BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/AN/RG/2024-25/30910-30912

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

In respect of:

Noticee No.	Noticee Name	PAN
1	Edelweiss Asset Management Limited	AABCE8255H
2	Ms. Radhika Gupta	ARPPG6617H
3	Mr. Trideep Bhattacharya	AEWPB8493E

In the matter of Edelweiss Asset Management Limited

A. BRIEF BACKGROUND

1. While undertaking an industry wide analysis of whether focused funds are true to label or not, SEBI inter alia noted that Edelweiss Focused Equity Fund ("EFEF") had violated the provision 'An open ended equity scheme investing in maximum 30 stocks' on 88 days. The deviations from mandatory asset allocation was observed for the months of November 2022, December 2022, January 2023 and February 2023.

2. Pursuant to the said analysis, it was inter alia observed by SEBI that Edelweiss Asset Management Limited (hereinafter also referred to as "EAML"/ "Noticee No. 1" / "AMC") had allegedly violated Regulation 25 (1) and (3) of SEBI (Mutual Funds)

Regulation,1996 (hereinafter also referred to as "Mutual Funds Regulations") and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018, Ms. Radhika Gupta (hereinafter also referred to as "Noticee No. 2") had allegedly violated Regulation 25 (6A) (a) of SEBI (Mutual Funds) Regulations, 1996 and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018 and Mr. Trideep Bhattacharya (hereinafter also referred to as "Noticee No. 3") had allegedly violated Regulation 25 (6B) (a) of SEBI (Mutual Funds) Regulations, 1996 and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018. Accordingly, SEBI initiated adjudication proceedings against the Noticee Nos. 1-3 (hereinafter collectively referred to as "Noticees") under Section 15-I of SEBI Act, 1992 (hereinafter also referred as "SEBI Act") for the alleged violations of the relevant provisions, as stated.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. Whereas the Competent Authority was prima facie of the view that there were grounds to adjudicate upon the alleged violations by the Noticees, as stated above and therefore, in exercise of the powers conferred upon him under section 15-I of SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by AO) Rules, 1995 (hereinafter also referred to as "SEBI Adjudication Rules" / "Adjudication Rules" / "AO Rules"), the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") vide order dated December 28, 2023 to inquire into and adjudicate under Section 15E and 15HB of the SEBI Act, 1992, for the alleged violations by the Noticees. The said proceedings of appointment were communicated to the undersigned vide Communique dated December 29, 2023.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice bearing no. SEBI/EAD-5/AN/RG/563/1-3/2024 dated January 04, 2024 ("SCN"), was served upon the Noticees under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticees under Sections 15E and 15HB of the SEBI Act, 1992, for the violations alleged to have been committed by the Noticees.

5. The following was inter alia observed and alleged in the SCN in respect of the Noticees:

"...
3. BACKGROUND

3.1. While undertaking an industry wide analysis of whether focused funds are true to label or not, SEBI noted that Edelweiss Focused Equity Fund ("EFEF") has violated the provision 'An open ended equity scheme investing in maximum 30 stocks' on 88 days. The deviations from mandatory asset allocation was observed for the months of November 2022, December 2022, January 2023 and February 2023.

4. Findings and Observations by SEBI and alleged violations thereto in respect of the Noticees:

Noticee No. 1
4.1. As per SEBI circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017, a focused fund shall have following scheme characteristics and description:

*4.1.1. Scheme characteristics as "scheme focused on the number of stocks (maximum 30). **Minimum** investment in equity & equity related instruments -65% of total asset" and*
4.1.2. Type of scheme as "An open ended equity scheme investing in maximum 30 stocks (mention where the scheme intends to focus, viz., multi cap, large cap, mid cap, small cap)"

4.2. The deviations from mandatory asset allocation was as under for the months of November 2022, December 2022, January 2023 and February 2023 (Annexure 1):

Sr. No.	*No. of days deviation observed*	*Number of stocks held by EFEF*
1	*62*	*31*
2	*12*	*32*
3	*14*	*33*
4	*Total: 88*	*Between 31-33*

4.3. It is observed that deviation from stipulated asset allocation of maximum 30 stocks were active in nature. These deviations were corrected just before the month end date when scheme wise detailed portfolio is required to be disclosed as per clause 3(1(a)) of SEBI circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 5, 2018.

4.4. Additionally, after allotment of units, the AMC took long position in NIFTY FIFTY futures for 10 days i.e. from August 2, 2022 till August 11, 2022. NIFTY FIFTY index has 50 constituent securities. Hence, taking long exposure to NIFTY FIFTY index leads to portfolio exposure going beyond 30 stocks.

4.5. Clarification was sought from the EAML vide email dated September 4 and 5, 2023 and October 10, 2023. EAML had submitted in its reply dated 08 September 2023 and 11 October 2023, that the Fund Manager was buying and selling the stocks in staggered manner and spread across the month to navigate through market volatility and investment in NIFTY FIFTY was to avoid holding cash in the Fund's portfolio (EAML's communication with SEBI attached as Annexure 2).

4.6. However, SEBI observed that the reasons stated by EAML are not acceptable considering the following:

4.6.1. In terms of para 2.1 of SEBI circular dated March 4, 2021 on 'Circular on Mutual Funds', following is specified:

"In partial modification to SEBI Circular No.IIMARP/MF/CIR/01/294/98 dated February 4, 1998, the portion on "Investment pattern" in paragraph-2(a)(ii)shall be read as under:
Investment pattern -The tentative portfolio break-up of Equity, Debt, Money Market Instruments, other permitted securities and such other securities as may be permitted by the Board from time to time with minimum and maximum asset allocation, while retaining the option to alter the asset allocation for a short term period on defensive considerations."

4.6.2. Deviation from stipulated asset allocation on a short term basis on "defensive considerations" is intended for extenuating circumstances which may include substantial redemptions, adverse market conditions etc. or instances which are beyond the control of the fund manager and the AMC and hence may require such deviations. However, "defensive considerations" cannot be interpreted to justify exceeding 30-stock requirement on a regular basis (88 instances during the period of 4 months) thereby violating basic tenet of a Focused Fund.

4.6.3. Further, it may also be noted that the section 'asset allocation and investment pattern' of Scheme Information Document ("SID") Of EFEF does not mention about the aforesaid SEBI circular dated March 4, 2021.

4.7. In view thereof, it is alleged that the Noticee No. 1 has violated para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.

4.8. In terms of para B(3)(1(a)) of SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018 following is specified mandating AMCs to disclose the portfolio of schemes on monthly basis:

"Mutual Funds/AMCs shall disclose portfolio (along with ISIN) as on the last day of the month / half-year for all their schemes on their respective website and on the website of AMFI within 10 days from the close of each month/ half-year respectively in a user-friendly and downloadable spreadsheet format "

4.9. The purchases/sale of stocks in the Scheme are timed in such way that the deviation is not reflected in the month-end portfolio disclosure, thus, evading from reporting the deviation in monthly portfolio disclosure done in public domain.

4.10. Further, EAML stated that they invested in NIFTY FIFTY Futures to avoid holding cash in the Fund's portfolio. However, it may be noted that NIFTY FIFTY index has 50 constituent securities. Hence, taking long exposure to NIFTY FIFTY index shall lead to exposure going beyond 30 stocks in terms of SEBI circular dated October 6, 2017 for Focused Fund and thereby leading to violation of SEBI circular dated October 6, 2017. Further, in terms of Scheme Information Document of EFEF, following is mentioned "Notwithstanding anything contained in the Scheme Information Document the provisions of the SEBI (Mutual Funds) Regulations, 1996 and the Guidelines thereunder shall be applicable." Hence, the Noticee's comment that the investment was made in accordance with the provisions mentioned in the SID of the Fund is also not acceptable. Therefore, the Noticee No. 1 is alleged to have violated para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018.

4.11. Further, it is alleged that Noticee No. 1 has failed to ensure that the asset management company takes all reasonable steps and exercise due diligence to ensure that the investment of funds pertaining to any scheme is not contrary to the provisions of these regulations, in violation of Regulation 25(1) of Mutual Fund Regulations.

4.12. Also, it is alleged that Noticee No. 1 being responsible for the acts of commission or omission by its employees or the persons whose services have been procured by the asset management company, has violated Regulation 25(3) of Mutual Fund Regulations.

Noticee No. 2

4.13. Regulation 25 (6A) (a) of Mutual Funds Regulations states that "The Chief Executive Officer (whatever be the designation]) of the asset management company shall ensure that the mutual fund complies with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time and that the investments made by the fund managers are in the interest of the unit holders and shall also be responsible for the overall risk management function of the mutual fund".

4.14. Noticee No. 2 being the CEO of EAML has failed to ensure that the mutual fund complies with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time.

4.15. In view thereof, Noticee No. 2 is alleged to have violated Regulation 25 (6A) (a) of Mutual Funds Regulations and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018.

Noticee No. 3...

4.16. Regulation 25 (6B) (a) of Mutual Funds Regulations states that "The fund managers (whatever be the designation) shall ensure that the funds of the schemes are invested to achieve the objectives of the scheme and in the interest of the unit holders".

4.17. Noticee Nos. 3 .. being fund managers of EFEF failed to ensure that the funds of the schemes are invested to achieve the investment objective of the scheme as stated in SID, which states that "The investment objective of the fund is to generate long term capital appreciation by investing in equity and equity and derivative segment of upto 30 companies across market capitalization"

4.18. In view thereof, Noticee Nos. 3 ... are alleged to have violated Regulation 25 (6B) (a) of Mutual Funds Regulations and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018.

..."

6. Vide email dated January 17, 2024, the Noticees sought inspection of documents, which was provided to the Noticees on January 19, 2024.

7. Subsequently, vide letter dated February 02, 2024, Noticees submitted their reply to the SCN. The key submissions made by Noticees as reply to the SCN, are as under:

Noticee No. 1

"...

III. BRIEF FACTUAL BACKGROUND

11. The Noticee is the asset management company of Edelweiss Mutual Fund, registered with SEBI bearing reference number MF/057/08/02. It commenced operations in 2009, and as of December 31, 2023, has assets worth INR 1.21 lakh crore and enjoys the confidence of over 10 lakh investors. The Noticee has been the recipient of numerous awards recognising its stellar wealth creation ability and investment ethos.

12. The Noticee is fully committed to conducting its businesses and discharging its obligations in compliance with the applicable regulatory framework to the highest professional standards. The Noticee's investment team has over 150 cumulative years of experience in the securities market and is committed to investing responsibly and sustainably in the Indian equities market to ensure wealth creation for its investors.

*13. In the instant case, it is relevant to note that the Fund was launched on August 1, 2022, with its investment thesis focused on generating "... long-term capital appreciation from a diversified portfolio that predominantly invests in equity and equity-related securities of companies across various market capitalisation." The managers of the Fund are seasoned professionals with over 40 cumulative years of experience between them. Given the long-standing reputation of the Noticee and the fund managers in the market, the Fund has quickly grown to manage assets of over INR 600 crore and has delivered an unparalleled simple annualised return of over 29% in the past year, as of December 2023. In this regard, a copy of the relevant extracts of the factsheet of the Fund as on December 29, 2023 is annexed as **Annexure C.***

*14. The Fund, being cognisant of the fact that a focused fund under the extant regulatory framework can only invest in a maximum of 30 stocks, aims to ensure that it does not overstep this regulatory threshold. The Fund's factsheets over the last three months bear this out – the relevant extracts of the same have been annexed to this Reply as **Annexure D (Colly).***

15. Given that the Fund only has elbow room within these 30 stocks to deliver returns to its investors, it is incumbent upon the managers to ensure that stocks that are not performing in line with expectations be swapped out with stocks that align better with the Fund's investment objectives, so as to ensure that the Fund's investors are not adversely affected.

16. In the instant case, it is respectfully submitted that the interpretation canvassed by SEBI is ex-facie egregious, and the Noticee is not in violation of the alleged circulars as mentioned above.

IV. RESPONSE TO SPECIFIC ALLEGATIONS

17. Set out below are detailed submissions/responses to the findings/allegations set out under the Notice.

A. NO VIOLATION OF THE 2017 SEBI CIRCULAR

18. At the outset, it is submitted that all the investments made in the Fund were in accordance with the SEBI regulations and circulars. The extant regulatory framework gives due flexibility to the fund managers to take investment decisions, as long as these are within the broad contours of the regulatory framework. In light thereof, and the submissions made below, it is clearly demonstrated that there is no violation of the alleged SEBI Circulars.

19. The Notice specifically alleges that the Fund is in violation of the 2017 SEBI Circular, with particular reference to paragraph I (3) read with Annexure A(8). The Notice contends that the Noticee has violated the aforesaid provision for the months of November 2022, December 2022, January 2023 and February 2023 as set out below:

Sr. No.	No. of days in which deviation is observed	No. of stocks held by the Fund
1)	62	31
2)	12	32
3)	14	33
4)	Total: 88	Between 31-33

20. It is respectfully submitted that the aforesaid observation is denied and merits no consideration whatsoever. It is relevant to note that the interpretation of the 2017 SEBI Circular adopted disregards the nature of the SEBI Circular dated February 4, 1998 ("1998 SEBI Circular") read with SEBI circular dated March 4, 2021 ("2021 SEBI Circular"), which gives the option to an AMC to alter the asset allocation for a short period on defensive considerations. The relevant extract of the said circular is as follows:

"The tentative portfolio break-up of Equity, Debt, Money Market Instruments, other permitted securities and such other securities as may be permitted by the Board from time to time with minimum and maximum asset allocation, while retaining the option to alter the asset allocation for a short term period on defensive considerations." (emphasis supplied)

21. SEBI, in its FAQs issued to Mutual Fund Investors dated March 31, 2023 ("SEBI MF FAQs"), has clarified that fund managers are "... allowed certain flexibility in altering the asset allocation considering the interest of the investors." It has further clarified that the asset allocation can be changed "... on a short term basis on defensive considerations i.e. to protect the NAV." (emphasis supplied) A copy of the SEBI MF FAQs is annexed as Annexure E.

22. Accordingly, fund managers have the flexibility to alter the categorization specified in the 2017 Circular for defensive considerations. This flexibility given to fund managers for a short period of time is a long-standing one that forms part of the regulatory framework, as laid down in the 1998 SEBI Circular. This underscores the regulatory intention to grant fund managers the discretion to nimbly adapt to changing market conditions and tweak the fund's portfolio to serve the best interests of the investors.

23. It is to be noted that the investment objective of the Fund is to deliver long-term capital appreciation from a diversified portfolio. To ensure the same, it is critical that the Fund has the right basket of 30 stocks, which would enable investors to reap long-term capital appreciation. Given the focused

nature of the Fund, any non-performing stock must be quickly and efficiently swapped out such that the interests of the investors are not adversely affected.

24. *Furthermore, the Notice notes that there is no mention of the 2021 SEBI Circular in the scheme information documents of the Fund. In this respect, it is submitted that there is no provision or stipulation in the Fund's scheme information documents that would prevent the Fund from carrying out such asset allocation alterations. In any event, given that the regulatory provisions analysed above would prevail over and supersede the contents of the scheme information documents, it is reiterated that there is no bar against the asset allocation alterations and that the exclusion of the 2021 SEBI Circular from the scheme information documents cannot be held against the Noticee.*

25. *It is submitted that it is amply clear that the asset allocation prescribed by the 2017 SEBI Circular is not set in stone precisely because such a narrow interpretation would deprive fund managers of the flexibility to adapt to exigent market conditions. In order to safeguard the net asset value of the fund and to protect the interests of the investors, fund managers are allowed to alter the asset allocation for a short period of time until the requirement for defensive considerations has passed.*

26. *It is submitted that the deviations alleged in the Fund's asset allocation by the Notice are merely in the nature of transitory changes to the Fund's portfolio, which happen over the course of swapping out one stock for another. The fund manager was merely selling and buying desired stocks in a staggered manner in order to minimise market fluctuations and risk.*

27. *The allegation in the Notice seems to suggest that the recommended course of action for the Fund would be to sell down a stock in totality before assuming positions in another. Given the quantity of any particular stock held with the Fund, a sudden sell down without an accompanying purchase would lead to significant price volatility in the stock and would adversely affect the net asset value of the Fund, thereby adversely affecting the investors. This would additionally concentrate risk for the Fund's investors, given that there would only be 29 stocks in the Fund. The Fund has furnished comprehensive details to SEBI regarding the stocks being transitioned out, and the accompanying rationale, vide emails dated September 8, 2023 and October 11, 2023. The same has been annexed to this Reply as Annexure F, for your ready reference.*

Fund's positions in NIFTY FIFTY futures do not violate the 2017 SEBI Circular

28. *It is submitted that the Fund's position in NIFTY FIFTY futures does not violate the 2017 SEBI Circular when read along with the 1998 SEBI Circular, which offers flexibility to fund managers to alter asset allocation.*

29. *Given that the Fund was launched only on August 1, 2022, the fund managers were tasked with building up the portfolio to reflect the exposure promised in the scheme information document and as prescribed by the extant regulatory framework. In order to avoid holding cash in the Fund's portfolio, the Fund had invested in NIFTY FIFTY futures. Subsequently, the Fund systematically deployed the proceeds of the Fund's new fund offer into the portfolio stocks in a phased manner, factoring in aspects such as stock specific liquidity. This is in line with best industry standards and market practice and is aimed at ensuring that investors who join the Fund at an early juncture are not disadvantaged due to excess cash reserve holdings of the Fund.*

30. *Furthermore, we request you to note the uncontroverted fact that NIFTY FIFTY futures were on the books of the Fund for only ten days starting the day of conception of the Fund. In line with the 1998 SEBI Circular, the Fund only had such altered asset allocation for the shortest duration of time as possible. Subsequent to the building up of the portfolio, the Fund has never taken positions in NIFTY FIFTY futures.*

31. *It is further submitted that these investments in NIFTY FIFTY futures were contemplated well in advance by the Fund and were duly disclosed to investors in the scheme information documents of the Fund. The relevant extract of the scheme information document is as below:*

"The Scheme can take derivative exposure upto 50% of net asset of the Scheme. The total exposure related to options premium paid will not exceed 20% of the net assets of the Scheme. (...)

The Scheme may invest in Derivative Instruments to the extent permitted under SEBI Circulars DNPD/Cir-29/2005 dated September 14, 2005, DNPD/Cir-29/2005 dated January 20, 2006, SEBI/DNPD/Cir-31/2006 dated September 22, 2006 and CIR/IMD/DF/11/2010 dated August 18, 2010 on 'Trading by Mutual Funds on Exchange Traded Derivatives' as amended from time to time. Derivative products are specialized instruments that require investment techniques and risk analysis different from those associated with stocks and bonds. The use of derivatives requires an understanding not only of the underlying instrument but also of the derivative instruments itself. The Scheme may use derivative instruments such as index futures and options, stock futures and options contracts, warrants, convertible securities, swap or forward rate agreements or any other derivative instruments that are permissible or may be permissible in future under applicable regulations and such investments shall be in accordance with the investment objective of the Scheme. (…)

The position limit for the Mutual Fund in index futures contracts shall be as follows:

• The Fund's position limit in all index futures contracts on a particular underlying index shall be Rs. 500 Crores or 15% of the total open interest of the market in index futures, whichever is higher, per Stock Exchange.

• This limit would be applicable on open positions in all futures contracts on a particular underlying index."

32. *Furthermore, it is submitted that through a letter dated October 19, 2023, addressed to the Association of Mutual Funds in India ("AMFI"), SEBI had flagged the common market practice of focussed funds taking positions in index derivative instruments and had interpreted the 2017 SEBI Circular to prohibit focussed funds from taking exposure to such instruments. This is since taking a position in an index derivative instrument would be akin to taking exposure in the constituents of the index's funds.*

33. *Given that it was widespread market practice for focussed funds to take exposure to such instruments, SEBI had instructed AMFI to direct asset management companies to ensure that focussed funds remain true to label, and rebalance their asset allocation one month from October 19, 2023. The SEBI letter dated October 19, 2023 is annexed as Annexure G.*

34. *It is clearly seen that it was common market practice for focused funds to take exposure to index derivative instruments, and SEBI had flagged this practice as potentially violative of the extant framework only in October 2023. Accordingly, SEBI had given the window of a month for focussed funds to comply with SEBI's understanding of the framework. In this light, it is patently unjust for the Notice to retrospectively fit this understanding to the Noticee's conduct, which was in the period of August 2022 only.*

35. *As is clear from the submissions above, at no point of time after 2022 has the Fund ever taken any positions in index derivative instruments. Accordingly, the Notice cannot make out this allegation against the Noticee when the understanding of the law with respect to index derivative instruments was only firmed up in October 2023.*

36. *In light of the above, it is submitted that the Notice does not make out any violation in any manner with respect to the 2017 SEBI Circular.*

B. ALLEGATIONS CONCERNING MANAGEMENT OF THE SCHEMES ON ASPECTS INVOLVING BUSINESS JUDGMENT

37. *It is pertinent to highlight the standard of care to be exercised by a professional asset management company in discharge of its responsibilities as well as the scope of review that a regulator may exercise in the context of business decisions taken by an asset management company.*

38. *While the SEBI MF Regulations do not specifically address the standard of professional care expected of an asset management company, reference is made to Jacob Mathew v. State of Punjab and Ors, wherein the Supreme Court of India had occasion to examine the standard of care which would apply to a professional, in discharge of his duties:*

"Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices." (emphasis supplied)

39. *Similarly, it would also be helpful to refer to the judgment of the U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, which considered the standard of care that would apply specifically in the context of fund management. The court, after considering whether the fund manager of an investment fund breached its duties of loyalty and 'prudence' in managing the fund, dismissed the complaint against the fund manager and observed as follows:*

"ERISA requires a fiduciary to act "with the care, skill, prudence, and diligence under the circumstances ... that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). "The test of prudence - the Prudent [Person] Rule - is one of conduct, and not a test of the result of performance of the investment. Whether a fiduciary's actions are prudent cannot be measured in hindsight."

40. *Further, the Hon'ble SAT, while considering the appeal of the auditor against the order of SEBI in Price Waterhouse & Co & Ors v. SEBI, referred to the following judgments in relation to the standard of care to be adopted by professionals:*

"73. In Bolam vs Friern Hospital Management Committee [1957] 1 WLR 582, it was held:-

"No matter what profession it may be, the common law does not impose on those who practice it any liability for damage resulting from what in the result turn out to have been errors of judgment, unless the error was such as no reasonably well-informed and competent member of that profession could have made."

41. *In Eckersley & Others vs. Binnie & Others, the Court of Appeal (Civ Div), it was held:-*

"In deciding whether a professional man has fallen short of the standards observed by ordinarily skilled and competent members of his profession, it is the standards prevailing at the time of his acts or omissions which provide the relevant yardsticks. He is not, as the learned Judge in this case correctly observed (at p. 20H of his judgment) to be judged by the wisdom of hindsight. This of course means that knowledge of an event which happened later should not be applied when judging acts and omissions which took place before that event; a very relevant consideration here because knowledge of the Abbeystead catastrophe has (as the evidence shows) had a profound educational effect......""

42. *In the absence of any specific regulatory guidance under the SEBI MF Regulations, and in view of the judicial precedents discussed above, it is evident that the standard of care that the Noticee is expected to meet in the discharge of its responsibilities is that of reasonableness and general prudence, having regard to the prevailing facts and circumstances.*

43. *Further, the yardstick to measure such standard would be of a professional of ordinary competence engaged in the same profession (and not a person of the highest competence). Courts have also categorically warned against hindsight bias and held that professional conduct ought not to be judged by the eventual outcome or performance in any given case.*

Business Judgment Rule

44. *It is also submitted that business decisions taken by the Noticee for the Schemes are protected by the business judgment rule. The business judgment rule requires courts to focus on the decision-making process instead of a substantive evaluation of the merits of a management decision while also being cautious against hindsight bias. In the absence of any malafides or some other corrupt ulterior motive, the asset management company may not be liable for errors of judgment, whether those mistakes are classified as mistakes of fact or mistakes of law.*

45. *While each of the allegations in the Notice pertaining to the Noticee's management of the Fund are addressed hereinabove, it is submitted that the Noticee has discharged the requisite standard of care with respect to all actions taken by it in this context and business decisions taken by the Noticee have been taken in good faith and in exercise of the best judgment. Further, it is not even alleged that the Noticee has acted in bad faith, self-interest, or that any form of personal benefit has accrued to the Noticee.*

46. *The Noticee, in its role, is required to take rational risk-integrated business decisions. It is submitted that any judicial or quasi-judicial inquiry should apply the business judgment rule as the appropriate standard to judge investment decisions made by the Noticee as the investment manager of the Fund. Holding the Noticee liable for regular and good faith investment decisions with the advantage of hindsight will hamper and discourage business/investment decision making, thereby adversely impacting the interests of investors in and the development of the Indian securities market.*

47. *It is submitted that fund managers have the flexibility to determine investment strategies and make investment decisions, subject to compliance with the overall regulatory framework and after making adequate disclosures to investors. Investment decisions made by fund managers are necessarily subjective, which require an exercise of business judgment and often an assessment of competing considerations. It is submitted that the exercise of such business judgment in the interests of investors ought not to be made the basis for adverse and punitive directions and that such a precedent will disincentivise fund managers from taking risk-weighted calls in the interest of investors. It is our submission that the same will also hinder the development of the market.*

C. *The Fund has always been in compliance with the extant disclosure requirements*

48. *The Notice alleges that the Noticee has violated Paragraph B(3)(1(a)) of the 2018 SEBI Circular, through which the Fund is mandated to disclose its portfolio on the last day of the month.*

49. *It is submitted that the above allegation brought against the Noticee is incorrect and is not consistent with the facts of the matter. The Fund has been making its month-end portfolio disclosures in line with the regulatory framework, as is clearly borne out by the contents of Annexure D.*

50. *Without prejudice to our submissions above, even if the alteration of the asset allocation was not in line with the extant regulatory framework, it cannot be alleged that the Fund has violated its obligation to make month-end disclosures, which it has been duly doing. The Notice has mechanically invoked the provisions of the 2018 SEBI Circular, which mandate disclosure requirements, without making out any case for the Noticee actually having failed to make such disclosure.*

51. *It is also critical to note that the Notice has not alleged that the month-end disclosures are in any way inaccurate or inconsistent with the Fund's portfolio as on the date of making the disclosure. The Notice has, in a roving manner, tried to make out a violation by alleging that the asset alterations were timed in a manner so as to evade reporting in the month-end disclosures. However, as stated above, the asset alterations were rebalanced before the end of the month so as to ensure that the alterations, which were carried out for defensive considerations in the best interests of the investors, were only for a "short period of time" as stipulated in the regulatory framework.*

52. *Accordingly, while the Notice vaguely tries to cast aspersions on the conduct of the Noticee, the same can be substantiated beyond any reasonable doubt through reference to the extant regulatory framework.*

53. *It is reiterated that in any event, Paragraph B(3)(1(a)) of the 2018 Circular, which simpliciter mandates month-end disclosures, cannot be used to make out any kind of violation against an asset management company that has been duly making such month-end disclosures in the prescribed format and method since its very inception to the present date. This allegation against the Noticee merits no consideration whatsoever and should be dismissed at the very outset.*

D. *ALLEGATIONS CONCERNING CONDUCT OF DUE DILIGENCE AND EXERCISE OF CARE*

54. *The Notice calls into question various practices of the Noticee on grounds that it failed to exercise requisite due diligence and care in performing its functions. In terms of Regulation 25 of the SEBI MF Regulations, an asset management company is required to take all reasonable steps and exercise due diligence in all its investment decisions and ensure that the investments of the mutual fund are in line with the SEBI MF Regulations.*

55. *The SEBI MF Regulations do not define or expand on the meaning of the term 'due diligence' and the standard thereof to be observed by asset management companies. Accordingly, reliance may be placed on interpretations provided by courts in this context.*

56. *In particular, reference is drawn to Chander Kanta Bansal v. Rajinder Singh Anand, wherein the Hon'ble Supreme Court placed reliance on the following definitions of 'due diligence':*

"…The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial…." (emphasis supplied).

57. *Placing reliance on the observation of the Hon'ble Supreme Court in the above matter, the Hon'ble SAT in Almonds Global Securities Limited v. SEBI, while discussing the scope of 'due diligence' to be exercised by merchant bankers, made the following observation:*

"52. This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. Hon'ble Supreme Court in the case of Chander Kanta Bansal Vs. Rajender Singh Anand reported in MANU/SC/7310/2008 : 2008 (5)

SCC 117 held that due diligence in law means reasonable diligence and doing "everything reasonable, not everything possible". (emphasis supplied)

58. *While each of the allegations in the Notice pertaining to the Noticee's conduct of due diligence and exercise of care is addressed above, it is submitted that the Noticee has, at all times, in good faith and in exercise of best judgment, adopted a reasonable and prudent standard of due diligence, having regard to the prevailing facts and circumstances.*

E. THE NOTICE FAILS TO CONSIDER NOTICEE'S BONA FIDE ACTIONS IN FURTHERANCE OF INVESTORS' INTERESTS

59. *Without prejudice to the aforesaid, it is humbly submitted that the Noticee has always acted in a bona fide manner, in the best interests of the investors. No unfair benefit of any sort has been accrued to the Fund, the Noticee or any of its employees, and all actions that are the subject of the present Notice have only been carried out to safeguard the wealth of the Fund's investors, numbering north of 20000, out of which the overwhelming majority consists of retail investors.*

60. *It is submitted, therefore, that the Noticee cannot be held to be in breach of the same, so long as it has acted in good faith and applied its mind to the relevant considerations for reaching a determination in a manner consistent with such principles.*

61. *Notwithstanding the above, it is submitted that the allegations levelled by the Notice can be, at best, a menial and venial breach, that are purely procedural in nature, with no adverse market-wide impact and thus lack pervasiveness. The Notice has not made out any mala fide intent, or alleged any unjust enrichment, on the part of the Noticee.*

62. *The findings of the Hon'ble Supreme Court of India in Hindustan Steel Ltd. v. State of Orissa are relevant in this regard:*

"Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out." (emphasis supplied)

63. *In light of the foregoing, it is humbly submitted that the intent of the Noticee has always been to act in accordance with and comply with all applicable laws, and the bona fides of the Noticee are evident by its conduct.*

64. *It is respectfully submitted that the Notice considers the allegations only from a limited perspective without proper examination of the factual matrix, and the overarching investor interest that has been served in the present case. Accordingly, no adverse action is necessitated against the Noticee in the present case.*

F. FACTS OF THE CASE DO NOT WARRANT IMPOSITION OF MONETARY PENALTY

65. *Without prejudice to any of our submissions above, it is submitted that the facts of present matter, even if borne out, do not constitute a suitable case for imposition of monetary penalty on the Noticee. It is humbly submitted that any adverse action against the Noticee would prevent other focused funds in the markets from nimbly responding to market fluctuations and risk factors, and*

would thereby compel them to sell off the entire chunk of holdings in a stock before buying another stock. This would adversely impact investors and introduce considerable volatility in the market.

66. *Furthermore, any adverse action would tarnish the reputation of the Noticee, which has painstakingly built up over the years, would thereby affect investor confidence and market trust in the Noticee. This is particularly exacerbated in the case of a Noticee, an asset management company that has significant interface with retail investors. As has been observed by the Hon'ble SAT, when there is an allegation which has the propensity to affect the reputation of a market participant, there must be a "convincing preponderance of evidence" for such party to be found guilty.*

67. *It is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of an administrative / cautionary advice and does not require imposition of any penalty under the SEBI Act.*

68. *It is submitted that any imposition of penalty would be completely contrary to canons of law and jurisprudence. Further, as stated above, any imposition of penalty based on an incomplete appreciation of the facts would cause irreparable prejudice to the Noticee's reputation. There is no account of any loss having been caused to the investors due to actions of the Noticee, and not a single investor complaint against the Noticee or the Fund with respect to contents of the Notice has been recorded.*

69. *Further, from the aforesaid facts, as also from the Notice itself, with reference to Section 15J of the SEBI Act, it becomes abundantly clear that the Noticee has not defrauded any investor or market participant, nor made unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally.*

70. *In Adjudicating Officer, SEBI v. Bhavesh Pabari, the Hon'ble Supreme Court held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Factors other than those can also be considered in mitigating the quantum of penalty sought to be imposed.*

71. *Reference is also made to the SAT order in the matter of PG Electroplast Limited, where while setting aside the order of the adjudicating officer imposing penalty on the company, the tribunal observed that: "If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."*

72. *Further, in Piramal Enterprises Limited v. SEBI, the Hon'ble SAT held as follows:*

24. "…SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty…" (emphasis supplied)

73. *In view of the aforesaid and the judicial precedents cited hereinabove, it is humbly submitted that this is not a fit case for imposition of monetary penalty, and as such, the Notice ought to be disposed of without any adverse findings or directions against the Noticee.*

74. *In light of the above, it is evident that the Notice does not establish a case justifying the allegations made against the Noticee or the imposition of penalty under the SEBI Act. Further, it has been sufficiently established that the Noticee has consistently acted in the best interests of its investors and has adhered at all times to the regulatory framework. Therefore, any finding by SEBI upholding the allegations made against the Noticee in the present instance would be inconsistent with the relevant provisions of law, binding precedents and also the facts and circumstances of the case.*

75. *Under these facts and circumstances, we would like to state that there are no justifiable grounds or basis to issue any directions or impose any penalties against the Noticee. The submissions made above are briefly summarized below:*

(a) There is no violation of the 2017 SEBI Circular, given that the Fund is empowered to alter asset allocation on defensive considerations;

(b) The Fund's positions in NIFTY FIFTY futures do not violate the 2017 SEBI Circular, given that positions in the same were taken only at the time of building up the portfolio, and the taking up of such positions have been sanctioned by the Fund's scheme information documents;

(c) The business judgments taken by the Fund are in line with the business judgment rule, and have always been in the furtherance of investors' interests;

(d) In any event, the facts of the present matter in light of established law do not warrant the imposition of monetary penalty.

Therefore, it is respectfully submitted that the proceedings against the Noticee be disposed of without any adverse finding or imposition of penalty.

..."

Noticee No. 2

"...

III. BRIEF FACTUAL BACKGROUND

14. *The Noticee is a prominent figure in the Indian financial sector, currently serving as the MD & CEO of EAML. The Noticee's journey in the financial realm has been marked by significant accomplishments and strategic leadership.*

15. *The Noticee has also been associated with esteemed firms like Microsoft, McKinsey and Company, and AQR Capital Management. In 2009, the Noticee co-founded Forefront Capital Management in Mumbai, India, which was later acquired by Edelweiss Financial Services Limited in 2014, marking her entry into the asset management sector. Ascending to the CEO position at EAML in 2017, her strategic leadership significantly augmented the assets managed by EAML from Rs.6700 crore (as on March 31, 2017) to INR 1,04,986 crore (as on March 31, 2023).*

16. *It is also relevant to note that during her tenure, the Noticee played a pivotal role in the acquisition of JP Morgan Mutual Fund, leading its seamless integration into Edelweiss in 2016-2017. Under her guidance, Edelweiss Mutual Fund launched the Bharat Bond ETF in 2019, India's first corporate bond ETF, marking a significant milestone in the company's journey. This innovation, along with others, propelled Edelweiss Mutual Fund to a top 13 spot by September 2023, up from a rank of 30 in March 2017. The Noticee's focus on innovative and solution-led products, along with building a strong investment team imbued with a culture of risk awareness and governance, have been the cornerstones of this remarkable growth.*

17. *Over the past years, the Noticee has conducted herself with integrity and professionalism and has remained in strict compliance with applicable laws and regulations. This is clearly borne out by the fact that not a single allegation has been levelled by any authority with respect to her conduct in the financial space over the span of her extensive career.*

18. *The Noticee's exemplary leadership and contributions have also been recognised through numerous accolades such as the Economic Times 40 Under 40 Business Leaders Award in 2022, Young Global Leader by the Word Economic Forum in 2022, etc.*

IV. RESPONSE TO SPECIFIC ALLEGATIONS

19. *Set out below are detailed submissions/responses to the findings/allegations set out under the Notice.*

A. *THE ROLE OF A CEO OUGHT TO BE CONSIDERED*

20. *The allegations in the Notice ought to be set aside on the basis that they fail to consider the specific role and responsibilities of the CEO as contemplated under the SEBI MF Regulations and the well-settled legal principles relating to applicable standards of diligence and the exercise of business judgment in the discharge of such professional responsibilities. It is relevant to note that no case for breach of the Noticee is made out when the allegations are tested against these standards (without prejudice to any of the other submissions).*

21. *In this regard, Regulation 25(6A) of the SEBI MF Regulations provides as follows:*

"25(6A)- The Chief Executive Officer (whatever his designation may be) of the asset management company shall ensure that the mutual fund complies with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time and that the investments made by the fund managers are in the interest of the unit holders and shall also be responsible for the overall risk management function of the mutual fund."

22. *Accordingly, the role of the CEO is to exercise general supervision and oversight over the affairs of the mutual fund, with a particular focus on certain aspects such as regulatory compliance and risk management. However, the CEO is not ordinarily expected to directly take individual investment decisions and relies on the expertise and experience of specialised teams within the organization, which has been adhered to in the instant case.*

23. *It is further respectfully submitted that the observation that the CEO failed to ensure that the fund complied with the provisions of the SEBI MF Regulations is incorrect and absurd. As adequately demonstrated in the Response, there is no violation of the SEBI MF Regulations or circulars. Therefore, no adverse observation should be made against the Noticee.*

24. *While Regulation 25(6A) delineates the general responsibilities of the CEO, the SEBI MF Regulations do not specify the standard of care and diligence which apply to a CEO in the discharge of such professional functions. Accordingly, guidance may be drawn from relevant judicial precedents.*

25. *In this regard, reliance is placed on the decision of the Hon'ble Supreme Court of India in Jacob Mathew v. State of Punjab and Ors, wherein the Supreme Court of India had occasion to examine the standard of care which would apply to a professional, in the discharge of his duties:*

"Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not,

would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices." (emphasis supplied)

26. *Similarly, it would also be helpful to refer to the judgment of the U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, which considered the standard of care that would apply specifically in the context of fund management. The court, after considering whether the fund manager of an investment fund breached its duties of loyalty and 'prudence' in managing the fund, dismissed the complaint against the fund manager and observed as follows:*

"ERISA requires a fiduciary to act "with the care, skill, prudence, and diligence under the circumstances ... that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). "The test of prudence - the Prudent [Person] Rule - is one of conduct, and not a test of the result of performance of the investment. Whether a fiduciary's actions are prudent cannot be measured in hindsight."

27. *Further, the Hon'ble SAT, while considering the appeal of the auditor against the order of SEBI in Price Waterhouse & Co & Ors v. SEBI, referred to the following judgments in relation to the standard of care to be adopted by professionals:*

"73. In Bolam vs Friem Hospital Management Committee [1957] 1 WLR 582, it was held:-

"No matter what profession it may be, the common law does not impose on those who practice it any liability for damage resulting from what in the result turn out to have been errors of judgment, unless the error was such as no reasonably well-informed and competent member of that profession could have made."

28. *In Eckersley & Others vs. Binnie & Others, the Court of Appeal (Civ Div), it was held:-.*

"In deciding whether a professional man has fallen short of the standards observed by ordinarily skilled and competent members of his profession, it is the standards prevailing at the time of his acts or omissions which provide the relevant yardsticks. He is not, as the learned Judge in this case correctly observed (at p. 20H of his judgment) to be judged by the wisdom of hindsight. This of course means that knowledge of an event which happened later should not be applied when judging acts and omissions which took place before that event; a very relevant consideration here because knowledge of the Abbeystead catastrophe has (as the evidence shows) had a profound educational effect......""

29. *In the absence of any specific regulatory guidance under the SEBI MF Regulations, and in view of the judicial precedents discussed above, it is evident that the standard of care that the Noticee is expected to meet in the discharge of its responsibilities, is that of reasonableness and general prudence, having regard to the prevailing facts and circumstances which have been clearly discharged in the present case.*

30. *Further, the yardstick to measure such standard would be of a professional of ordinary competence engaged in the same profession (and not a person of highest competence). Courts have also categorically warned against hindsight bias and held that professional conduct ought not to be judged by the eventual outcome or performance in any given case.*

Standards for review of subjective business judgment exercised in good faith

31. *It is also submitted that business decisions taken by the Noticee for the Schemes are protected by the business judgment rule. The business judgment rule requires courts to focus on the decision-making process instead of a substantive evaluation of the merits of a management decision, while*

also being cautious against hindsight bias. In the absence of any malafides or some other corrupt ulterior motive, the asset management company may not be liable for errors of judgment, whether those mistakes are classified as mistakes of fact or mistakes of law.1

32. *It is submitted that any judicial or quasi-judicial inquiry should apply the business judgment rule as the appropriate standard to judge investment decisions made by the CEO of a mutual fund. Imposition of liability with the advantage of hindsight, will hamper and discourage business/investment decision making, and thereby adversely impact the interests of investors in and the development of the Indian securities market.*

B. *THE NOTICEE HAS DISCHARGED HIS RESPONSIBILITIES IN GOOD FAITH*

33. *While each of the allegations in respect of the Fund have been specifically dealt by EAML in their Response, it is submitted that the Noticee has discharged is responsibilities in good faith and exercised reasonable due diligence. The Noticee reiterates that the Fund has not violated the provisions of the SEBI MF Regulations and has adhered to the regulatory guidelines.*

34. *It is also pertinent to note that EAML has been managing a wide variety of schemes and the Noticee exercises oversight over the entirety of EAML's operations and has always adhered to the regulatory standards.*

35. *It is respectfully submitted that the appropriate yardstick in the present case would be to assess whether or not the Noticee acted reasonably and in good faith. It is not even alleged that the Noticee has acted in bad faith or self-interest. To the contrary, the impeccable conduct and consistent track record of the Noticee speaks for itself. Hence, it is respectfully submitted that it would be unjust and unfair for liability to be imposed upon the Noticee in such circumstances, considering that the Noticee has acted all along in good faith and with reasonable prudence and in the interests of investors.*

36. *It is also relevant to note that no unfair benefit of any sort has been accrued to the Noticee and all actions that are the subject of the present Notice have only been carried out to safeguard the wealth of the Fund's investors, numbering north of 20000, out of which the overwhelming majority consists of retail investors.*

C. *THE PRINCIPLE OF VICARIOUS LIABILITY HAS BEEN INCORRECTLY APPLIED TO THE NOTICEE*

37. *It is respectfully submitted that there are no specific averments in the Notice against the Noticee to demonstrate her role or involvement in the alleged violations of EAML. Thus, it appears that SEBI has proceeded against the Noticee under the principle of vicarious liability.*

38. *That being the case, it is submitted that the Notice issued to the Noticee is pre-mature, given that the allegations against EAML have not been established so far. It is a settled principle of law that prior to invoking the principle of vicarious liability against a director/officer of a company, the alleged violations of the law by the company have to be established in the first place.*

39. *In fact, neither the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, nor the SEBI Act, imposes such strict vicarious liability. The Hon'ble SAT in the matter of Rahul H Shah v. Securities and Exchange Board of India2 has also held in a matter pertaining to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, that the concept of strict vicarious liability does not exist. Similarly, the Hon'ble WTM of SEBI in the matter of Home Trade Limited,3 held that the directors of the company would not be liable unless there were specific averments against them. It was observed that:*

"Thus, the vicarious liability turns on the merits of each case and has to be determined accordingly and the case cited is in the context of prosecution proceedings against the company. In any event, there has to be a modicum of evidence linking the said directors with the manipulation and in its absence, complicity cannot be presumed." (emphasis supplied)

40. Whilst, the above case pertains to a director, the same analogy should also extend to key managerial personnel, such as the Noticee in the present case. In this regard, SEBI has held, in the matter of SEBI v. Panther Fincap and Management Services Ltd, that:

"Unless the company commits an offence, and it is found guilty, there is no question of dragging another person for being vicariously liable for the commission of an offence by the company which is not proved."

41. Hence, in view of the above, it is submitted that the Noticee is premature and does not attribute any wrongdoing. Given that there was no lapse on the part of the Noticee of her responsibilities, no liability can be imputed upon the Noticee.

D. THE FUND HAS NOT VIOLATED THE 2017 CIRCULAR

42. It is respectfully submitted that all the investments made in the Fund were in accordance with the SEBI regulations and circulars. The extant regulatory framework gives due flexibility to the fund managers to take investment decisions, as long as these are within the broad contours of the regulatory framework. In light thereof, and the submissions made below, it is clearly demonstrated that there is no violation of the alleged SEBI Circulars.

43. The Notice specifically alleges that the Fund is in violation of the 2017 SEBI Circular, with particular reference to paragraph I (3) read with Annexure A(8). The Notice contends that the Noticee has violated the aforesaid provision for the months of November 2022, December 2022, January 2023 and February 2023 as set out below:

Sr. No.	No. of days in which deviation is observed	No. of stocks held by the Fund
1)	62	31
2)	12	32
3)	14	33
4)	Total: 88	Between 31-33

44. It is respectfully submitted that the aforesaid observation is denied and merits no consideration whatsoever. It is relevant to note that the interpretation of the 2017 SEBI Circular adopted disregards the nature of the SEBI Circular dated February 4, 1998 ("1998 SEBI Circular") read with SEBI circular dated March 4, 2021 ("2021 SEBI Circular"), which gives the option to an AMC to alter the asset allocation for a short period on defensive considerations. The relevant extract of the said circular is as follows:

"The tentative portfolio break-up of Equity, Debt, Money Market Instruments, other permitted securities and such other securities as may be permitted by the Board from time to time with minimum and maximum asset allocation, while retaining the option to alter the asset allocation for a short term period on defensive considerations." (emphasis supplied)

45. SEBI, in its FAQs issued to Mutual Fund Investors dated March 31, 2023 ("SEBI MF FAQs"), has clarified that fund managers are "... allowed certain flexibility in altering the asset allocation considering the interest of the investors." It has further clarified that the asset allocation can be changed "... on a short term basis on defensive considerations i.e. to protect the NAV." (emphasis supplied) A copy of the SEBI MF FAQs is annexed as Annexure C.

46. *Accordingly, fund managers have the flexibility to alter the categorization specified in the 2017 Circular for defensive considerations. This flexibility given to fund managers for a short period of time is a long-standing one that forms part of the regulatory framework, as laid down in the 1998 SEBI Circular. This underscores the regulatory intention to grant fund managers the discretion to nimbly adapt to changing market conditions and tweak the fund's portfolio to serve the best interests of the investors.*

47. *It is to be noted that the investment objective of the Fund is to deliver long-term capital appreciation from a diversified portfolio. To ensure the same, it is critical that the Fund has the right basket of 30 stocks, which would enable investors to reap long-term capital appreciation. Given the focused nature of the Fund, any non-performing stock must be quickly and efficiently swapped out such that the interests of the investors are not adversely affected.*

48. *Furthermore, there is no provision or stipulation in the Fund's scheme information documents that would prevent the Fund from carrying out such asset allocation alterations. In any event, given that the regulatory provisions analysed above would prevail over the scheme information documents, it is reiterated that there is no bar against the asset allocation alterations.*

49. *It is submitted that it is amply clear that the asset allocation prescribed by the 2017 SEBI Circular is not set in stone precisely because such a narrow interpretation would deprive fund managers of the flexibility to adapt to exigent market conditions. In order to safeguard the net asset value of the fund and to protect the interests of the investors, fund managers are allowed to alter the asset allocation for a short period of time until the requirement for defensive considerations has passed.*

50. *It is submitted that the deviations alleged in the Fund's asset allocation by the Notice are merely in the nature of transitory changes to the Fund's portfolio, which happen over the course of swapping out one stock for another. The fund manager was merely selling and buying desired stocks in a staggered manner in order to minimise market fluctuations and risk.*

Fund's positions in NIFTY FIFTY futures do not violate the 2017 SEBI Circular

51. *It is submitted that the Fund's position in NIFTY FIFTY futures does not violate the 2017 SEBI Circular when read along with the 1998 SEBI Circular, which offers flexibility to fund managers to alter asset allocation.*

52. *Given that the Fund was launched only on August 1, 2022, the fund managers were tasked with building up the portfolio to reflect the exposure promised in the scheme information document and as prescribed by the extant regulatory framework. In order to avoid holding cash in the Fund's portfolio, the Fund had invested in NIFTY FIFTY futures. Subsequently, the Fund systematically deployed the proceeds of the Fund's new fund offer into the portfolio stocks in a phased manner, factoring in aspects such as stock specific liquidity. This is in line with best industry standards and market practice and is aimed at ensuring that investors who join the Fund at an early juncture are not disadvantaged due to excess cash reserve holdings of the Fund.*

53. *Furthermore, we request you to note the uncontroverted fact that NIFTY FIFTY futures were on the books of the Fund for only ten days starting the day of conception of the Fund. In line with the 1998 SEBI Circular, the Fund only had such altered asset allocation for the shortest duration of time as possible. Subsequent to the building up of the portfolio, the Fund has never taken positions in NIFTY FIFTY futures.*

54. *It is further submitted that these investments in NIFTY FIFTY futures were contemplated well in advance by the Fund and were duly disclosed to investors in the scheme information documents of the Fund. The relevant extract of the scheme information document is as below:*

"The Scheme can take derivative exposure upto 50% of net asset of the Scheme. The total exposure related to options premium paid will not exceed 20% of the net assets of the Scheme. (...)

The Scheme may invest in Derivative Instruments to the extent permitted under SEBI Circulars DNPD/Cir-29/2005 dated September 14, 2005, DNPD/Cir-29/2005 dated January 20, 2006, *SEBI/DNPD/Cir-31/2006 dated September 22, 2006 and CIR/IMD/DF/11/2010 dated August 18, 2010 on 'Trading by Mutual Funds on Exchange Traded Derivatives' as amended from time to time. Derivative products are specialized instruments that require investment techniques and risk analysis different from those associated with stocks and bonds. The use of derivatives requires an understanding not only of the underlying instrument but also of the derivative instruments itself. The Scheme may use derivative instruments such as index futures and options, stock futures and options contracts, warrants, convertible securities, swap or forward rate agreements or any other derivative instruments that are permissible or may be permissible in future under applicable regulations and such investments shall be in accordance with the investment objective of the Scheme. (...)*

The position limit for the Mutual Fund in index futures contracts shall be as follows:

• The Fund's position limit in all index futures contracts on a particular underlying index shall be Rs. 500 Crores or 15% of the total open interest of the market in index futures, whichever is higher, per Stock Exchange.

• This limit would be applicable on open positions in all futures contracts on a particular underlying index."

55. *Furthermore, it is submitted that through a letter dated October 19, 2023, addressed to the Association of Mutual Funds in India ("AMFI"), SEBI had flagged the common market practice of focussed funds taking positions in index derivative instruments and had interpreted the 2017 SEBI Circular to prohibit focussed funds from taking exposure to such instruments. This is since taking a position in an index derivative instrument would be akin to taking exposure in the constituents of the index's funds.*

56. *Given that it was widespread market practice for focussed funds to take exposure to such instruments, SEBI had instructed AMFI to direct asset management companies to ensure that focussed funds remain true to label, and rebalance their asset allocation one month from October 19, 2023. The SEBI letter dated October 19, 2023 is annexed as Annexure D.*

57. *It is clearly seen that it was common market practice for focused funds to take exposure to index derivative instruments, and SEBI had flagged this practice as potentially violative of the extant framework only in October 2023. Accordingly, SEBI had given the window of a month for focussed funds to comply with SEBI's understanding of the framework. In this light, it is patently unjust for the Notice to retrospectively fit this understanding to the Noticee's conduct, which was in the period of August 2022 only.*

58. *As is clear from the submissions above, at no point of time after 2022 has the Fund ever taken any positions in index derivative instruments. Accordingly, the Notice cannot make out this allegation against the Noticee when the understanding of the law with respect to index derivative instruments was only firmed up in October 2023.*

59. *In light of the above, it is submitted that the Notice does not make out any violation in any manner with respect to the 2017 SEBI Circular.*

60. *It is also submitted that the Fund has always been in compliance with the extant disclosure requirements and in not violation of paragraph B (3)(1(a)) of the 2018 SEBI Circular.*

61. *In view of the above submissions, it can be reasonable inferred that the Fund has not violated the provisions of the SEBI MF Regulations and circulars issued by SEBI. As a result, the Noticee cannot be said that the Noticee has failed to ensure that the mutual fund complies with the*

E. FACTS OF THE CASE DO NOT WARRANT IMPOSITION OF MONETARY PENALTY

62. *Without prejudice to any of our submissions above, it is submitted that the facts of present matter, even if borne out, do not constitute a suitable case for imposition of monetary penalty on the Noticee. It is humbly submitted that any adverse action against the Noticee would tarnish the*

reputation of the Noticee, which has painstakingly built up over the years, would thereby affect investor confidence and market trust in the Noticee. This is particularly exacerbated in the case of a Noticee, which has an impeccable track record and reputation in this industry. As has been observed by the Hon'ble SAT, when there is an allegation which has the propensity to affect the reputation of a market participant, there must be a "convincing preponderance of evidence" for such party to be found guilty.

63. *It is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of an administrative/cautionary advice and do not require the imposition of any penalty under the SEBI Act.*

64. *It is submitted that any imposition of penalty would be completely contrary to canons of law and jurisprudence. Further, as stated above, any imposition of penalty based on an incomplete appreciation of the facts would cause irreparable prejudice to the Noticee's reputation. There is no account of any loss having been caused to the investors due to actions of the Noticee, and not a single investor complaint against the Noticee or the Fund with respect to contents of the Notice has been recorded.*

65. *Further, from the aforesaid facts, as also from the Notice itself, with reference to Section 15J of the SEBI Act, it becomes abundantly clear that the Noticee has not defrauded any investor or market participant, nor made unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally.*

66. *In Adjudicating Officer, SEBI v. Bhavesh Pabari, the Hon'ble Supreme Court held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Factors other than those can also be considered in mitigating the quantum of penalty sought to be imposed.*

67. *Reference is also made to the SAT order in the matter of PG Electroplast Limited, where while setting aside the order of the adjudicating officer imposing penalty on the company, the tribunal observed that: "If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."*

68. *In view of the aforesaid and the judicial precedents cited hereinabove, it is humbly submitted that this is not a fit case for imposition of monetary penalty, and as such, the Notice ought to be disposed of without any adverse findings or directions against the Noticee.*

…"

Noticee No. 3

"…

III. BRIEF FACTUAL BACKGROUND

14. *The Noticee is a prominent figure in the Indian financial sector, currently serving as the president and chief investment officer, equities, of EAML. The Noticee's journey in the financial realm has been marked by significant accomplishments and strategic leadership.*

15. *The Noticee has also been associated with esteemed Indian and international organisations like Kotak Securities, UBS Global Asset Management Company, and Axis Mutual Fund. At Axis Mutual Fund, he was instrumental in building a market leading portfolio management services business, in his role as Senior Portfolio Manager of Alternate Equities.*

16. *Under his guidance as the fund manager of the Fund, the Fund has quickly grown to manage assets of over INR 600 crore and has delivered an unparalleled simple annualised return of over*

29% in the past year, as of December 2023. The Noticee's strong focus on market innovation and long-term wealth appreciation has served as the cornerstone for this remarkable performance.

17. *Over the past years, the Noticee has conducted himself with integrity and professionalism and has remained in strict compliance with applicable laws and regulations. This is clearly borne out by the fact that not a single allegation has been levelled by any authority with respect to his conduct in the financial space over the span of his extensive career.*

18. *The Noticee's exemplary management ability and contributions have also been recognised through numerous accolades.*

IV. RESPONSE TO SPECIFIC ALLEGATIONS

19. *Set out below are detailed submissions/responses to the findings/allegations set out under the Notice.*

A. THE ROLE OF A FUND MANAGER OUGHT TO BE CONSIDERED

20. *The allegations in the Notice ought to be set aside on the basis that they fail to consider the specific role and responsibilities of the fund managers of a fund, as contemplated under the SEBI MF Regulations and the well-settled legal principles relating to applicable standards of diligence and the exercise of business judgment in the discharge of such professional responsibilities. It is relevant to note that no case for breach of the Noticee is made out when the allegations are tested against these standards (without prejudice to any of the other submissions).*

21. *In this regard, Regulation 25(6B) of the SEBI MF Regulations provide as follows:*

"25(6B)- The fund managers (whatever be the designation) shall ensure that the funds of the schemes are invested to achieve the objectives of the scheme and in the interest of the unit holders."

22. *Accordingly, the role of the fund manager is an overarching one, which entails ensuring that the investment objectives of the fund in question as promised to the investors – for example, long-term wealth appreciation, or risk diversification, or exposure to the global markets – is fulfilled. The fund manager also seeks to ensure that the fund is heading in a direction that is in the interests of the unit holders and in line with the unit holder's expectations of that particular fund.*

23. *No special inculpatory material has been brought out in the Notice to demonstrate any personal wrongdoing on behalf of the Noticee. Furthermore, there is no evidence of mala fides, personal gain or dereliction of duty. As has been brought out in our submissions below, the actions of the Noticee were in line with the role entrusted upon him by the extant regulatory framework.*

24. *It is further respectfully submitted that the observation that the fund manager failed to ensure that the fund complied with the investment objectives of the Fund is not tenable. As adequately demonstrated in the Response, there is no violation of the SEBI MF Regulations or circulars, including the investment objective as laid out in the 2017 SEBI Circular. Therefore, no adverse observation should be made against the Noticee.*

25. *While Regulation 25(6B) delineates the general responsibilities of the fund manager, the SEBI MF Regulations do not specify the standard of care and diligence which apply to a fund in the discharge of such professional functions. Accordingly, guidance may be drawn from relevant judicial precedents.*

26. *In this regard, reliance is placed on the decision of the Hon'ble Supreme Court of India in Jacob Mathew v. State of Punjab and Ors, wherein the Supreme Court of India had occasion to examine the standard of care which would apply to a professional, in the discharge of his duties:*

"Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices." (emphasis supplied)

27. *Similarly, it would also be helpful to refer to the judgment of the U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, which considered the standard of care that would apply specifically in the context of fund management. The court, after considering whether the fund manager of an investment fund breached its duties of loyalty and 'prudence' in managing the fund, dismissed the complaint against the fund manager and observed as follows:*

"ERISA requires a fiduciary to act "with the care, skill, prudence, and diligence under the circumstances … that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). "The test of prudence - the Prudent [Person] Rule - is one of conduct, and not a test of the result of performance of the investment. Whether a fiduciary's actions are prudent cannot be measured in hindsight."

28. *Further, the Hon'ble SAT, while considering the appeal of the auditor against the order of SEBI in Price Waterhouse & Co & Ors v. SEBI, referred to the following judgments in relation to the standard of care to be adopted by professionals:*

"73. In Bolam vs Friem Hospital Management Committee [1957] 1 WLR 582, it was held:-

"No matter what profession it may be, the common law does not impose on those who practice it any liability for damage resulting from what in the result turn out to have been errors of judgment, unless the error was such as no reasonably well-informed and competent member of that profession could have made."

29. *In Eckersley & Others vs. Binnie & Others, the Court of Appeal (Civ Div), it was held:-.*

"In deciding whether a professional man has fallen short of the standards observed by ordinarily skilled and competent members of his profession, it is the standards prevailing at the time of his acts or omissions which provide the relevant yardsticks. He is not, as the learned Judge in this case correctly observed (at p. 20H of his judgment) to be judged by the wisdom of hindsight. This of course means that knowledge of an event which happened later should not be applied when judging acts and omissions which took place before that event; a very relevant consideration here because knowledge of the Abbeystead catastrophe has (as the evidence shows) had a profound educational effect……""

30. *In the absence of any specific regulatory guidance under the SEBI MF Regulations, and in view of the judicial precedents discussed above, it is evident that the standard of care that the Noticee is expected to meet in the discharge of its responsibilities, is that of reasonableness and general*

prudence, having regard to the prevailing facts and circumstances which have been clearly discharged in the present case.

31. *Further, the yardstick to measure such standard would be of a professional of ordinary competence engaged in the same profession (and not a person of highest competence). Courts have also categorically warned against hindsight bias and held that professional conduct ought not to be judged by the eventual outcome or performance in any given case.*

Standards for review of subjective business judgment exercised in good faith

32. *It is also submitted that business decisions taken by the Noticee for the Schemes are protected by the business judgment rule. The business judgment rule requires courts to focus on the decision-making process instead of a substantive evaluation of the merits of a management decision, while also being cautious against hindsight bias. In the absence of any malafides or some other corrupt ulterior motive, the asset management company may not be liable for errors of judgment, whether those mistakes are classified as mistakes of fact or mistakes of law.i*

33. *It is submitted that any judicial or quasi-judicial inquiry should apply the business judgment rule as the appropriate standard to judge investment decisions made by the CEO of a mutual fund. Imposition of liability with the advantage of hindsight, will hamper and discourage business/investment decision making, and thereby adversely impact the interests of investors in and the development of the Indian securities market.*

B. *THE NOTICEE HAS DISCHARGED HIS RESPONSIBILITIES IN GOOD FAITH*

34. *34. While each of the allegations in respect of the Fund has been specifically dealt by EAML in their Response, it is submitted that the Noticee has discharged his responsibilities in good faith and exercised reasonable due diligence. The Noticee reiterates that the Fund has not violated the provisions of the SEBI MF Regulations and has adhered to the regulatory guidelines, including the investment objective contemplated in the 2017 SEBI Circular and the Fund's scheme information documents*

35. *It is also pertinent to note that EAML has been managing a wide variety of schemes and the Noticee exercises oversight over the entirety of EAML's operations and has always adhered to the regulatory standards.*

36. *It is respectfully submitted that the appropriate yardstick in the present case would be to assess whether or not the Noticee acted reasonably and in good faith. It is not even alleged that the Noticee has acted in bad faith or self-interest. To the contrary, the impeccable conduct and consistent track record of the Noticee speaks for itself. Hence, it is respectfully submitted that it would be unjust and unfair for liability to be imposed upon the Noticee in such circumstances, considering that the Noticee has acted all along in good faith and with reasonable prudence and in the interests of investors.*

37. *It is also relevant to note that no unfair benefit of any sort has been accrued to the Noticee and all actions that are the subject of the present Notice have only been carried out to safeguard the wealth of the Fund's investors, numbering north of 20000, out of which the overwhelming majority consists of retail investors.*

C. *THE PRINCIPLE OF VICARIOUS LIABILITY HAS BEEN INCORRECTLY APPLIED TO THE NOTICEE*

38. *It is respectfully submitted that there are no specific averments in the Notice against the Noticee to demonstrate his role or involvement in the alleged violations of EAML. Thus, it appears that SEBI has proceeded against the Noticee under the principle of vicarious liability.*

39. *That being the case, it is submitted that the Notice issued to the Noticee is pre-mature, given that the allegations against EAML have not been established so far. It is a settled principle of law that prior to invoking the principle of vicarious liability against a director/officer of a company, the alleged violations of the law by the company have to be established in the first place.*

40. *In fact, neither the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, nor the SEBI Act, imposes such strict vicarious liability. The Hon'ble SAT in the matter of Rahul H Shah v. Securities and Exchange Board of Indiaii has also held in a matter pertaining to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, that the concept of strict vicarious liability does not exist. Similarly, the Hon'ble WTM of SEBI in the matter of Home Trade Limited,4 held that the directors of the company would not be liable unless there were specific averments against them. It was observed that:*

"Thus, the vicarious liability turns on the merits of each case and has to be determined accordingly and the case cited is in the context of prosecution proceedings against the company. In any event, there has to be a modicum of evidence linking the said directors with the manipulation and in its absence, complicity cannot be presumed." (emphasis supplied)

41. *Whilst, the above case pertains to a director, the same analogy should also extend to key managerial personnel, such as the Noticee in the present case. In this regard, SEBI has held, in the matter of SEBI v. Panther Fincap and Management Services Ltd, that:*

"Unless the company commits an offence, and it is found guilty, there is no question of dragging another person for being vicariously liable for the commission of an offence by the company which is not proved."

42. *Hence, in view of the above, it is submitted that the Noticee is premature and does not attribute any wrongdoing. Given that there was no lapse on the part of the Noticee of her responsibilities, no liability can be imputed upon the Noticee.*

D. THE FUND HAS NOT VIOLATED THE 2017 CIRCULAR

43. *It is respectfully submitted that all the investments made in the Fund were in accordance with the SEBI regulations and circulars. The extant regulatory framework gives due flexibility to the fund managers to take investment decisions, as long as these are within the broad contours of the regulatory framework. In light thereof, and the submissions made below, it is clearly demonstrated that there is no violation of the alleged SEBI Circulars.*

44. *The Notice specifically alleges that the Fund is in violation of the 2017 SEBI Circular, with particular reference to paragraph I (3) read with Annexure A(8). The Notice contends that the Noticee has violated the aforesaid provision for the months of November 2022, December 2022, January 2023 and February 2023 as set out below:*

Sr. No.	*No. of days in which deviation is observed*	*No. of stocks held by the Fund*
1)	*62*	*31*
2)	*12*	*32*
3)	*14*	*33*
4)	*Total: 88*	*Between 31-33*

45. *It is respectfully submitted that the aforesaid observation is denied and merits no consideration whatsoever. It is relevant to note that the interpretation of the 2017 SEBI Circular adopted disregards the nature of the SEBI Circular dated February 4, 1998 ("1998 SEBI Circular") read with SEBI circular dated March 4, 2021 ("2021 SEBI Circular"), which gives the option to an AMC to alter the asset allocation for a short period on defensive considerations. The relevant extract of the said circular is as follows:*

"The tentative portfolio break-up of Equity, Debt, Money Market Instruments, other permitted securities and such other securities as may be permitted by the Board from time to time with minimum and maximum asset allocation, while retaining the option to alter the asset allocation for a short term period on defensive considerations." (emphasis supplied)

46. *SEBI, in its FAQs issued to Mutual Fund Investors dated March 31, 2023 ("SEBI MF FAQs"), has clarified that fund managers are "… allowed certain flexibility in altering the asset allocation considering the interest of the investors." It has further clarified that the asset allocation can be changed "… on a short term basis on defensive considerations i.e. to protect the NAV." (emphasis supplied) A copy of the SEBI MF FAQs is annexed as Annexure C.*

47. *Accordingly, fund managers have the flexibility to alter the categorization specified in the 2017 Circular for defensive considerations. This flexibility given to fund managers for a short period of time is a long-standing one that forms part of the regulatory framework, as laid down in the 1998 SEBI Circular. This underscores the regulatory intention to grant fund managers the discretion to nimbly adapt to changing market conditions and tweak the fund's portfolio to serve the best interests of the investors.*

48. *It is to be noted that the investment objective of the Fund is to deliver long-term capital appreciation from a diversified portfolio. To ensure the same, it is critical that the Fund has the right basket of 30 stocks, which would enable investors to reap long-term capital appreciation. Given the focused nature of the Fund, any non-performing stock must be quickly and efficiently swapped out such that the interests of the investors are not adversely affected.*

49. *Furthermore, there is no provision or stipulation in the Fund's scheme information documents that would prevent the Fund from carrying out such asset allocation alterations. In any event, given that the regulatory provisions analysed above would prevail over the scheme information documents, it is reiterated that there is no bar against the asset allocation alterations.*

50. *It is submitted that it is amply clear that the asset allocation prescribed by the 2017 SEBI Circular is not set in stone precisely because such a narrow interpretation would deprive fund managers of the flexibility to adapt to exigent market conditions. In order to safeguard the net asset value of the fund and to protect the interests of the investors, fund managers are allowed to alter the asset allocation for a short period of time until the requirement for defensive considerations has passed.*

51. *It is submitted that the deviations alleged in the Fund's asset allocation by the Notice are merely in the nature of transitory changes to the Fund's portfolio, which happen over the course of swapping out one stock for another. The fund manager was merely selling and buying desired stocks in a staggered manner in order to minimise market fluctuations and risk.*

Fund's positions in NIFTY FIFTY futures do not violate the 2017 SEBI Circular

52. *It is submitted that the Fund's position in NIFTY FIFTY futures does not violate the 2017 SEBI Circular when read along with the 1998 SEBI Circular, which offers flexibility to fund managers to alter asset allocation.*

53. *Given that the Fund was launched only on August 1, 2022, the fund managers were tasked with building up the portfolio to reflect the exposure promised in the scheme information document and as prescribed by the extant regulatory framework. In order to avoid holding cash in the Fund's portfolio, the Fund had invested in NIFTY FIFTY futures. Subsequently, the Fund systematically deployed the proceeds of the Fund's new fund offer into the portfolio stocks in a phased manner, factoring in aspects such as stock specific liquidity. This is in line with best industry standards and market practice and is aimed at ensuring that investors who join the Fund at an early juncture are not disadvantaged due to excess cash reserve holdings of the Fund.*

54. *Furthermore, we request you to note the uncontroverted fact that NIFTY FIFTY futures were on the books of the Fund for only ten days starting the day of conception of the Fund. In line with the 1998 SEBI Circular, the Fund only had such altered asset allocation for the shortest duration of time as possible. Subsequent to the building up of the portfolio, the Fund has never taken positions in NIFTY FIFTY futures.*

55. *It is further submitted that these investments in NIFTY FIFTY futures were contemplated well in advance by the Fund and were duly disclosed to investors in the scheme information documents of the Fund. The relevant extract of the scheme information document is as below:*

"The Scheme can take derivative exposure upto 50% of net asset of the Scheme. The total exposure related to options premium paid will not exceed 20% of the net assets of the Scheme. (...)

The Scheme may invest in Derivative Instruments to the extent permitted under SEBI Circulars DNPD/Cir-29/2005 dated September 14, 2005, DNPD/Cir-29/2005 dated January 20, 2006, SEBI/DNPD/Cir-31/2006 dated September 22, 2006 and CIR/IMD/DF/11/2010 dated August 18, 2010 on 'Trading by Mutual Funds on Exchange Traded Derivatives' as amended from time to time. Derivative products are specialized instruments that require investment techniques and risk analysis different from those associated with stocks and bonds. The use of derivatives requires an understanding not only of the underlying instrument but also of the derivative instruments itself. The Scheme may use derivative instruments such as index futures and options, stock futures and options contracts, warrants, convertible securities, swap or forward rate agreements or any other derivative instruments that are permissible or may be permissible in future under applicable regulations and such investments shall be in accordance with the investment objective of the Scheme. (...)

The position limit for the Mutual Fund in index futures contracts shall be as follows:

• The Fund's position limit in all index futures contracts on a particular underlying index shall be Rs. 500 Crores or 15% of the total open interest of the market in index futures, whichever is higher, per Stock Exchange.

• This limit would be applicable on open positions in all futures contracts on a particular underlying index."

56. *Furthermore, it is submitted that through a letter dated October 19, 2023, addressed to the Association of Mutual Funds in India ("AMFI"), SEBI had flagged the common market practice of focussed funds taking positions in index derivative instruments and had interpreted the 2017 SEBI Circular to prohibit focussed funds from taking exposure to such instruments. This is since taking a position in an index derivative instrument would be akin to taking exposure in the constituents of the index's funds.*

57. *Given that it was widespread market practice for focussed funds to take exposure to such instruments, SEBI had instructed AMFI to direct asset management companies to ensure that focussed funds remain true to label, and rebalance their asset allocation one month from October 19, 2023. The SEBI letter dated October 19, 2023 is annexed as Annexure D.*

58. *It is clearly seen that it was common market practice for focused funds to take exposure to index derivative instruments, and SEBI had flagged this practice as potentially violative of the extant framework only in October 2023. Accordingly, SEBI had given the window of a month for focussed funds to comply with SEBI's understanding of the framework. In this light, it is patently unjust for the Notice to retrospectively fit this understanding to the Noticee's conduct, which was in the period of August 2022 only.*

59. *As is clear from the submissions above, at no point of time after 2022 has the Fund ever taken any positions in index derivative instruments. Accordingly, the Notice cannot make out this allegation against the Noticee when the understanding of the law with respect to index derivative instruments was only firmed up in October 2023.*

60. *In light of the above, it is submitted that the Notice does not make out any violation in any manner with respect to the 2017 SEBI Circular.*

61. *It is also submitted that the Fund has always been in compliance with the extant disclosure requirements and in not violation of paragraph B (3)(1(a)) of the 2018 SEBI Circular.*

62. *In view of the above submissions, it can be reasonable inferred that the Fund has not violated the provisions of the SEBI MF Regulations and circulars issued by SEBI. As a result, the Noticee cannot be said that the Noticee has failed to ensure that the mutual fund complies with the*

E. *FACTS OF THE CASE DO NOT WARRANT IMPOSITION OF MONETARY PENALTY*

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64. *It is humbly submitted that even if the allegations levelled in the Notice are made out, they can be dealt with by way of an administrative/cautionary advice and do not require the imposition of any penalty under the SEBI Act.*

65. *It is submitted that any imposition of penalty would be completely contrary to canons of law and jurisprudence. Further, as stated above, any imposition of penalty based on an incomplete appreciation of the facts would cause irreparable prejudice to the Noticee's reputation. There is no account of any loss having been caused to the investors due to actions of the Noticee, and not a single investor complaint against the Noticee or the Fund with respect to contents of the Notice has been recorded.*

66. *Further, from the aforesaid facts, as also from the Notice itself, with reference to Section 15J of the SEBI Act, it becomes abundantly clear that the Noticee has not defrauded any investor or market participant, nor made unlawful or disproportionate gains or attained any unfair advantage or avoided loss illegally.*

67. *In Adjudicating Officer, SEBI v. Bhavesh Pabari, the Hon'ble Supreme Court held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Factors other than those can also be considered in mitigating the quantum of penalty sought to be imposed.*

68. *Reference is also made to the SAT order in the matter of PG Electroplast Limited, where while setting aside the order of the adjudicating officer imposing penalty on the company, the tribunal observed that: "If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act."*

69. *In view of the aforesaid and the judicial precedents cited hereinabove, it is humbly submitted that this is not a fit case for imposition of monetary penalty, and as such, the Notice ought to be disposed of without any adverse findings or directions against the Noticee.*

..."

8. Having regard to Principles of Natural Justice, vide Hearing Notice dated February 07, 2024, interalia the Noticees were provided an opportunity of hearing

on February 13, 2024. Vide email dated February 08, 2024, the Noticees sought adjournment and the hearing in the matter was rescheduled to February 21, 2024.

9. On the rescheduled date of hearing viz, February 21, 2024, the Noticees availed the said hearing opportunity through its Authorized Representatives (ARs) viz., Ms. Shruti Rajan (Advocate), Mr. Vivek Shah (Advocate) and Mr. Harishankar Raghunath (Advocate), wherein the ARs inter alia relied upon and reiterated the submissions made by Noticees vide their letters dated February 02, 2024. The ARs also informed during the hearing that the settlement applications had been filed by the Noticees in the instant matter.

10. Subsequently, vide email dated May 14, 024, the Noticees informed that the Settlement Applications in the instant matter had been withdrawn on May 10, 2024.

11. Vide email dated June 28, 2024, the Noticees requested for another opportunity of hearing. Having regard to Principles of Natural Justice, vide Hearing Notice dated August 13, 2024, the Noticees were provided another opportunity of hearing on August 20, 2024.

12. On the scheduled date of second hearing viz, August 20, 2024, the Noticees availed the said hearing opportunity through their Authorized Representatives (ARs) viz., Ms. Shruti Rajan (Advocate), Mr. Vivek Shah (Advocate) and Mr. Jehzeel Master, wherein the ARs inter alia relied upon and reiterated the submissions made by Noticees vide their letters dated February 02, 2024. Further, the ARs sought time till August 27, 2024 to make additional submissions as final and complete submissions in the matter, accordingly the same was allowed.

13. Subsequently, vide letter dated August 27, 2024, the Noticees made additional submissions as under:

"...

4. *We refer to the Notice which alleges that the Noticees are in violation of SEBI Circular dated October 06, 2017 ("2017 SEBI Circular"), SEBI Circular dated June 05, 2018 ("2018 SEBI Circular")*

and various provisions of the SEBI (Mutual Fund) Regulations, 1996, in connection with the Edelweiss Focused Equity Fund (the "Fund").

5. *In this regard, we respectfully submit that the Noticees have always acted in conformity with the applicable regulatory framework, and in the best interests of the unitholders of the Fund.*

6. *It is submitted that the fund manager of any active fund, such as the Fund, is tasked with developing a strategy to deliver long-term capital appreciation for the fund's investors, and must be accorded that flexibility in terms of the regulatory framework as long as his actions are bona fide and in the best interests of the unitholders. In the case of the Fund, it is the duty of the fund manager to ensure that non-performing stocks are quickly and efficiently swapped out with better alternatives, in the interests of preserving the net asset value ("NAV") of the Fund.*

7. *Accordingly, the alleged deviations in terms of the 2017 SEBI Circular are only seen in the course of the fund manager entering or exiting a stock in a staggered manner, which temporarily caused the number of stocks in the Fund to fluctuate. In all events, the alleged deviations were only in the range of 1 to 3 stocks, and clearly evidences the intention of the fund manager to smoothly transition between various stocks in order to tweak the Fund's portfolio holdings, while minimising market fluctuations and attendant risks.*

8. *The requirement to preserve a 'magic number' of 30 stocks at all times would deprive the fund managers of the flexibility to adapt to exigent market conditions. This flexibility has been recognised through SEBI Circular dated March 04, 2021, which allows the asset allocation to be altered for a short period of time on defensive considerations to protect NAV. Furthermore, a sudden sell down of a stock by an institutional investor such as the Fund would lead to significant price volatility in the stock, impacting investors and adversely affecting the NAV.*

9. *With respect to the allegation regarding the Fund's position in NIFTY FIFTY futures, it is submitted that these investments were in line with the regulatory framework, and explicitly disclosed in the scheme information documents of the Fund. Furthermore, through a letter dated October 19, 2023, SEBI had instructed the Association of Mutual Funds in India ("AMFI") to direct asset management companies to ensure that focussed funds remain true to label, and had given a buffer time of one month from October 19, 2023 for all focussed funds in the industry to appropriately rebalance their portfolios. It is accordingly patently unfair to retrospectively allege violations for the Fund's holdings in NIFTY FIFTY futures, which were only for a period of 10 days in the month of August 2022. A copy of the letter has been annexed as Annexure 'G' to the Response filed on behalf of Edelweiss Asset Management Limited.*

10. *It may also be worthwhile to note that the SEBI's communication dated October 19, 2023, was also forwarded by AMFI vide an email dated October 23, 2023 to the members of the industry advising them to take note of the SEBI's guidelines for necessary compliance and inform AMFI about the compliance by November 20, 2023. A copy of the email dated October 23, 2023 received from AMFI is enclosed herewith as Annexure A.*

11. *Further, it is submitted that the Fund was always making its month-end disclosures in line with the extant regulatory framework, and the allegation with respect to non-disclosure in terms of the 2018 SEBI Circular is clearly a mechanical invocation of provisions by SEBI, without any supporting factual grounds whatsoever.*

<u>Role of the Individuals</u>

12. *It is submitted that even if the Fund were found to be in violation of the charges alleged, the lapses are menial and venial in nature, and largely pertain to the operational workings of EAML. Accordingly, no responsibility can be attributed to the individuals in the present matter – that is, Ms. Radhika Gupta and Mr. Trideep Bhattacharya.*

13. *In the present case, there is no evidence made out, in terms of any instruction or email, that would actually bear out a tangible, direct connection between the individuals and the alleged lapses. There in nothing on record that evidences any kind of participation of these individuals in the*

alleged lapses, and the allegation against them are merely in the nature of mechanical charges that flow from the charges detailed against EAML.

14. *It is submitted that this case, which alleges operational breaches in governance, is far removed from cases involving fraud or other malfeasance, in which the individuals are implicated by virtue of lapses in their fiduciary duties. It is settled precedent that the principle of vicarious liability cannot be mechanically invoked, and the complicity of the individuals in the alleged default cannot be assumed without any substantiating evidence. SEBI may not simpliciter rope in key personnel for an intermediary's operational defaults, unless some demonstrable link exists between the default in question and the relevant personnels' actions.*

15. *In this regard, we would like to bring on record the recent Adjudication Order dated August 08, 2024 in the matter of Nippon Life India Asset Management Limited ("Nippon AMC") and Nippon Life India Trustee Limited ("Nippon Trustee"), which passed a penalty against the Nipon AMC and the Nippon Trustee for allegations regarding improper booking of expenses in certain schemes. It is noteworthy that the individuals, be in the key management personnel or the fund managers of the relevant schemes, were not brought into the scope of the order. This reflects a balanced approach, wherein SEBI has recognised that an operational lapse would merit the imposition of a penalty against the relevant intermediary, but not against the intermediary's key personnel where such personnel have not contributed to the lapse. This is especially true in a large intermediary with a complex organisational structure such as EAML, where the key personnel cannot be participating in every decision of the intermediary.*

16. *Similarly, in a whole-time member's order dated February 20, 2010 in the matter of Birla Sunlife Asset Management Company Limited ("Bira AMC"), Birla AMC was held to be in violation of the guidelines governing advertisements. While the CEO of Birla AMC was also held to be in violation of the regulatory framework, the matter was disposed of with a warning.*

17. *While each case stands on its own merits, and the above examples are not binding on these proceedings, we would respectfully submit that they amply bear out that SEBI has on occasions not passed charges against key personnel, where the default is more in the nature of an institutional lapse rather than any particular action or inaction attributable to the key personnel.*

18. *Therefore, on the basis of the aforesaid factors as well as detailed submissions made in the Responses, it is respectfully submitted that no case has been made out to support the allegations against the Noticees, and the Notice should be discharged without any adverse action. Even if the alleged charges are made out against EAML, there is nothing on record establishing any link between the allegations and the individual Noticees, and the Notice cannot stand against them.*

..."

D. CONSIDERATION OF ISSUES AND FINDINGS

14. The issues that arise for consideration in the instant matter are:

Issue No. I: Whether the Noticees have violated the provisions of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circulars, as alleged?

Issue No. II: If yes, whether the violations on the part of the Noticees would attract monetary penalty under Section 15E and Section 15HB of the SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticees?

Issue No. I: Whether the Noticees have violated the provisions of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circulars, as alleged?

15. **The following was inter alia observed and alleged in respect of the Noticee No. 1:**

15.1. In this regard, it was inter alia observed and alleged that per SEBI circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017, a focused fund shall have following scheme characteristics and description:

- *Scheme characteristics as "scheme focused on the number of stocks (maximum 30). Minimum investment in equity & equity related instruments -65% of total asset" and*
- *Type of scheme as "An open ended equity scheme investing in maximum 30 stocks (mention where the scheme intends to focus, viz., multi cap, large cap, mid cap, small cap)"*

However, SEBI noted that Edelweiss Focused Equity Fund (EFEF) had violated the provision '*An open ended equity scheme investing in maximum 30 stocks*' on 88 days.

15.2. In this regard, I note from the material available on record that deviations from mandatory asset allocation was as under for the months of November 2022, December 2022, January 2023 and February 2023:

Sr. No.	No. of days deviation observed	Number of stocks held by EFEF
1	62	31
2	12	32
3	14	33

4	Total: 88	Between 31-33

The abovementioned 88 instances are as per table below:

Date	Actual total number of stocks
17/11/2022	31
18/11/2022	31
19/11/2022	31
20/11/2022	31
21/11/2022	31
22/11/2022	31
01/12/2022	31
02/12/2022	31
03/12/2022	31
04/12/2022	31
05/12/2022	31
06/12/2022	31
07/12/2022	31
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26/12/2022	31
27/12/2022	31
28/12/2022	31
29/12/2022	31
04/01/2023	31
05/01/2023	32
06/01/2023	32

07/01/2023	32
08/01/2023	32
09/01/2023	32
10/01/2023	32
11/01/2023	32
12/01/2023	32
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16/02/2023	31
17/02/2023	31
18/02/2023	31
19/02/2023	31

20/02/2023	31
21/02/2023	31
22/02/2023	31
23/02/2023	31
24/02/2023	31
25/02/2023	31
26/02/2023	31

I note from the table above that on majority of the days, there were more than 30 stocks in the portfolio, and only around the month end/ day of disclosing, the number of stocks in the portfolio were brought down to 30. I note from the AMFI website that as per month end disclosure, the number of stocks in the portfolio were 30.

15.3. In this regard, I note that the Noticee No. 1 has submitted, "*...interpretation of the 2017 SEBI Circular adopted disregards the nature of the SEBI Circular dated February 4, 1998 ("1998 SEBI Circular") read with SEBI circular dated March 4, 2021 ("2021 SEBI Circular"), which gives the option to an AMC to alter the asset allocation for a short period on defensive considerations. The relevant extract of the said circular is as follows:*
The tentative portfolio break-up of Equity, Debt, Money Market Instruments, other permitted securities and such other securities as may be permitted by the Board from time to time with minimum and maximum asset allocation, while retaining the option to alter the asset allocation for a short term period on defensive considerations...."

In this regard, I note from the relevant extract of the SEBI Circular dated March 4, 2021, quoted by the Noticee No. 1 that the option to alter the asset allocation is with respect to altering the allocation to different asset classes viz., Equity, Debt, Money Market Instruments, other permitted securities and such other securities, however the allegation against the Noticee No. 1 is with respect to investing in more than maximum allowed number of stocks in equity & equity related instruments. Therefore, the Noticee's submission is out of context.

Further in this regard, I note that SEBI circular dated March 4, 2021 gives the option to an AMC to alter the asset allocation for a short period on defensive considerations, however in the instant case, it is observed that the deviations from mandatory asset allocation were observed for 88 days in 4 months viz., November 2022, December 2022, January 2023 and February 2023. Therefore, the deviations cannot be said to have been observed for a short period only, rather the deviations were observed on regular basis, and stocks were brought down to 30 so as to reflect compliance as of date of month end disclosure becoming due.

I also note from the material available on record that deviations from stipulated asset allocation on a short term basis on "*defensive considerations*" is intended for extenuating circumstances which may include substantial redemptions, adverse market conditions etc. or instances which are beyond the control of the fund manager and the AMC and hence may require such deviations. However, the Noticee has not demonstrated with relevant details and documents that in the instant case, the deviations from mandatory asset allocation took place on account of defensive considerations.

Therefore, the Noticee No. 1's contention is devoid of merit and hence not acceptable.

15.4. In this regard, I note that the Noticee No. 1 had also submitted, "*...SEBI, in its FAQs issued to Mutual Fund Investors dated March 31, 2023 ("SEBI MF FAQs"), has clarified that fund managers are "... allowed certain flexibility in altering the asset allocation considering the interest of the investors." It has further clarified that the asset allocation can be changed "... on a short term basis on defensive considerations i.e. to protect the NAV."...*"

In this regard, I note that the relevant portion of SEBI FAQs issued to Mutual Fund Investors dated March 31, 2023 reads as under:

*"…**20) Can a mutual fund change the asset allocation while deploying funds of investors?***

Considering the market trends, any prudent fund manager can change the asset allocation, i.e. he can invest higher or lower percentage of the fund in equity or debt instruments compared to what is disclosed in the offer document. It can be done on a short term basis on defensive considerations i.e. to protect the NAV. Hence, the fund managers are allowed certain flexibility in altering the asset allocation considering the interest of the investors…"

I note that as per the FAQs, that the option to change the asset allocation is with respect to altering the allocation to different asset classes viz., equity or debt instruments, however the allegation against the Noticee No. 1 is with respect to investing in more than maximum allowed number of stocks in equity & equity related instruments. Further, as noted in the foregoing, the option to change allocation is allowed only on a short term basis on defensive considerations, however it is observed that in the instant case that the deviations were observed on regular basis. However, the Noticee has not demonstrated with relevant details and documents that in the instant case, the deviations from mandatory asset allocation took place on account of defensive considerations. Therefore, the Noticee No. 1's contention is devoid of merit and hence not acceptable.

15.5. The Noticee No.1 has also submitted that, "…*Fund's asset allocation by the Notice are merely in the nature of transitory changes to the Fund's portfolio, which happen over the course of swapping out one stock for another. The fund manager was merely selling and buying desired stocks in a staggered manner in order to minimise market fluctuations and risk…"* In this regard, I note that the Noticee's submission is out of context as the same is in the normal course of business and would anyways apply otherwise, however, I note that the SEBI circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017, specifically limits the investing in maximum of 30 stocks.

I further note that the Noticee's submission, "*...The Fund has furnished comprehensive details to SEBI regarding the stocks being transitioned out, and the accompanying rationale, vide emails dated September 8, 2023 and October 11, 2023...*" is out of context as the allegations in respect of the Noticee have been arrived at pursuant Noticee's response to SEBI earlier.

15.6. It was also observed and alleged that the AMC took long position in NIFTY FIFTY futures for 10 days i.e. from August 2, 2022 till August 11, 2022. NIFTY FIFTY index has 50 constituent securities. Hence, taking long exposure to NIFTY FIFTY index leads to portfolio exposure going beyond 30 stocks.

15.7. In this regard, the Noticee No. 1 has submitted:

, "*...through a letter dated October 19, 2023, addressed to the Association of Mutual Funds in India ("AMFI"), SEBI had flagged the common market practice of focussed funds taking positions in index derivative instruments and had interpreted the 2017 SEBI Circular to prohibit focussed funds from taking exposure to such instruments. This is since taking a position in an index derivative instrument would be akin to taking exposure in the constituents of the index's funds.*

Given that it was widespread market practice for focussed funds to take exposure to such instruments, SEBI had instructed AMFI to direct asset management companies to ensure that focussed funds remain true to label, and rebalance their asset allocation one month from October 19, 2023...Accordingly, SEBI had given the window of a month for focussed funds to comply with SEBI's understanding of the framework. In this light, it is patently unjust for the Notice to retrospectively fit this understanding to the Noticee's conduct, which was in the period of August 2022 only...the Notice cannot make out this allegation against the Noticee when the understanding of the law with respect to index derivative instruments was only firmed up in October 2023..." In this regard, I note from the SEBI's letter dated October 19, 2023 to AMFI that AMFI was advised to instruct the AMCs to ensure that the total exposure of all equity securities in a Focus Fund shall not be beyond

30 stocks and that as per the letter, the AMCs having Focused Funds which had exposure beyond 30 stocks should ensure that the deviation from the stipulated asset allocation is rebalanced within a period of one month from the date of the letter.

I further note that the Noticee's submission is out of context as time allowed for regularizing a wrong doing/ complying and wrong doing per say are two distinct aspects. In any case, the Noticee was at liberty to approach concerned Department of SEBI in case of doubts, including by way of request for informal guidance from concerned department. I further note that the Noticee has not demonstrated that there was any exemption provided to the Noticee with respect to the past violations.

15.8. I further note that the Noticee No. 1's submission, "*...investments in NIFTY FIFTY futures were contemplated well in advance by the Fund and were duly disclosed to investors in the scheme information documents of the Fund. The relevant extract of the scheme information document is as below:*
...The position limit for the Mutual Fund in index futures contracts shall be as follows:
• The Fund's position limit in all index futures contracts on a particular underlying index shall be Rs. 500 Crores or 15% of the total open interest of the market in index futures, whichever is higher, per Stock Exchange..." is out of context as the allegation is with respect to maximum number of stocks with regard to a focused fund. Therefore, the Noticee's submission is out of context.

15.9. In view thereof, I hold that the Noticee No. 1 has violated para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.

15.10. It was also observed and alleged that Noticee No. 1 had failed to ensure that the asset management company took all reasonable steps and exercised due diligence to ensure that the investment of funds pertaining to any scheme was not contrary to the provisions of these regulations and that it failed to ensure that the asset management company shall be responsible for the acts of commission or omission by its employees or the persons whose services have been procured by the asset management company.

Accordingly, it was alleged that the Noticee No. 1 had violated Regulation 25(1) and (3) of Mutual Funds Regulations.

15.11. In this regard, I note from material available on record that the purchases/sale of stocks in the Scheme were timed the in such way that the deviation is not reflected in the month-end portfolio disclosure, thus, evading from reporting the deviation in monthly portfolio disclosure done in public domain.

15.12. In this regard, Noticee No. 1 has submitted, "*...the asset alterations were rebalanced before the end of the month so as to ensure that the alterations, which were carried out for defensive considerations in the best interests of the investors, were only for a "short period of time" as stipulated in the regulatory framework...*"

In this regard, I note from the material available on record that the deviations from mandatory asset allocation was on 88 days during the 4-month period. Therefore, the same cannot be construed as the deviations were only for a *"short period of time".* Also, it is observed that the no. of stocks in portfolio on last day of these 4 months were less than or equal to 30. I further note that as per SEBI, the fund manager timed the purchases/sale of stocks in the Scheme in such way that the deviation was not reflected in the month-end portfolio disclosure, thus, evading from reporting the deviation in monthly portfolio disclosure done in public domain.

15.13. Further in this regard, the Noticee No. 1 has contended, "*...It is pertinent to highlight the standard of care to be exercised by a professional asset management company in discharge of its responsibilities as well as the scope of review that a regulator may exercise in the context of business decisions taken by an asset management company.*"

In this regard, the Noticee No. 1 has relied upon the judgments of Hon'ble Supreme Court in the case of Jacob Mathew v. State of Punjab and Ors (Appeal no. 281 of 2017), U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, Hon'ble Securities Appellate Tribunal (Hon'ble SAT) in Price Waterhouse & Co & Ors v. SEBI, Court of Appeal in Eckersley & Others vs. Binnie & Others, Hon'ble Supreme Court in Chander Kanta Bansal v. Rajinder Singh Anand and Hon'ble SAT in Almonds Global Securities Limited v. SEBI.

15.14. In this regard, I note that each matter may be peculiar and /or unique in its facts and circumstances based on which the violations are ascertained. Though certain portion of the orders have been cited however Noticee No. 1 has neither demonstrated as to how these orders were applicable in the instant matter nor has it demonstrated as to what are the relied upon findings in the respective orders which had a bearing on the alleged violations against the Noticee No. 1. Accordingly, the submission of Noticee No. 1 are observed to be generic in nature and hence not tenable.

15.15. I further note that the Noticee No.1's submission, "*...It is submitted that the exercise of such business judgment in the interests of investors ought not to be made the basis for adverse and punitive directions...*" is misplaced as in any case the Noticee as a market intermediary was expected to ensure compliance with extant applicable provisions of securities laws, as mandated.

exercised due diligence to ensure that the investment of funds pertaining to any scheme was not contrary to the provisions of these regulations and that it failed to ensure that the asset management company shall be responsible for the acts of commission or omission by its employees or the persons whose services have been procured by the asset management company, stands established. Therefore, I hold that the Noticee No. 1 had violated Regulation 25(1) and (3) of Mutual Funds Regulations.

15.17. It was also observed and alleged that purchases/sale of stocks in the Scheme were timed the in such way that the deviation is not reflected in the month-end portfolio disclosure, thus, evading from reporting the deviation in monthly portfolio disclosure done in public domain.

Therefore, it was alleged that the Noticee No. 1 had violated para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018.

15.18. In this regard, I note that para B(3)(1(a)) of SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018 inter alia\ reads as under:

"...

Mutual Funds/AMCs shall disclose portfolio (along with ISIN) as on the last day of the month / half-year for all their schemes on their respective website and on the website of AMFI within 10 days from the close of each month/ half-year respectively in a user-friendly and downloadable spreadsheet format

..."

15.19. In this regard, the Noticee No. 1 has contended, "...*even if the alteration of the asset allocation was not in line with the extant regulatory framework, it cannot be alleged that the Fund has violated its obligation to make month-*

15.19. In this regard, the Noticee No. 1 has contended, "*...even if the alteration of the asset allocation was not in line with the extant regulatory framework, it cannot be alleged that the Fund has violated its obligation to make month-end disclosures, which it has been duly doing. The Notice has mechanically invoked the provisions of the 2018 SEBI Circular, which mandate disclosure requirements, without making out any case for the Noticee actually having failed to make such disclosure...*"

15.20. In this regard, I note that from the material available on record that on majority of the days, there were more than 30 stocks in the portfolio, and only around the month end/ day of disclosing, the number of stocks in the portfolio were brought down to 30.

I further note from the material available on record that the purchases/sale of stocks in the Scheme were timed the in such way that the deviation is not reflected in the month-end portfolio disclosure, thus, evading from reporting the deviation in monthly portfolio disclosure done in public domain. Therefore, I note that the Noticee's submission is devoid of merit.

15.21. In view thereof, I hold that the Noticee No.1 has violated para B(3)(1(a)) of SEBI/HO/IMD/DF2/CIR/P/2018/92 dated June 05, 2018.

16. **The following was inter alia observed and alleged in respect of the Noticee No. 2:**

16.1. SEBI observed that Edelweiss Focused Equity Fund had violated the provision '*An open ended equity scheme investing in maximum 30 stocks*' of SEBI circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 on 88 days. The deviations from mandatory asset allocation were onserved for the months of November 2022, December 2022, January 2023 and February 2023. In this regard, it was observed and alleged that Noticee No. 2 being the CEO of EAML had failed to ensure that the mutual fund complied

16.2. In this regard, I note that Regulation 25 (6A) (a) of Mutual Funds Regulations reads as under:

"…

[94][(6A)[95][(a)]The Chief Executive Officer ([96][whatever be the designation]) of the asset management company shall ensure that the mutual fund complies with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time and that the investments made by the fund managers are in the interest of the unit holders and shall also be responsible for the overall risk management function of the mutual fund.

…"

16.3. In this regard, the Noticee No. 2 has submitted that, "*…the role of the CEO is to exercise general supervision and oversight over the affairs of the mutual fund, with a particular focus on certain aspects such as regulatory compliance and risk management. However, the CEO is not ordinarily expected to directly take individual investment decisions and relies on the expertise and experience of specialised teams within the organization, which has been adhered to in the instant case…no responsibility can be attributed to the individuals in the present matter – that is, Ms. Radhika Gupta and Mr. Trideep Bhattacharya…There in nothing on record that evidences any kind of participation of these individuals in the alleged lapses, and the allegation against them are merely in the nature of mechanical charges that flow from the charges detailed against EAML…*"

In this regard, I note that Regulation 25 (6A) (a) of Mutual Funds Regulations casts specific responsibility on the CEO of the asset management company to ensure that the mutual fund complies with all the provisions of Mutual Funds Regulations and the guidelines or circulars issued in relation thereto from time to time, which the Noticee No. 2 has failed to ensure, as Noticee No. 1 is found to be in violation of Para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and Regulation 25 (1) and (3) of Mutual Funds Regulations. Therefore, the Noticee No. 2's submission is devoid of merit and hence not acceptable.

16.4. The Noticee No. 2 has further submitted that, "...*While Regulation 25(6A) delineates the general responsibilities of the CEO, the SEBI MF Regulations do not specify the standard of care and diligence which apply to a CEO in the discharge of such professional functions. Accordingly, guidance may be drawn from relevant judicial precedents...*"

In this regard, the Noticee No. 2 has relied upon the judgments of Hon'ble Supreme Court in the case of Jacob Mathew v. State of Punjab and Ors (Appeal no. 281 of 2017), U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, Hon'ble Securities Appellate Tribunal)Hon'ble SAT) in Price Waterhouse & Co & Ors v. SEBI and Court of Appeal in Eckersley & Others vs. Binnie & Others.

16.5. In this regard, I note that each matter may be peculiar and /or unique in its facts and circumstances based on which the violations are ascertained. Though certain portion of the orders have been cited however Noticee No. 2 has neither demonstrated as to how these orders were applicable in the instant matter nor has it demonstrated as to what are the relied upon findings in the respective orders which had a bearing on the alleged violations against the Noticee. Accordingly, the submission of Noticee No. 2 are observed to be generic in nature and hence not tenable.

16.6. Further in this regard, the Noticee No. 2 has contended, "...*there are no specific averments in the Notice against the Noticee to demonstrate her role or involvement in the alleged violations of EAML. Thus, it appears that SEBI has proceeded against the Noticee under the principle of vicarious liability...It is a settled principle of law that prior to invoking the principle of vicarious liability against a director/officer of a company, the alleged violations of the law by the company have to be established in the first place...*"

In this regard, it is reiterated that as noted above, Noticee No. 1 is found to be in found to be in violation of Para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 and Regulation 25 (1) and (3) of Mutual Funds Regulations. I note that Regulation 25 (6A) (a) of Mutual Funds Regulations casts specific responsibility on the CEO of the asset management company to ensure that the mutual fund complies with all the provisions of Mutual Funds Regulations, which Noticee No. 2 has failed to ensure in the instant case. Therefore, the Noticee's contention is not tenable.

16.7. Further in this regard, the Noticee No. 2 has contended, "...*SEBI may not simpliciter rope in key personnel for an intermediary's operational defaults, unless some demonstrable link exists between the default in question and the relevant personnels' actions*...". In this regard, the Noticee has cited SEBI's Adjudication Order dated August 08, 2024 in the matter of Nippon Life India Asset Management Limited ("Nippon AMC") and Nippon Life India Trustee Limited ("Nippon Trustee") and SEBI WTM's order dated February 20, 2010 in the matter of Birla Sunlife Asset Management Company Limited.

In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Further, Adjudication proceedings are to be initiated against which entities depends on facts and circumstances of each case. Hence, any generic parallel drawn would be devoid of merit. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a prerogative of SEBI depending upon the outcome of the examination and findings thereof.

16.8. The Noticee No. 2 has further submitted, "*the Hon'ble WTM of SEBI in the matter of Home Trade Limited, held that the directors of the company would not be liable unless there were specific averments against them*". In this regard, I note that the directors of a company and a CEO are distinct, in so far as while there may be multiple directors, however there only one CEO in a company. I also note as per Regulation 25 (6A) (a) of Mutual Funds Regulations, the CEO of the asset management company has to ensure that the mutual fund complies with all the provisions of Mutual Funds Regulations and the guidelines or circulars issued in relation thereto from time to time.

16.9. In view thereof, I find that the allegation that Noticee No. 2 being the CEO of EAML had failed to ensure that the mutual fund complied with all the provisions of these regulations and the guidelines or circulars issued in relation thereto from time to time, stands established. Therefore, I hold that the Noticee No. 2 has violated Regulation 25 (6A) (a) of Mutual Funds Regulations and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.

17. **The following was inter alia observed and alleged in respect of the Noticee No. 3:**

17.1. SEBI observed that Edelweiss Focused Equity Fund had violated the provision '*An open ended equity scheme investing in maximum 30 stocks*' of SEBI circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017 on 88 days. The deviations from mandatory asset allocation were observed for the months of November 2022, December 2022, January 2023 and February 2023. In this regard, it was observed and alleged that Noticee No. 3 being fund manager of EFEF failed to ensure that the funds of the schemes were invested to achieve the investment objective of the scheme as stated in SID, which states that "*The investment objective of the fund is to generate long term capital appreciation by investing in equity and equity and derivative segment of upto 30 companies across market capitalization*".

17.2. In this regard, I note that Regulation 25 (6B) (a) of Mutual Funds Regulations reads as under:

"...

(6B) [99][(a)]The fund managers [100][(whatever be the designation)]shall ensure that the funds of the schemes are invested to achieve the objectives of the scheme and in the interest of the unit holders.]

…"

17.3. In this regard, the Noticee No. 3 has submitted that, "…*the role of the fund manager is an overarching one, which entails ensuring that the investment objectives of the fund in question as promised to the investors – for example, long-term wealth appreciation, or risk diversification, or exposure to the global markets – is fulfilled. The fund manager also seeks to ensure that the fund is heading in a direction that is in the interests of the unit holders and in line with the unit holder's expectations of that particular fund…*"

17.4. In this regard, I note from the material available on record that the investment objective of the scheme as stated in SID dated April 28, 2023 reads as under: "*The investment objective of the fund is to generate long term capital appreciation by investing in equity and equity and derivative segment of upto 30 companies across market capitalization.*"

I note that the investment objective of the scheme limited the exposure to 30 companies, however as brought out in the foregoing, the deviation from stipulated asset allocation of maximum 30 stocks were observed on 88 instances in a period of 4 months i.e. November 2022 to February 2023.

17.5. The Noticee No. 3 has further contended that, "…*While Regulation 25(6B) delineates the general responsibilities of the fund manager, the SEBI MF Regulations do not specify the standard of care and diligence which apply to a fund in the discharge of such professional functions. Accordingly, guidance may be drawn from relevant judicial precedents…*"

In this regard, the Noticee No. 3 has relied upon the judgments of Hon'ble Supreme Court in the case of Jacob Mathew v. State of Punjab and Ors

(Appeal no. 281 of 2017), U.S. Court of Appeals in James Ellis & Anr. v. Fidelity Management Trust Company, Hon'ble Securities Appellate Tribunal)Hon'ble SAT) in Price Waterhouse & Co & Ors v. SEBI and Court of Appeal in Eckersley & Others vs. Binnie & Others.

17.6. In this regard, I note that each matter may be peculiar and /or unique in its facts and circumstances based on which the violations are ascertained. Though certain portion of the orders have been cited however Noticee No. 3 has neither demonstrated as to how these orders were applicable in the instant matter nor has it demonstrated as to what are the relied upon findings in the respective orders which had a bearing on the alleged violations against the Noticee. Accordingly, the submission of Noticee No. 3 are observed to be generic in nature and hence not tenable.

17.7. Further in this regard, the Noticee has contended, "*...there are no specific averments in the Notice against the Noticee to demonstrate his role or involvement in the alleged violations of EAML. Thus, it appears that SEBI has proceeded against the Noticee under the principle of vicarious liability...It is a settled principle of law that prior to invoking the principle of vicarious liability against a director/officer of a company, the alleged violations of the law by the company have to be established in the first place... no responsibility can be attributed to the individuals in the present matter – that is, ... Mr. Trideep Bhattacharya...There in nothing on record that evidences any kind of participation of these individuals in the alleged lapses, and the allegation against them are merely in the nature of mechanical charges that flow from the charges detailed against EAML...*"

In this regard, it is reiterated that as noted above, Noticee No. 1 is found to be in violation of Regulation 25 (1) and (3) of Mutual Funds Regulations and Para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017, as deviations from stipulated asset allocation of maximum 30 stocks were observed on 88 instances in a period of 4 months i.e. November 2022 to February 2023. I note that Regulation 25 (6B) (a) of Mutual Funds Regulations casts specific responsibility on the fund manager of the asset management company to ensure that the funds of the schemes are invested to achieve the objectives of the scheme, which Noticee No. 3 had failed to ensure in the instant case. Therefore, the Noticee's contention is not tenable.

17.8. Further in this regard, the Noticee has submitted, "*...SEBI may not simpliciter rope in key personnel for an intermediary's operational defaults, unless some demonstrable link exists between the default in question and the relevant personnels' actions...*". In this regard, the Noticee has cited SEBI's Adjudication Order dated August 08, 2024 in the matter of Nippon Life India Asset Management Limited ("Nippon AMC") and Nippon Life India Trustee Limited ("Nippon Trustee") and SEBI WTM's order dated February 20, 2010 in the matter of Birla Sunlife Asset Management Company Limited.

In this regard, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Further, Adjudication proceedings are to be initiated against which entities depends on facts and circumstances of each case. Hence, any generic parallel drawn would be devoid of merit. I also note that, initiation of Adjudication proceedings under the appropriate provisions of SEBI Act is a prerogative of SEBI depending upon the outcome of the examination and findings thereof.

17.9. In view thereof, I find that the allegation that Noticee No. 3 being the fund manager of EFEF failed to ensure that the funds of the schemes were invested to achieve the investment objective of the scheme, stands established. Therefore, I hold that the Noticee No. 3 has violated Regulation 25 (6B) (a) of Mutual Funds Regulations and para I (3) read with Annexure A (8) of SEBI circular SEBI/HO/IMD/DF3/CIR/P/2017/114 dated October 6, 2017.

Issue No. II: If yes, whether the violations on the part of the Noticees would attract monetary penalty under Section 15E and Section 15HB of the SEBI Act, 1992?

18. It has been established in the foregoing paragraphs that Noticees had violated provisions of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circulars, as stated.

19. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......*"

20. In this regard, the Noticees have stated the following:

"*...it is submitted that the allegations levelled by the Notice can be, at best, a menial and venial breach, that are purely procedural in nature, with no adverse market-wide impact and thus lack pervasiveness. The Notice has not made out any mala fide intent, or alleged any unjust enrichment, on the part of the Noticee...There is no account of any loss having been caused to the investors due to actions of the Noticee, and not a single investor complaint against the Noticee or the Fund with respect to contents of the Notice has been recorded*"

In this regard, in my view said contentions would not exempt the Noticees from complying with the extant applicable provisions of securities laws violated, which Noticees were required to comply with and can at best be considered as mitigating factors.

In this regard, the Noticee relied upon the judgments of Hon'ble Supreme Court in Adjudicating Officer, SEBI v. Bhavesh Pabari, Hon'ble Securities Appellant Tribunal's ("Hon'ble SAT") in the case of P.G. Electroplast Limited v. SEBI, Hon'ble

SAT's order in Piramal Enterprises Limited v. SEBI and Hon'ble Supreme Court in Hindustan Steel Ltd. v. State of Orissa.

In this regard, I note that each matter is peculiar in its facts and circumstances based on which the violations are ascertained. Further, I am of the opinion that facts and circumstances of each matter are unique in nature and are accordingly dealt with and decided. Hence, any generic parallel drawn would be devoid of merit. Further in this regard, I also note that the alleged violations in respect of the Noticee are of extant applicable provisions of law, and not just about minor procedural aspects specific to the Noticee.

21. Therefore, for the established violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under Sections 15E and Section 15HB of SEBI Act which provides as following:

"...

15E: Penalty for failure to observe rules and regulations by an asset management company.
Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to [88][a penalty [89][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]]..

...

15HB: Penalty for contravention where no separate penalty has been provided.
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 [104][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

..."

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticee?

22. While determining the quantum of penalty under Section 15E and 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: -

SEBI Act

"..........

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15- or section 11 or section 11B, the Board or 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.*

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

............."

23. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors or profit made by the Noticees as a result of the violations committed by the Noticee. Further, there is nothing on record to show that the violations committed by the Noticees are repetitive in nature. However, I cannot ignore the fact that Noticees were required to comply with the extant applicable provisions of laws, which SEBI is duty bound to enforce compliance of. The Noticees failed to comply with the provisions of law, as brought out in the foregoing, and such non-compliances accordingly needs to be dealt with suitable penalty.

E. ORDER

24. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticee and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose following penalty, as per Table below, on the Noticees, for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

Name of the Noticee	Penalty under Section	Penalty (in Rs.)
Edelweiss Asset Management Limited	Section 15E read with Section 15HB of the SEBI Act	8,00,000/- (Rupees Eight Lakhs only)
Ms. Radhika Gupta	Section 15HB of the SEBI Act	4,00,000/- (Rupees Four Lakhs only)
Mr. Trideep Bhattacharya	Section 15HB of the SEBI Act	4,00,000/- (Rupees Four Lakhs only)

Edelweiss Asset Management Limited	Section 15E read with Section 15HB of the SEBI Act	8,00,000/- (Rupees Eight Lakhs only)
Ms. Radhika Gupta	Section 15HB of the SEBI Act	4,00,000/- (Rupees Four Lakhs only)
Mr. Trideep Bhattacharya	Section 15HB of the SEBI Act	4,00,000/- (Rupees Four Lakhs only)

25. The 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

26. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

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

DATE: October 25, 2024
PLACE: MUMBAI

AMAR NAVLANI
ADJUDICATING OFFICER