

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

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

IN RESPECT OF –

NOTICEE	REGISTRATION NO.
PINNACLE MARKET INVESTMENT ADVISORY PVT. LTD.	INA000005614

IN THE MATTER OF PINNACLE MARKET INVESTMENT ADVISORY PVT. LTD.

BACKGROUND

1. Securities and Exchange Board of India (“SEBI”) had initiated Enquiry Proceedings against Pinnacle Market Investment Advisory Pvt. Ltd. (“**Noticee**”/ “**Pinnacle**”), a registered Investment Adviser, in terms of the SEBI (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations, 2008**”).
2. Vide an Order dated August 3, 2021, under Section 19 of the SEBI Act, 1992 read with Regulation 24 of the Intermediaries Regulations, 2008, SEBI had appointed a Designated Authority (“**DA**”) to enquire into the violations alleged against the Noticee and to submit a report in accordance with the provisions of the aforesaid Regulations. Upon completion of the enquiry, an Enquiry Report dated March 23, 2022, was submitted by the DA to the Designated Member (“**DM**”).
3. In the Enquiry Report, the DA had observed the following violations against the Noticee:
 - A. *Failure to redress client’s grievances promptly and in a time bound manner in violation of SEBI Circular No. CIR/OIAE/1/2014 dated December 18, 2014 (“**Circular dated December 18, 2014**”) read with Regulation 21 of the*

SEBI (Investment Advisers) Regulations, 2013 (“Investment Adviser Regulations, 2013”).

- B. Failure to disclose material information regarding appointment of Director in violation of Regulation 13(b) of the Investment Adviser Regulations, 2013 and Clauses 8 and 9 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.*
- C. Failure to maintain arms-length relationship with its client and failure to act in a fiduciary capacity to its client in violation of Regulations 15(1), 15(3), 22(b) and Clause 1 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.*
- D. Failure to abide by principles of suitability of advice to its clients and failure to act in a fiduciary capacity to its clients in violation of Regulations 15(1), 17 and Clauses 1,2 and 6 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.*
- E. Failure to carry out adequate and appropriate risk profiling of its clients and using leading questions in its risk profiling questionnaire in violation Regulations 16(b) and 16(d)(ii) of the Investment Adviser Regulations, 2013.*
- F. Failure to charge fees from its clients in a fair and reasonable manner and failure to act fair and in best interests of its clients in violation of Clauses 1 and 6 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.*
- G. Promising unrealistic returns to its clients and charging unreasonable fees in violation of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations, 2003”).*

4. In light of the above and in terms of Regulation 23 and Regulation 26 of the Intermediaries Regulations, 2008 read with Regulation 28 of the Investment Adviser Regulations, 2013, the DA had recommended that:

*“... the registration of the Noticee i.e. Pinnacle Market Investment Advisory Pvt. Ltd. [SEBI Registration No. INA000005614] **be cancelled** ...”*

5. Thereafter, post–enquiry Show Cause Notices dated April 5, 2022 and April 22, 2022 (“SCN”), was issued to the Noticee enclosing a copy of the Enquiry Report submitted by the DA and calling upon it to show cause in terms of the Intermediaries Regulations, 2008, as to why action as recommended by the DA or any other penalty should not be imposed on it, as deemed fit by the DM. The details with regard to service of SCN are provided below:

TABLE I			
NOTICEE	SCN No. AND DATE	SCN SENT THROUGH SPEED POST ACKNOWLEDGEMENT DUE AT THE FOLLOWING ADDRESSES	DELIVERY STATUS
M/S PINNACLE MARKET INVESTMENT ADVISOR PVT. LTD.	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/14927/1 DATED APRIL 5, 2022	PLOT No. 185, SCHEME No. 54, PU-4, COMMERCIAL BEHIND MALHAR MEGA MALL, VIJAY NAGAR, INDORE, MADHYA PRADESH - 452010	RETURNED UNDELIVERED
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/14929/1 DATED APRIL 5, 2022	H.NO. 100, RAJA RAM AVENUE, NEAR TULSI NAGAR, INDORE, MASHYA PRADESH - 452001	
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/14929/1 DATED APRIL 5, 2022	EMAIL TO ER.ABHISHEKPATEL@GMAIL.COM ; HR@PINNACLEFINANCIAL.IN ;AND INFO@PINNACLEFINANCIAL.IN DATED APRIL 6, 2022	DELIVERED
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17276/1 DATED APRIL 22, 2022	BUILDING No. 660, NEAR ITI COLLEGE ITI, MADHOTAL, JABALPUR, MADHYA PRADESH - 482002	RETURNED UNDELIVERED
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17278/1 DATED APRIL 22, 2022	F. No. 303, RAJLAXMI PARADISE, 279, PRAGATI NAGAR, INDORE, MADHYA PRADESH – 452012	
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17291/1 DATED APRIL 22, 2022	123, JANKHAI KALAN, WARD No. 8, NEAR MAIN ROAD, VILLAGE POST JANKHAI, JAWA DISTRICT, REWA, MADHYA PRADESH – 486223	
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17292/1 DATED APRIL 22, 2022	F-1/4, RISHI NAGAR, UJJAIN, MADHYA PRADESH – 456010	
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17294/1 DATED APRIL 22, 2022	H.No. 73, RAJA RAM AVENUE, TULSI NAGAR, INDORE, MADHYA PRADESH - 452010	
	SEBI/HO/EFD1/DRA6/OW/P/EN Q/JF/2022/17297/1 DATED APRIL 22, 2022	FLAT No. 201, UNIC CENTER, MAHALAXMI NAGAR, INDORE, MADHYA PRADESH - 452001	

6. Pursuant to service of the SCN, the Noticee, vide an e-mail dated May 30, 2022, submitted its reply.
7. Thereafter, an opportunity of hearing was granted to the Noticee on July 21, 2022. However, the Noticee did not appear for hearing on the said date. In the interest of natural justice, another opportunity of hearing was granted to the Noticee on October 14, 2022. Rupesh Jain, Chartered Accountant, entered appearance on behalf of the Noticee on October 14, 2022 and made oral submissions. Rupesh Jain also sought liberty to file a detailed reply in the matter, which request was acceded to and a week's time was granted for filing submissions. However, no reply was received from the Noticee. Further, vide an e-mail dated April 19, 2023, the Noticee was advised to submit written submissions, if any, within seven days from the date of receipt of said e-mail. However, no reply was received from the Noticee.
8. It is pertinent to note that SEBI had also initiated parallel enforcement proceedings against Pinnacle and its Directors and had passed an Order No. WTM/SM/WRO/WRO/23160/2022-23 dated January 25, 2023 under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992, *inter alia* restraining Pinnacle and its Directors from accessing the securities market in any manner for a period of three years and also imposing monetary penalties on them.

FINDINGS

9. I have considered the allegations made in the SCN read with the Enquiry Report in light of the reply filed by the Noticee. In this context, the relevant extracts of the provisions allegedly violated by the Noticee are reproduced below:

PROVISIONS OF THE SEBI ACT:

Section 12A. No person shall directly or indirectly—

- (a) *use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange,*

- any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
 - (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

PROVISIONS OF THE PFUTP REGULATIONS:

Regulation 2(1)(c):

- (c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
 - (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
 - (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
 - (4) a promise made without any intention of performing it;*
 - (5) a representation made in a reckless and careless manner whether it be true or false;*
 - (6) any such act or omission as any other law specifically declares to be fraudulent,*
 - (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
 - (8) a false statement made without reasonable ground for believing it to be true.*

- (9) *the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly ...

Regulation 3. *No person shall directly or indirectly—*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

PROVISIONS OF THE INVESTMENT ADVISERS REGULATIONS:

Regulation 13: Conditions of Certificate

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

- (b) the investment adviser shall forthwith inform the Board in writing, if any information or particulars previously submitted to the Board are found to be false or misleading in any material particular or if there is any material change in the information already submitted;*

Regulation 15: General Responsibility

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

Regulation 15(3): *An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.*

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

THIRD SCHEDULE

CODE OF CONDUCT FOR INVESTMENT ADVISER

- 1. Honesty and fairness:** *An investment adviser shall act honestly, fairly and in the best interests of its clients and in the integrity of the market.*
- 2. Diligence:** *An investment adviser shall act with due skill, care and diligence in the best interests of its clients and shall ensure that its advice is offered after thorough analysis and taking into account available alternatives.*
- 6. Fair and reasonable charges:** *An investment adviser advising a client may charge fees, subject to any ceiling as may be specified by the Board⁸⁵[***]. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.*
- 8. Compliance:** *An investment adviser including its [partners, 'Principal Officer' and persons associated with investment advice] shall comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market.*
- 9. Responsibility of senior management:** *The senior management of a body corporate which is registered as investment adviser shall bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the body corporate.*

Regulation 16: Risk profiling:

Investment adviser shall ensure that:

- (b) it has a process for assessing the risk a client is willing and able to take, including:*
 - (i) assessing a client's capacity for absorbing loss;*
 - (ii) identifying whether client is unwilling or unable to accept the risk of loss of capital;*
 - (iii) appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.*
- (d) any questions or description in any questionnaires used to establish the risk a client is willing and able to take are fair, clear, and not misleading, and should ensure that:*
 - (ii) questionnaire is not structured in a way that that it contains leading questions.*

Regulation 17: Suitability

Investment adviser shall ensure that, -

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

knowledge, investment objectives, risk appetite and capacity for absorbing loss.

Regulation 21: Redressal of client grievances

Regulation 21(1) An investment adviser shall redress client grievances promptly.

Regulation 22: Segregation of execution services

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

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

- (b) The investment adviser shall maintain arm's length relationship between its activities as investment adviser and distribution or execution services.

[Prior to SEBI (Investment Advisers) (Amendment) Regulations, 2020, which came into force on 30-09-2020.]

SEBI Circular CIR/OIAE/2014 dated December 18, 2014

“... 9. All listed companies and SEBI registered intermediaries shall review its investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries to whom complaints are forwarded through SEBI Complaints Redress System (“**SCORES**”), shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.

10. The listed companies and SEBI registered intermediaries shall update the Action Taken Report (“**ATR**”) along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed Company / SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed Company / SEBI registered intermediary, for future reference.

11. Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.

12. A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed Company or SEBI registered intermediary with respect to a complaint will not mean that the complaint is not pending against them.

13. Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance...”

10. I shall now deal with the allegations contained in the SCN read with the Enquiry Report, in light of the reply submitted by the Noticee.

A. Failure to redress client’s grievances promptly and in a time bound manner in violation of Circular dated December 18, 2014 read with Regulation 21 of the Investment Adviser Regulations, 2013.

10.1 The Noticee is alleged to have failed to promptly resolve investor grievances received on SCORES in a time bound manner.

10.2 In its reply, the Noticee *inter alia* submitted as under:

a. You have also mentioned a table and mentioned that we have failed to resolve the complaints on 8 occasions within the stipulated time frame but hereby we want to mention that in the case of Kapil Gupta, D. K. Rahul, and Delhirasa V., we have filed out ATR within the stipulated time frame as prescribed by SEBI. It has clearly shown as per your table that complaint forwarded to Investment Adviser on Jun 24, 2020 and we have filed the ATR on July 6, 2020.

b. In the other 5 complaints, we were communicating with the clients to resolve his/ her complaint. So, in this context, we have not violated the Circular dated December 18, 2014.

10.3 From the data of complaints filed against the Noticee on SCORES, it was observed that as on September 15, 2020, 8 complaints were pending against the Noticee, details of which are provided below:

TABLE II							
S. No.	SCORES COMPLAINT No.	NAME OF COMPLAINANT	DATE OF RECEIPT OF COMPLAINT	DATE OF FORWARDING COMPLAINT TO INVESTMENT ADVISER	DATE OF FINAL ATR	DATE OF REMINDERS	EXCESSIVE TIME ABOVE 30 DAYS AS ON SEP 15, 2020
1	SEBIP/MP20/000072/1	MAMTA MESHARAM	FEB 10, 2020	FEB 14, 2020	JUL 8, 2020	JUL 24, 2020 SEP 15, 2020	188
2	SEBIE/MP20/0000503/1	ALOK SHARMA	FEB 19, 2020	MAR 09, 2020	SEP 10, 2020	AUG 26, 2020	160
3	SEBIE/MP20/0001045/1	KAPIL GUPTA	APRIL 17, 2020	JUN 23, 2020	JUL 24, 2020	JUL 28, 2020 AUG 14, 2020 AUG 26, 2020	54
4	SEBIP/MP20/0000100/1	SUNITA SINGH	MAR 12, 2020	JUN 24, 2020	-	AUG 03, 2020 AUG 17, 2020	53
5	SEBIE/MP20/0000994/1	LALIT CHADHA	MAY 07, 2020	JUN 24, 2020	SEP 2, 2020	SEP 02, 2020	53
6	SEBIE/MP20/0001150/1	D. K. RAHUL	JUNE 17, 2020	JUN 24, 2020	JUL 6, 2020	JUL 30, 2020 AUG 17, 2020	53
7	SEBIE/MP20/0000679/1	DELHIRASA V.	MARCH 09, 2020	JUN 24, 2020	JUL 6, 2020	SEP 15, 2020	53
8	SEBIE/MP20/0001193/1	VIKAS DIVEKAR	JUN 26, 2020	JUL 07, 2020	AUG 18, 2020	AUG 26, 2020 SEP 15, 2020	51

10.4 The Circular dated December 18, 2014, casts an obligation on all SEBI registered intermediaries to take immediate action in resolving complaints within a period of 30 days and thereafter, file an ATR with SEBI. Further, Regulation 21(1) of the Investment Adviser Regulations, 2013 *inter alia* states that an Investment Adviser shall promptly redress clients' grievances. In the instant proceedings, the Noticee had submitted that in 3 out of 8 complaints mentioned in the SCN, ATR was filed in a timely manner. From the aforesaid, it is clear that the Noticee had admittedly failed to address 5 out of the 8 complaints. As regards 3 complaints wherein the Noticee had claimed that ATR was filed in a timely manner, it may be mentioned that while the ATR was filed within the due date i.e. on or before expiry of 30 days from the date of receipt

of complaint on SCORES, the complaints were nonetheless not redressed by the Noticee and were kept pending for 51 days and more as on September 15, 2020. It is for the said reason that reminders for redressal of grievance were also sent by SEBI, to the Noticee in respect of the aforesaid 3 complaints. It is also pertinent to note that as on date, the aforesaid 8 complaints are still pending redressal by the Noticee.

- 10.5 In view of the above, I find that the Noticee had failed to promptly resolve client complaints received on SCORES and also failed to submit ATR in respect of the said complaints, in a time bound manner, in violation of the Circular dated December 18, 2014 read with Regulation 21(1) of the Investment Adviser Regulations, 2013.

B. Failure to disclose material information regarding appointment of Director in violation of Regulation 13(b) of the Investment Adviser Regulations, 2013 and Clauses 8 and 9 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

- 10.6 The Noticee is alleged to have failed to disclose the material information i.e. 'appointment of Director' to SEBI and violated Regulation 13(b) of the Investment Adviser Regulations, 2013 and Clauses 8 and 9 of the Code of Conduct specified in Schedule III read with Regulation 15(9) of the aforementioned Regulations.

- 10.7 In its reply, the Noticee submitted as under:

- a. You have stated that appointment of a new Director is material information that needs to have been informed to SEBI by Pinnacle immediately after such appointment, so we want to state here that we have not changed control of the Company. Also, we have not changed the Directors also. We have only appointed one more Director which in our opinion, was not a material event requiring informing SEBI immediately.*

- 10.8 From the Form–A submitted by the Noticee while applying for registration as an Investment Adviser, it is noted that the Noticee had listed Abhishek Patel and Shekhar Mishra as its Directors. Vide a letter dated July 23, 2018, the Noticee informed SEBI that Parul Sahu had been appointed as a Director vide Board Resolution passed in the Extraordinary General Meeting of the Noticee on December 30, 2016. The said information was disclosed to SEBI only after a period of 18 months from its occurrence.
- 10.9 In this regard, the Noticee has submitted that the aforesaid information is not a material event which necessitated informing SEBI immediately.
- 10.10 I note that a Company being a juristic person, all its deeds and functions are the results of acts done by certain natural persons who manage and govern its affairs. In this context, the role played by a Director is significant and material in running day-to-day affairs of the Company. A Company acts through its Board of Directors who are collectively liable for the acts or omission of a Company. In addition, details pertaining to history of regulatory action and economic offences, compliance with the *fit and proper* criteria are sought by SEBI in respect of the Directors of the Company while applying for registration as Investment Adviser. In view of the aforesaid, the role of a Director of a Company becomes significant and accordingly, any change or addition to the composition of Board of Directors of a Company is a material information having implication on the functioning and management of such Company.
- 10.11 Regulation 13(b) of the Investment Adviser Regulations, 2013, mandates that the Investment Adviser shall inform SEBI of any material change in the information already submitted to SEBI. In terms of Clauses 8 and 9 of the Code of Conduct specified in the Third schedule read with Regulation 15(9) of the Investment Advisers Regulations, 2013, an Investment Adviser shall comply with all regulatory requirements applicable to the conduct of its business activities. Further, it is the responsibility of the senior management to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures by the Company.

10.12 In the instant matter, I note that the Noticee had submitted a declaration in Form–A that it shall notify SEBI immediately of any change in the information provided in its application for registration. However, the material information in respect of its new Director, Parul Sahu, was disclosed to SEBI, by the Noticee, with a delay of 18 months. In view of the same, I find that the Noticee had violated Regulation 13(b) of the Investment Adviser Regulations, 2013 and Clauses 8 and 9 of the Code of Conduct specified in the Third schedule read with Regulation 15(9) of the aforementioned Regulations.

C. *Failure to maintain arms–length relationship with its client and failure to act in a fiduciary capacity to its client in violation of Regulations 15(1), 15(3), 22(b) and Clause 1 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.*

10.13 The Noticee is alleged to have executed trades on behalf of its clients in violation of Regulations 15(1), 15(3), 22(b) and Clause 1 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

10.14 In its reply, the Noticee submitted as under:

a. In the case of A. V. S. R. Sastry, we want to submit our reply that we were not providing any execution services so there was no question of an arms–length relationship between investment adviser activities and other activities. Our employee has not done any trade on behalf of client. If any trades were done in Indore, it cannot be done without client consent because for trading in option and commodities, a person needs to be aware of ID and password of the client. So the allegation that trades were done without the consent of the client is not right.

10.15 In the SCORES complaint of A. V. S. R. Sastry, it was alleged that “*Afterwards, Rohit has directly traded online on my behalf in commodities and options (As I*

am not aware of the same) up to 25/7/2018 and made a total loss of 4.00L in demat a/c". It is noted from the IP addresses that most of the trades in the client's account were executed from Indore, Madhya Pradesh where the Noticee's office is located whereas the complainant A. V. S. R. Sastry's location as registered by him on SCORES was Hyderabad.

10.16 The Noticee submitted that the trades were not executed by its employee and even if they were executed, the trades were done with the consent of the client. In this regard, I note that an Investment Adviser is obligated to maintain an arms-length relationship between its activities as an investment adviser and other activities. Even if it were accepted that the client had shared his trading credentials with the investment adviser, it cannot use the same to trade on behalf of its client in violation of the provisions of the Investment Adviser Regulations, 2013. The investment adviser therefore, has to restrict its activities only to providing investment advice. Accordingly, I am not inclined to accept the submission of the Noticee in this regard.

10.17 In the instant matter, based on the evidence of the location of the IP addresses, the preponderance of probability of the Noticee executing the trades in the trading account of A. V. S. R. Sastry is very high. In view of the above, I note that the Noticee failed to maintain an arms-length relationship between its investment adviser activities and other activities. Further, the Noticee did not act with honesty and in the best interest of its client. I therefore, find that the Noticee had violated Regulations 15(1), 15(3), 22(b) and Clause 1 of the Code of Conduct specified in Schedule III read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

D. Failure to abide by principles of suitability of advice to its clients and failure to act in a fiduciary capacity to its clients in violation of Regulations 15(1), 17 and Clauses 1,2 and 6 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

10.18 The Noticee is alleged to have sold products to its clients without considering their suitability for such clients.

10.19 No reply was submitted by the Noticee in respect of the aforesaid allegation.

10.20 I note that the amount of advisory fees charged by the Noticee to its clients was more than the annual income and the proposed trading amount of the clients. A few such instances are tabulated as under:

TABLE III				
S. No.	CLIENT NAME	ANNUAL INCOME (IN Rs.)	PROPOSED TRADING AMOUNT (IN Rs.)	FEES CHARGED BY THE NOTICEE (IN Rs.)
1.	ALOK SHARMA	3-5 LAKH	1-3 LAKH	10.46 LAKH
2.	RALU PRASAD	< 3 LAKH	< 1 LAKH	4.66 LAKH
3.	SUNITA SINGH	10-15 LAKH	3-5 LAKH	20 LAKH
4.	NIRAJ TIWARI	5-10 LAKH	< 1 LAKH	4 LAKH
5.	LALIT CHADHA	5-10 LAKH	< 1 LAKH	3.09 LAKH
6.	VIKAS DIVEKAR	5-10 LAKH	1-3 LAKH	4.47 LAKH

10.21 From the table above, I note that the Noticee had charged advisory service fee to its clients much more than the proposed trading amount mentioned by the clients in their risk profiling form ("**RPF**"). Further, in case of clients mentioned at S. No. 1, 2 and 3 in the table above, the fee charged was even higher than their annual income.

10.22 Further, in case of Vikas Divekar (S. No. 6 at Table III), I note from the call records that the client was encouraged by the Noticee's employee to borrow an amount of Rs. 3 Lakh in order to pay the Noticee's service fee. I note that such advice had been provided without considering the client's financial situation. (*Transcript of call between Vikas Divekar and employee of the Noticee is reproduced at paragraph 10.50*)

10.23 In view of the above, I find that the Noticee had knowingly disregarded the parameters for suitability as prescribed under Regulation 17 of the Investment Adviser Regulations, 2013 such as client's financial situation, investment objectives, risk appetite, etc. The Noticee sold products/ services to its clients without considering their financial status and their investment needs. Thus, the Noticee did not act honestly and in the best interests of its clients. The Noticee also failed to act in a fiduciary capacity towards its clients. I note that the Noticee did not act with due skill to ensure the suitability of its advice. Accordingly, I find that the Noticee violated Regulations 15(1), 17 and Clauses 1, 2 and 6 of the Code of Conduct specified in Schedule III read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

E. Failure to carry out adequate and appropriate risk profiling of its clients and using leading questions in its risk profiling questionnaire in violation Regulations 16(b) and 16(d)(ii) of the Investment Adviser Regulations, 2013.

10.24 The Noticee is alleged to have failed to conduct risk profiling of its clients in a proper manner and the risk profiling questionnaire used by the Noticee was alleged to contain leading questions.

10.25 In its reply, the Noticee submitted as under:

- a. The allegation that the process of risk profiling carried out by Pinnacle is subjective is not right because we have the process/ mechanism to determine the risk profiling of the clients on the basis of scores generated through weight assign to every question on the RPF.*
- b. We have assigned the weight on the basis of proper reasoning. For example, if the clients age is above 45 years than he can take more risk so he got the high nos. On the other side, if the client is a senior citizen than he cannot take more risk so he got the low nos. On the basis of this reasoning, we had assigned the numeric Nos. (High Scores means high risk appetite, Low score means low risk appetite). So, on basis of the*

above facts, this allegation is also not right that the method which Pinnacle categorizes the risk category (high/ medium/ low) is not fair and transparent but vague, ambiguous and deceptive.

10.26 An analysis of the sample risk profiling forms of the Noticee's clients is given below:

TABLE IV								
S. NO. AS PER RPF	CLIENT NAME	NIRAJ TIWARI	D. K. RAHUL	KAPIL GUPTA	RALU PRASAD	SUNITA SINGH	MAMTA MESHRAM	ALOK SHARMA
1	Age	25-45	25-45	25-45	25-45	45-55	45-55	55-60
3	Proposed Trading amount	< 1 lakh	< 1 lakh	<1 lakh	< 1 lakh	3-5 lakh	<1 lakh	1-3 lakh
5 (a)	Best describe your attitude about the next three years performance of this investment?	I need to see at least a little return	I'd have a hard time tolerating a loss	I don't mind if I lose money	I don't mind if I lose money	I need to see at least a little return	I don't mind if I lose money	I'd have a hard time tolerating a loss
6	Annual Income	5 -10 lakh	5 -10 lakh	3-5 lakh	Below 3 lakh	10-15 lakh	3-5 lakh	3-5 lakh
21	High risk is associated with high return, medium risk is associated with medium returns and low risk is associated with low returns. What risk can you bear (not prefer)?	Medium	Medium	Medium	Medium	High	Medium	Medium
	Payment Received by Investment Adviser as fees	4 lakh	2.74 lakh	2.7 lakh	4.66 lakh	20 lakh	3.09 lakh	10.46 lakh
	Risk Category assigned by Investment Adviser	High	High	High	High	Low	High	High

10.27 From the table above, I note that except for Sunita Singh, all the clients had categorically mentioned that they could bear only 'medium' risk. However, the Noticee had categorized the said clients as 'high' risk for the purpose of providing advisory services to them. Further, Sunita Singh had been categorized under the 'low' risk category even though she had claimed that she could bear 'high' risk. In view of the same, I note that the Noticee had failed to appropriately assess the client's risk profile i.e. their ability/ willingness/ appetite to take risk with regard to their investments in the securities market.

10.28 In case of D. K. Rahul and Kapil Gupta, both the clients belong to the same age category and same proposed trading amount. However, their attitude towards performance of their investment over the next three years was different. D. K. Rahul stated that he would have had a hard time tolerating a loss whereas Kapil Gupta stated that he did not mind losing money. In spite of the aforesaid difference, both the clients had been categorized as '*high*' risk. In view of the same, I note that the Noticee failed to assess the client's capacity for absorbing loss.

10.29 Regulation 16(b) of the Investment Adviser Regulations, 2013 states that the Investment Adviser must have a process for assessing the risk a client is willing and able to take, including assessing the client's capacity for absorbing loss, whether the client is unwilling to accept the risk of loss of capital and appropriately interpreting client responses to questions and not attributing inappropriate weight to certain answers.

10.30 I note from the paragraphs above that the Notice had failed to appropriately assess the risk appetite of its clients, interpret client's responses appropriately and assign them into suitable risk category. There appears to be no underlying principle as to how the risk profiling process was carried out by the Noticee. I find that the Noticee had carried out the risk profiling process in a subjective manner as brought out in the paragraphs above. It leads to a conclusion that the Noticee did not have a process or mechanism such as score or mechanism assigned to the questions in the RPF to arrive at the risk appetite of the client.

10.31 In this regard, the Noticee submitted that it had a process to determine the risk profile of the clients on the basis of the scores generated through the weightage assigned to every question in the RPF. However, on a perusal of several RPFs, it is noted that no such scores were given to the clients' responses. Further, the aforesaid submission of the Noticee has not been backed by any supporting documents. Hence, I am not inclined to accept the submission of the Noticee.

- 10.32 In view of the above, I find that the Noticee had violated Regulation 16(b) of the Investment Adviser Regulations, 2013.
- 10.33 The risk profiling questionnaire used by the Noticee was alleged to have had leading questions.
- 10.34 As regards the allegation regarding the leading question in the RPF, no reply was furnished by the Noticee.
- 10.35 In terms of Regulation 16(d)(ii) of the Investment Adviser Regulation, 2013, any questions or description in any questionnaires used to establish the risk a client is willing and able to take must be fair, clear and not misleading and the Investment Adviser should ensure that the questionnaire is not structured in a way that it contains leading questions.
- 10.36 In this regard, I note that the RPF had the following question: *“High risk is associated with high return, medium risk is associated with medium return and low risk is associated with low returns. What risk can you bear (not prefer)?”*. The expression *‘High risk is associated with high return...’* would create in the mind of any average person, the impression that high return can only be achieved through high risk. This however, does not indicate the fact that high risk products/ services involve equally high chances of losses. Accordingly, if the Noticee had made its clients aware of the aforementioned, they would have been better placed to understand the perils associated with investing in high risk products.
- 10.37 I note that in the instant matter, the question mentioned in the RPF had been framed in such a manner so as to lead the Noticee’s clients into believing that only high risk can result in high returns. In view of the above, I find that the Noticee had violated Regulation 16(d)(ii) of the Investment Adviser Regulations, 2013.

F. Failure to charge fees from its clients in a fair and reasonable manner and failure to act fair and in best interests of its clients in violation of Clauses 1 and 6 of the Code of Conduct specified under the Third Schedule read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

10.38 The Noticee is alleged to have charged fees from its clients even prior to communicating their RPF. Further, the Noticee was also alleged to have charged clients for services, which were yet to be rendered to them.

10.39 In its reply, the Noticee submitted as under:

- a. *The purpose of risk profiling as per the Investment Adviser Regulations is that the Investment Adviser should be able to ascertain the risk appetite of the client and then recommend a product/service suitable to client with such risk profile and client can also assess his risk profile before agreeing to accept the advice so for this we have mailed risk profile to client before giving advice. In some instances, we have received amount before sending mail but we have communicated the risk profile before taking payment as we have the process to complete the risk profile on telephone with proper communication with clients so we have communicated the same on telephonic and thereafter send the mail.*

10.40 I note that in a few cases, the Noticee had received payment from the clients even before communicating the RPF to their clients. The details of such instances are as under:

TABLE V			
S. No.	CLIENT NAME	DATE OF COMMUNICATION OF RPF	DATE OF INVOICE / PAYMENT
1	D. K. RAHUL	MAY 4, 2018	MAY 2, 2018
2	BHAGAT SINGH	OCTOBER 22, 2018	OCTOBER 10-16, 2018
3	KAPIL GUPTA	JUNE 18, 2019	JUNE 17, 2019
4	MAMTA MESHARAM	JULY 5, 2019	JULY 4, 2019

10.41 From the above, I note that the products / services were sold by the Investment Adviser even before communicating the risk profiling of the clients to them.

10.42 In this regard, the Noticee did not contest the fact that the client was charged for the products/ services even before the communication of RPF through e-mail. However, the Noticee submitted that the RPF was communicated to the clients through telephone after which the e-mail was sent. I note that the aforesaid submission of the Noticee was not backed by any supporting documents / evidence. Hence, I am not inclined to accept the same.

10.43 I also note that the Noticee was charging fees from clients for services yet to be rendered. A few such instances are given as under:

TABLE VI					
S. No.	CLIENT NAME	PRODUCT	DURATION	DATE OF PAYMENT / INVOICE	AMOUNT IN Rs.
1	SUNITA SINGH	BTST FUTURE	JUL 13, 2017 – AUG 11, 2017	JAN 12, 2017	NA
2	RASMITA PRADHAN	HNI CASH	SEP 20, 2017 – MAR 27, 2018	APRIL 04, 2017	NA
3	ALOK SHARMA	INTRADAY CASH	JUN 11, 2019 – JUN 28, 2019	MARCH 11, 2019	5,000
4	NIRAJ TIWARI	PREMIUM FUTURE	JAN 20, 2021 – APR 23, 2021	JUNE 16, 2020	1,00,000
5	D. K. RAHUL	HNI OPTION	AUG 23, 2018 – DEC 04, 2018	MAY 19, 2018	80,000

10.44 From the table above, I find that the Noticee had charged fees from clients for a service that would begin after a period ranging from three months to six months. Such acts of the Noticee was not in the best interest of the clients as such advance payment of fees would compel the clients to avail the services offered by the Noticee without an option to change their decision in the event they were not satisfied with such services. I note from the complaint of Niraj Tiwari that the Noticee denied to provide refund to him for services that had not yet started by merely stating that it did not have a refund policy.

10.45 As regards the allegation regarding charging of fees for the services to be rendered in the future, no reply was furnished by the Noticee.

10.46 In view of the above, I find that the Noticee did not act honestly, fairly and in the best interests of its clients. Further, I find that the Noticee did not ensure that the fees charged to its clients were fair and reasonable. Accordingly, I find that the Noticee violated Clauses 1 and 6 of the Code of Conduct specified in Schedule III read with Regulation 15(9) of the Investment Adviser Regulations, 2013.

10.47 As regards all the aforementioned allegations, I also crave leave to rely on the Order of the Hon'ble Securities Appellate Tribunal ("**SAT**") dated September 6, 2023 ("**SAT Order**"), in respect of the appeal by the Noticee against the WTM Order No. WTM/SM/WRO/WRO/23160/2022-23 dated January 25, 2023 ("**SEBI Order**"). Vide the aforesaid Order, SAT had concurred with the findings in the SEBI Order and held as under:

"...The intimation of this appointment was made to SEBI on July 23, 2018 after a delay of more than 18 months. We find that the reasoning given by the Appellant, that SEBI was informed within 30 days of entrustment of the duties relating to investment advisory to the new directors, is specious as the Board of Directors are responsible for day to day functioning of the Company (Pinnacle) and play an important role in ensuring that the Company functions within the boundaries of applicable law. Any change in the composition of the Board of Directors is a material change. The Appellant is consequently guilty of violating Regulation 13 (b) of the IA Regulations.

With regard to charge of improper risk profiling of clients and absence of process of correct risk assessment of clients, the WTM held that the charges were proved thereby violating Regulations 15(1), 16(b), 16(d)(ii) and 17(d)(ii) of IA Regulations and Clause 2 of Code of Conduct for Investment Advisor read with Regulation 15(9) of IA Regulations. In this regard, we find that there were lacunae in the risk profiling mechanism of the appellants. We also find that in few cases fees from clients was received before the completion of risk profiling process. We thus find that the Appellants violated the above stated IA Regulations.

The WTM held that the Appellants initially on-boarded clients for particular service for a basic fee and then made clients upgrade in order to extract more fees. The WTM, therefore, held that the Appellants violated Regulation 15(1) and 17 of the IA Regulations and Clause 1, 2 and 6 of the Code of Conduct read with Regulation 15(9) of IA Regulations. We also notice that they charged abnormally high fees for the advice given. We, therefore, hold that the Appellants were in violation of Regulation 15(1) and 17 of IA Regulations and

Clauses no. 1, 2 and 6 of Code of Conduct read with Regulation 15(9) of IA Regulations.

With regard to charging fees for services to be rendered in future, we agree with the findings of the WTM that the Appellants were collecting fees from clients much in advance in violation of Clause 1 of the Code of Conduct read with Regulation 15(9) of IA Regulations.

We find that the Appellants failed to maintain arms-length relationship between their investment advisory services and execution of trade for at least one client in violation of Regulation 15(1), 15(3) and 22(b) of the IA Regulations and Clause 1 of Code of Conduct read with Regulation 15(9) of IA Regulations.

With regard to the failure of the Appellants in redressing investors grievances forwarded to them on the SCORES platform, admittedly the Appellants delayed redressing the complaints for more than 60 days. Some of the complaints confirmed to remain unaddressed till date. Needless to say this is a serious deficiency on the part of the Appellants and the Appellants have violated Regulation 21 of the IA Regulations.

We are of the opinion that the Appellants have violated various regulations of the IA Regulations and Code of Conduct read with Regulation 15(9) of the IA Regulations.”

G. *Promising unrealistic returns to its clients and charging unreasonable fees in violation of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003.*

10.48 The Noticee is alleged to have provided assurance of profits/ unrealistic returns to its clients and charged unreasonable fees from them in violation of Sections 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003.

10.49 A client of the Noticee namely, Pallav Shah had submitted a complaint against the Noticee along with a WhatsApp audio message received by him from the Noticee's employee. The aforesaid WhatsApp message *inter alia* had informed Pallav Shah of the following: “*Dear Sir, this is to update you that you had a conversation with our executive for the services of the Company. And you are*

having some trust issue and according to the conversation if we fail to give you the profits in the services we will repay your service amount as well as provide you 1 month services free of cost. Regards, Service Team.” It is noted from the aforesaid message that the Noticee is assuring profits to its clients.

10.50 I note from the call recordings as submitted by another client of the Noticee, Vikas Divekar, that the Noticee had promised daily returns by trading in the account held by the client with Goodwill Wealth Management. The transcripts of two such calls between Vikas Divekar and the Noticee's employee is given as under:

a. Noticee's Employee: *“App jis package mein kar raha hoon, us mein chaleez se kam ka profit minimum hoti hi nahi. Minimum chaleez hazaar par mein aapko teen din mein 1 lakh nikalke doonga.”*

Noticee' employee: *“...Kyunki chaleez se kum main profit nahi deta hoom Sir, aur mein koshish karunga Sir ki mein aapko saath se sathar thak ka bhi profit doon.”*

b. Complainant: *“account mein hai hi nahi na, kali 8000/- hain”*

Noticee' employee: *“account mein aapko kal theez hazaar rupya rakhna hain. Keval theez hazaar rupya, aur kuch nahi rakhna. Theez hazaar account main rakhlo aur kuch bhi mat rakhna, mere upar chodhho bhaki...”*

Complainant: *“Nahi hoga hai tho.”*

Kyunki chaleez se kum main profit nahi deta hoom Sir, aur mein koshish karunga Sir ki mein aapko saath se sathar thak ka bhi profit doon.”

Noticee' employee: *“...yeh joh teen lakh aap kisise lenge toh, mein aapko bata raha hoon sir; 4 din ke time maang rahe hoon 1 lakh ke liye, 4 din ke time maanga na, aur 4 din ka time maanga na. chaar din ke time mein, main aapko ek lakh nikalke poora dedoonga, aur aap us person ko dena. Yeh meri responsibility hain.”*

10.51 As regards the allegation regarding assurance of profits, no reply was furnished by the Noticee.

10.52 In this context, I note that with regard to the violations of the PFUTP Regulations, 2003 as alleged against the Noticee, the SAT had observed as under in the SAT Order:

Charging Unreasonable Fees

“...We find that the Appellants did not adhere to the norms of providing investment advice based on the client’s financial situation and requirements. We also notice that they charged abnormally high fees for the advice given. We, therefore, hold that the Appellants were in violation of Regulation 15(1) and 17 of IA Regulations and Clauses no. 1, 2 and 6 of Code of Conduct read with Regulation 15(9) of IA Regulations. However, with regard to violation of Regulation 3(a), (b), (c) and (d) of PFUTP Regulations, we find that the charges of fraudulent activities is based on the complaints of the clients and in our opinion such bald allegations need to be investigated further to term them as fraud...”

Providing Assured Returns

“...Regarding the charge of providing assured returns by the Appellants as stated in Paragraphs 33 to 37 of the impugned order, we find that the WTM has relied upon the complaints made by the clients of the Appellants. In our opinion, the allegations made in these complaints cannot be taken as material evidence and need to be investigated to arrive at such a finding. Such bald allegations as made in the complaints cannot lead to an assumption or presumption or conclusion that the Appellants have played a fraud attracting Regulations 3(a), (b), (c) and (d) of PFUTP Regulations read 9 with Regulations 2(1)(c)(1), (2) and (8) of PFUTP Regulations...”

10.53 Accordingly, on the basis of the material available on record, it cannot be conclusively determined that the Noticee had violated the provisions of PFUTP Regulations, 2003 with regard to the allegation of promising assured returns and charging unreasonable fees.

CONCLUSION

10.54 In the instant proceedings, it is reiterated that the DA had recommended that: “... *the registration of the Noticee i.e. Pinnacle Market Investment Advisory Pvt. Ltd. [SEBI Registration No. INA000005614] **be cancelled** ...*”. In this context and as detailed at paragraphs 10.1 – 10.47, I find that the Noticee had violated the provisions of the Investment Adviser Regulations, 2013, which findings have also been reaffirmed by the SAT Order. However, in respect of the allegations concerning the violation of the PFUTP Regulations, 2003, I find that the same cannot be conclusively determined at this stage, in light of the material available on record. Taking into account all the aforesaid, I am of the considered view that the Certificate of registration of the Noticee instead of being cancelled, be suspended for a period of three years, which is commensurate with the violations committed by the Noticee.

ORDER

11. I, in exercise of powers conferred upon me in terms of Section 19 and Section 12(3) of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008, hereby suspend the Certificate of registration granted to the Noticee, i.e. **Pinnacle Market Investment Advisory Pvt. Ltd. (No. INA000005614)**, as an Investment Adviser, for a period of **three years**.
12. This Order shall come into force with immediate effect.
13. A copy of this Order shall be served on the Noticee immediately. A copy of this Order shall also be served on the recognized Stock Exchanges and BSE Administration and Supervision Ltd.

Place: Mumbai
Date: September 12, 2023

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA