is clear that Noticees were not maintaining requisite records as mandated in terms of Regulation 19 of IA Regulations.

49. W.r.t. the aforesaid allegation, I note that Noticees 1-3 in their reply dated January 25, 2022 have admitted that there was no written agreement with its clients and that records of certain clients were not maintained due to human error. I note that Noticee 4 has not filed any reply to the SCN. Noticees 1-3 have however also contended that there was no regulatory requirement for an investment adviser to have a written agreement with its clients prior to April 01, 2021. In this regard, I note that Investment Advisers are mandatorily required to have a written agreement with their clients in terms of Regulation 19 of IA Regulations read with the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations. I also note that as per SEBI circulars which pertain to

Investment Advisers, April 01, 2021 was the last date for them to enter into investment advisory agreement with all their clients including existing clients. Thus, I find no merit in the aforesaid contention of Noticees 1-3.

50. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 19 of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**Alleged violation of Code of Conduct in respect of Complaint of Mr. Mahadeo Sadafule**

51. It has been alleged in the SCN that Noticees had failed to act in terms of the Code of Conduct for Investment Advisers specified for Investment Advisers under Schedule Ill of IA Regulations.

52. I note that as per clause 2 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations, an investment adviser must 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.

53. I note from available records of inspection that SEBI had received a complaint from Mr. Mahadeo Sadafule against Noticee 1. From a perusal of the complaint, I note that the complainant alleged that Noticee 1 charged a fee of Rs. 25,00,000 (approx) for availing investment advisory services wherein he was promised an assured return of 10%, however, the aforesaid advisory fee was excessive as the complainant incurred huge losses after availing the advisory services provided by Noticee 1. I further note that as per the risk profiling document for Mr. Mahadeo Sadafule, he intended to invest an amount of only Rs. 6-10 lacs. I further note from the records of inspection that Noticee 1 did not provide the complainant with any information in respect of his active services and the bifurcation of the fee charged for various services of Noticee 1. In this regard, I have perused the copies of various invoices issued by CapitalVia. CapitalVia issued multiple invoices to Mr. Mahadeo Sadafule in respect of various products such as Bullion Metal Pack ST, Nifty Futures ST, Forex ST etc. I note that Noticee 1, vide its email dated January 22, 2015, sent to Mr. Mahadeo Sadafule, stated that "*the risk of loss in trading any financial markets including equity, commodity and FOREX can be substantial. These are leveraged products that carry a substantial risk of loss upto your invested capital and may not be*

*suitable for everyone. You should therefore carefully consider whether such trading is suitable for you in light of your financial condition. Please ensure that you understand fully the risks involved and do invest money you cannot afford to lose*". Thus, I note that CapitalVia was putting the onus of investment decisions and the suitability of its investment advice on its clients. Therefore, I observe that CapitalVia was not taking any fiduciary responsibility in respect of the advice provided to clients.

54. I further note that vide its e-mail dated June 11, 2015 sent to Mr. Mahadeo Sadafule, Noticee 1 stated that "Our product pricing is 37 lakhs but as per deal offered to you we have provided you the product in Rs. 24,61,856 lakhs discounted services. In your package HNI Research (Equity+ Commodity), as we have discussed earlier that you will increase your investments then we will start proper trading in this services with full support till that we will trade with normal strategies, that's why we have created different sales orders to save your current investments. So just to save your money we have created sales order of our Basic Services of Equity/Commodity/Forex because if we created billing of HNI then from the very first month itself your amount get deducted around Rs. 1,00,000 according to service costing". It was also mentioned in the aforesaid e-mail that the expected ROI will be 6% to 8% subject to market risk. It was further mentioned in the e-mail that Mr. Mahadeo Sadafule would be getting direct service to the Broker from the executive of Noticee 1 as an extra benefit. I further note that as per the risk profiling document for Mr. Mahadeo Sadafule, he intended to invest an amount of only Rs. 6-10 lacs. Thus, I observe that Noticee 1 had charged disproportionately high fees which were not in consonance with the investment objective of its client.

55. Thus, I find that Noticee 1 was selling advisory and execution based services to its clients irrespective of the risk profile of its client, Mr Mahadeo Sadafule, by offering assured returns but without providing detailed information pertaining to the services sold to clients. I also observe that that Noticee 1 charged a hefty amount of Rs. 24,59,856 as fees for its advisory and execution based services by selling investment products which were not consistent with the risk profile of its client, Mr Mahadeo Sadafule, and no proper rationale was provided Mr Mahadeo Sadafule by Noticee 1 for the fees charged for its services. I also note that there was no alert or reconciliation mechanism available with Noticee 1 based on which they could know the amount of fee that they have collected from a particular client. Thus, I observe that Noticees had failed to act in a fiduciary capacity and with due skill, care and diligence while dealing with Mr. Mahadeo Sadafule.

56. W.r.t. the aforesaid allegation, Noticees 1-3 have submitted that the SCORES complaint of Mr. Mahadeo Sadafule had been resolved by Noticee 1 and a refund had been issued to Noticees 1-3 in this regard. However, I note from available records of inspection that Noticees 1-3 have not been able to dispute the allegations made in the SCN with reference to the aforesaid SCORES complaint. I note that Noticee 4 has not filed any reply to the SCN. I further note that the aforesaid refund issued to Mr. Mahadeo Sadafule demonstrated that the Noticees had accepted the violations as alleged in the aforesaid SCORES complaint. I also note that Noticees had not furnished any substantiating evidence to demonstrate that it had acted with due skill, care and diligence in the best interests of its clients. Thus, I do not find any merit in the aforesaid contention of Noticees 1-3.

57. Therefore, in view of the foregoing findings and given the fact that Noticees have not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Clause 2 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**Alleged violation of Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations**

58. It has been alleged in the SCN that Noticees had charged excess fees which were not fair and reasonable and thereby violated Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations.

59. I note that as per Clause 6 of the Code of Conduct specified for Investment Advisers under Schedule III of IA Regulations, “An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board if any. The Investment Adviser shall ensure that fees charged to the clients is fair and reasonable.”

60. I note from the available records of inspection that as per the product policy submitted by Noticee 1, none of the products offered by Noticee 1, except the HNI product, has an advisory fee of more than Rs. 1 lakh. I note that records show that Noticee 1 was charging an annual fee of Rs. 3,20,000/- for HNI product. On perusal of the details of fees collected submitted by Noticee 1, I observe that Noticee 1 had collected a fee of Rs. 5,00,000 or greater than Rs. 5,00,000 from each of its 43 clients. The details of the clients of Noticee 1 along with the amount of fees collected are as under:

| S.No. | Name of the Client | Advisory Fee Charged (Amount in Rs.) |
|---|---|---|
| 1 | Dhaval Ji | 3455000 |
| 2 | Mahadeo Sadafule | 2459856 |
| 3 | Ganesh Chakravarti | 2056555 |
| 4 | Anil Mittal | 1338000 |
| 5 | Krishna Kant Singhal | 1300000 |
| 6 | Harish Baxani | 925500 |
| 7 | Prashant | 860000 |
| 8 | Radhey Shyam Arora | 820000 |
| 9 | Shabbir Ahmedabadwala | 808150 |
| 10 | Mahaveer Sanghvi | 763500 |
| 11 | Alpesh Patel | 750000 |
| 12 | Rajendra Kumar Gupta | 715000 |
| 13 | Ajay K | 714292 |
| 14 | Roshan Jain | 709000 |
| 15 | Badri Prasad Yadav | 700000 |
| 16 | Digambar Bankar | 682000 |
| 17 | Biplob Mandal | 626000 |
| 18 | Sujit Kumar | 620500 |
| 19 | Hitesh Shekhat | 612500 |
| 20 | Kailash Babulalji Jain | 609000 |
| 21 | Rashmi Adnur | 605000 |
| 22 | Chandrasekar Balasubramanian | 601914 |
| 23 | Som Nath | 600000 |
| 24 | Jeet Guraya | 598502 |
| 25 | Dharmesh Kathiyara | 578000 |
| 26 | Sharathchandra Br | 561000 |
| 27 | Yogesh Kumar | 559900 |
| 28 | Shankarrao Soniram Govind | 555554 |
| 29 | Abhishek Padhye | 554900 |
| 30 | Prasad Mentada | 543433 |
| 31 | Mukesh Kumar | 541500 |
| 32 | Sandeep | 532026 |
| 33 | Ramesh Swarnakar | 531000 |
| 34 | Shripad Kulkarni | 529500 |
| 35 | Manoj Jain | 525000 |

| | | |
|---|---|---|
| 36 | Nandan Kamad Helkar | 517000 |
| 37 | Elamathi Ramachandran | 516711 |
| 38 | Kundumani Duraikkannu | 514003 |
| 39 | Prashant Akarshe | 512361 |
| 40 | Bhavesh Suthar | 510000 |
| 41 | Mahender Jain | 510000 |
| 42 | Venu Gopal | 503259 |
| 43 | Kulwant Singh | 500000 |
| | **Total** | 3,40,25,416 |

61. I note from the aforesaid details that Noticee 1 had charged the highest fee of Rs. 34,55,000 from Mr. Dhaval Ji, for which no justification has been provided. Similarly, Noticee 1 had charged Rs 24,59,856 from Mahadeo Sadafule even though his intended amount of investment was Rs. 6-10 Lacs. I further note that another client, Ganesh Chakravarti was charged Rs. 20,56,555 by Noticee 1. I further note from available records of inspection that Noticee 1 vide its email dated August 27, 2015, sought to justify the said fees by stating that it had incurred significant costs to sustain its advisory business due to various in-house processes like Lead acquisition process, Customer acquisition & retention process, Research & development process, sales process, Information technology Support process, Manpower training & development process and the cost of maintaining a dedicated research team etc. I note from the aforesaid email that Noticee 1 had charged fees only based on costs purportedly incurred by Noticee 1 but without considering the financial position and the intended amount of investment of the clients. As an illustration, I note that in respect of Mr. Mahadeo Sadafule, Noticee 1 had charged an advisory fee of Rs. 24,59,856, without any reasonable ground, even though his intended amount of investment was only Rs. 6-10 Lacs. I also note from the records of inspection that Noticee 1 could not provide any rationale to justify why high fees were charged from certain clients i.e. Dhaval Ji, Mr. Mahadeo Sadafule and Ganesh Chakravarti irrespective of their financial position. I also note that several other clients were charged between Rs. 5 lacs to 10 lacs by Noticee 1 and no reasons to justify such fees were produced on record by the Noticees. Thus, I find that Noticee 1 had charged a total amount of Rs. 3,40,25,416 from 43 clients which were not in consonance with the investment objective of its clients and such excessive fees were charged without adequate disclosures and adequate risk profiling of such clients, as well as without assessing whether such fees were reasonable having regard to the structure and risk reward profile of such products/services, the clients' risk profile, knowledge, investment objectives, risk appetite and capacity for absorbing loss.

62. I note that Noticees 1-3 in their reply dated January 25, 2022, have admitted that the aforesaid fees were charged from clients but have denied that the said fees were excessive. Noticees 1-3 have contended that IA Regulations do not prescribe any ceiling on the maximum amount of fees which can be charged from a client. I note that Noticee 4 has not filed any reply to the SCN. I further note that Noticees 1-3 have not provided any substantiating evidence to establish that the fees charged by it were reasonable. As per Clause 6 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations the fees charged by an investment adviser must be reasonable having regard to the risk profile and financial position of clients. In the instant case, as noted above, the excessive fees charged by Noticees had no rational basis and did not have any connection with the risk profile and financial position of the clients. Thus, I find no merit in the aforesaid contention of Noticees 1-3.

63. Therefore, in view of the foregoing findings, the admission by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Clause 6 of Code of Conduct as specified in Schedule III of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**Alleged violation of clause 5 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations**

64. It has been alleged in the SCN that the Noticees had not made disclosure of relevant material information while soliciting clients through various websites and thereby violated clause 5 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations.

65. I note that as per clause 5 of the Code of Conduct for Investment Advisers as specified in Schedule III of IA Regulations, *"an investment adviser shall make adequate disclosures of relevant material information while dealing with its clients".*

66. I note from available records of inspection that Noticee 1 has submitted that the following websites were being used by them for soliciting clients:-

| Domain/Website name | Status |
|---|---|
| www.sharetiQs-caQitalvia.com | Live |
| www.sharetiQsCaQitalvia.com | Live |
| www.mcxcaQitalviatiQs.com | Live |
| www.mcxcaQitalvia.com | Live |

| | |
|---|---|
| www.toQ1Ostocks.in | Live |
| www.QremiumstocktiQs.com | Live |
| www.mcxncdextiQs.com | Live |
| www.mcx-ncdex-tiQs.com | Live |
| www.live-market-tiQs.com | Live |
| www.intradatlevels.com | Live |
| **www.hottradingtips.com** | **Live** |
| **www.stocktips-capitalvia.com** | **Not live** |
| **www.capitalviatips.com** | **Not live** |
| **www.capitalvia-sharetips.com** | **Not live** |
| **www.commoditypricelive.com** | **Not live** |
| **www.stock-tips-capitalvia.com** | **Not live** |
| **www.nsebseguide.com** | **Not live** |
| **www.capitalvia.com** | **Live** |

67. As per records of inspection, the following defects were observed in the aforesaid websites which are enumerated as hereunder:
   (i) The websites did not contain any reference to CapitalVia.
   (ii) There was no information with regard to the owner of the website and contact details of such owner.
   (iii) There was no mention on the website about the registration of CapitalVia as an investment adviser.

68. Thus, I note from available records of inspection that Noticee 1 was soliciting clients for investment advisory services through numerous websites without disclosing its identity, registration number and contact details. I also note from available records of inspection that Noticee 1 had not provided the details of the aforesaid websites to SEBI at the time of registration.

69. In this regard, I note that Noticees 1-3 in their reply dated January 25, 2022, have admitted that the aforesaid websites were used by Noticee 1 to advertise its services. Noticees 1-3 have however stated that they had disclosed all material information during telephonic conversations with clients. I note that Noticees 1-3 have not provided any substantiating evidence w.r.t. their telephonic conversations with clients in support of their contention. I also note that Noticee 1 did not submit any explanation to SEBI about why intimation regarding several websites used for its advertisements, was not made to SEBI at the time

of registration and why it has not disclosed its identity at the time of soliciting clients through websites. Noticees 1-3 have further contended that there was no regulatory requirement to disclose all details of an investment adviser in its online advertisements. I also note that as per clause 5 of the Code of Conduct for Investment Advisers as specified in Schedule Ill of IA Regulations, an investment adviser is mandatorily required to disclose material information pertaining to the identity, registration number and contact details of an investment adviser. In view of the foregoing, I find the aforesaid contention of Noticees 1-3 to be unacceptable.

70. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Clause 5 of Code of Conduct as specified in Schedule Ill of IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**Alleged violation of Regulation 7(2) of IA Regulations**

71. It has been alleged in the SCN that Noticees had not ensured compliance with qualification and certification requirements as specified in Regulation 7(2) of IA Regulations and thereby violated Regulation 7(2) of IA Regulations.

72. I note that in terms of regulation 7(2) of the IA Regulations, "*An individual registered as an investment adviser and partners and representatives of Investment Advisers registered under these regulations offering investment advice shall have, at all times, a certification on financial planning or fund or asset or portfolio management or investment advisory services:*

*(a) from NISM; or*

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

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

73. I note from the available records of inspection that Noticee 1, being an existing investment adviser, was required to comply with the certification requirement on or before April 21, 2015. I further note that in its reply vide undated letter received by SEBI on July 07, 2015, Noticee 1 had approximately 60 employees as part of its advisory team. The details of

qualification and certification in investment advisory services as submitted by the advisory team on May 05, 2015, were placed on record by Noticee 1 during the inspection and the same are as under:

(a) Number of candidates cleared two modules - 19;
(b) Number of candidates cleared only one module – 42

74. Therefore, I find that a substantial number of employees of Noticee 1 had only cleared one module of NISM certification in Investment Advisory services which demonstrates that they had not cleared all modules of the NISM certification in Investment Advisory services and their qualifications were inadequate for the purpose of providing investment advisory services.

75. In this regard, Noticees 1-3 in their reply dated January 25, 2022, have contended that they had substantially complied with the aforesaid regulation as the employees of Noticee 1 had obtained NISM Certification in investment advisory services even though the same was not completely adequate. I note that Noticee 4 has not filed any reply to the SCN. I note that Noticees 1-3 have not provided any explanation as to why they had only partially complied with the aforesaid regulation. I note that as per Regulation 7(2) investment advisors are mandatorily required to ensure that their employees have adequate certification on financial planning or fund or asset or portfolio management or investment advisory services from the institutions specified therein and the same does not allow for any exception. Thus, I do not find any merit in the aforesaid contention of Noticees 1-3.

76. Thus, I note that all representatives of Noticee 1 had not obtained the requisite certification as specified in IA Regulations. Hence, I find that employees of Noticee 1 did not have the requisite certification in investment advisory services as mandated under Regulation 7(2) of IA Regulations. Therefore, in view of the foregoing findings and given the fact that Noticees have not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Regulation 7(2) of IA Regulations and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**<u>Alleged violation of Regulation 13(c) of IA Regulations</u>**

77. It has been alleged in the SCN that Noticee 1, as a body corporate, providing investment advisory services, had not included the words 'investment adviser' in its name and thereby

violated the conditions of the grant of certificate of registration as provided under Regulation 13(c) of IA Regulations.

78. I note that in terms of Regulation 13(c) of IA Regulations, “the investment adviser, not being an individual, shall include the words 'investment adviser' in its name:
Provided that if the investment advisory service is being provided by a separately identifiable department or division or a subsidiary then such separately identifiable department or division or subsidiary shall include the words 'investment adviser' in its name.”

79. In this regard, I note from the available records of inspection and email correspondences with clients that the words 'Investment Adviser' are not included in the name of CapitalVia. I note that Noticees have not provided any explanation or made any submissions w.r.t. the allegation made in the SCN in this regard. It is also noted that Noticee 4 has not filed any reply to the SCN. Thus, I note that Noticees have not disputed the aforesaid allegation. I further note that no separately identifiable department or division has been floated by CapitalVia for the purpose of investment advisory activities. Therefore, in view of the foregoing findings, I find that the allegation that Noticee 1, as a registered IA, has violated Regulations 13(c) of IA Regulations stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**<u>Alleged violation of clause 1 of the Code of Conduct specified for Investment Advisers in Schedule III of IA Regulations</u>**

80. It has been alleged in the SCN that Noticee had disclosed factually incorrect information on its website and thereby violated clause 1 of the Code of Conduct specified for Investment Advisers in Schedule III of the IA Regulations.

81. I note that in terms of clause 1 of the Code of Conduct specified in Schedule III of the IA Regulations, “an investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.”

82. I have perused the website of Noticee 1, www.capitalvia.com. I note that Noticee 1 had disclosed factually incorrect information about its advisory team, number of clients and its offices, which are enumerated as under:

**(a) Disclosure in respect of advisory team**

On the website of CapitalVia, it was mentioned that it has 750+ trained advisory team. During the inspection, the inspection team sought clarification with regard to the investment advisory team. In its reply vide undated letter received by SEBI on July 07, 2015, CapitalVia submitted to SEBI's inspection team that it employed 750 people including 60 employees, who were part of the advisory team, and 400 sales persons while remaining employees were qualified supporting staff.

**(b) Disclosure in respect of no. of clients:**

On the website of CapitalVia, it was mentioned that it has 4581+ clients. During the inspection, the inspection team sought clarification with regard no. of clients. In reply, CapitalVia submitted "the previous up gradation of website took place one year before and as per the business model, number of clients of Capita/Via varies day by day and at present, CapitalVia has a base of 3500+ (approx) clients".

**(c) Disclosure in respect of Offices in Singapore and USA**

On the website of CapitalVia, it was mentioned that it has offices at Indore, Singapore and USA.

83. I note from the records of inspection that in reply to the query during inspection, CapitalVia has stated that it has 60 employees in its advisory team, which was contrary to what was stated in its website. I also note that it was only pursuant to inspection that CapitalVia has mentioned on the website that they have 3500+ clients. I further note that as regards the claim that it had offices at Singapore and USA, pursuant to inspection, CapitalVia submitted that it had virtual offices in Singapore and USA and none of its employees are physically working from these locations, till date. Therefore, I find that Noticee 1 had displayed incorrect information on its website which was subsequently rectified by it when pointed by SEBI's inspection.

84. I note that Noticees 1-3 in their reply dated January 25, 2022, have admitted that incorrect information was disclosed by them on the website of CapitalVia. Noticees 1-3 have contended that the said information pertaining to its "Advisory team" was based on its understanding that the said term includes all employees of CapitalVia. In this regard, I note that Noticees had admitted vide undated letter received by SEBI on July 07, 2015 that it had made incorrect disclosure about the number of members in its advisory team on its website. Thus, I do not find the aforesaid contention of Noticee 1 to be acceptable. W.r.t. the number of clients, Noticee 1 has stated that the number of their clients keeps on changing continuously and information was not updated due to human error. Therefore, I do not find the aforesaid contention of Noticee 1 to be acceptable. I also note that Noticees 1-3 have not furnished any explanation or made any submissions in respect of the

allegation pertaining to incorrect disclosure w.r.t. offices at Indore, Singapore and USA. In this regard, I note that the aforesaid instances of incorrect disclosures w.r.t. number of employees in its advisory team, its offices, and number of clients are serious in nature and have the effect of giving a misleading impression to investors about the business of CapitalVia. In any case, Noticee 1 had rectified the aforesaid disclosures in its website pursuant to inspection by SEBI, which shows its acknowledgement of its non-compliance. Therefore, I note that the aforesaid contentions of Noticees are not tenable.

85. Therefore, in view of the foregoing findings, the admission made by Noticees 1-3 and given the fact that Noticee 4 has not disputed the aforesaid allegation, I find that the allegation that Noticee 1, as a registered IA, has violated Clause 1 of the Code of Conduct specified in Schedule III of the IA Regulations, stands established and therefore, the aforesaid allegation against Noticees 2-4, as Directors of Noticee 1 also stands established.

**Issue No. 2- Do the violations, if any, attract monetary penalty under Sections 15HB of SEBI Act?**

86. It has been established in the foregoing paragraphs that the Noticees have violated Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule III of IA Regulations. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held that: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established……*"

87. Therefore, in view of the findings and placing reliance on the above judgment of Hon'ble Supreme Court, I find that the aforesaid violations of Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule III of IA Regulations will attract monetary penalty under Section 15HB of the SEBI Act. The respective provision of Section 15HB of the SEBI Act as applicable at the time of the violations is reproduced as under:

***Penalty for contravention where no separate penalty has been provided***

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

**<u>Issue No.3 - What should be the quantum of monetary penalty</u>?**

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

***<u>SEBI Act</u>***

***Factors to be taken into account by the adjudicating officer.***

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

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

89. In the present matter, it is noted from available records that Noticees had collected Rs. 3,40,25,416 from 43 clients by charging them exorbitant fees for investment products/services without adequate disclosures and adequate risk profiling of such clients, as well as without assessing whether the structure and risk reward profile of such products/services was consistent with clients' experience, knowledge, investment objectives, risk appetite and capacity for absorbing loss. Thus, Noticees had subjected their clients to extraordinary financial risks without any knowledge of such risks on their part, while charging them exorbitant fees and without complying with basic requirements of IA Regulations. Therefore, I find that Noticees had acted with blatant disregard for the interest of their clients and made a disproportionate gain by exposing their uninformed clients to the risk of financial peril and thereby violated Regulations 7(2), 15(8), 16, 17, 18, 19, 22, 13(c), 15(1), 15(9) of IA Regulations read with Clauses 1, 2, 4, 5 and 6 of the Code of Conduct under Schedule III of IA Regulations. Thus, in light of such grave violations committed by Noticees, I am of the view that the aforesaid amount of money collected as fees by the Noticees from their clients was tantamount to disproportionate gain or unfair

advantage obtained by Noticees, even though the material available on record does not sufficiently quantify the amount of loss caused to investors as a result of the aforementioned violations by Noticees. As regards the repetitive nature of the default, I do not find the inspection having brought on record any regulatory action taken by SEBI in past against Noticees for the same violations as those observed in the instant inspection. However, as a SEBI registered investment adviser, Notice 1 along with its directors, Noticees 2 to 4, were under a statutory obligation to abide by the provisions of IA Regulations and act honestly and fairly in the best interests of their clients, which they had deliberately failed to do. Such blatant disregard for the interests of clients and the provisions of law governing the functioning of Investment Advisers calls for the maximum penalty provided under law for the aforementioned violations.

## ORDER

90. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in the exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the maximum penalty of Rs. 1,00,00,000 (Rupees One Crore Only), jointly and severally, on Noticees under Section 15HB of SEBI Act for the aforementioned violations.

91. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, said Noticee may contact the support at portalhelp@sebi.gov.in.

92. The Noticees shall forward said Demand Draft or the said confirmation of e-payment made in the format as given in table below which should be sent to "The Division Chief, EFD – DRA - 4, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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|---|---|
| 1. Case Name: | |
| 2. Name of payee: | |
| 3. Date of payment: | |
| 4. Amount paid: | |
| 5. Transaction no.: | |

| | |
|---|---|
| 6. Bank details in which payment is made: | |
| 7. Payment is made for:<br>(like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details) | |

93. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

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

**Place:Mumbai** **SOMA MAJUMDER**

**Date: October 19, 2022** **ADJUDICATING OFFICER**