QJA/GR/WRO/WRO/30286/2024-25

SECURITIES AND EXCHANGE BOARD OF INDIA

ENQUIRY ORDER

Under Section 12(3) of Securities and Exchange Board of India Act, 1992 read with Regulation 27 of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and Regulation 28 of Securities and Exchange Board of India (Investment Advisers) Regulation, 2013.

IN RESPECT OF:

NOTICEE	SEBI Registration No.	PAN
M/s. Money CapitalHeight Research Investment Advisers Pvt. Ltd.,	**INA000001423**	**AAHCM2437R**

In the matter of M/s. Money CapitalHeight Research Investment Advisers Pvt. Ltd.,

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Background:

1. The present matter emanates from a Show-Cause Notice dated October 26, 2023 (hereinafter referred to as **"SCN"**) issued by Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) to M/s. Money CapitalHeight Research Investment Adviser Pvt Ltd., (hereinafter referred to as **"Noticee" or "IA"**), registered with SEBI since April 03, 2014, with registration number **INA000001423** under Regulation 27(1) of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as **"Intermediaries Regulations, 2008"**), calling upon the Noticee to show cause as to why action as recommended by the Designated Authority (hereinafter referred to as **"DA"**) or any other direction/ penalty as deemed fit should not be issued/imposed on the Noticee. The SCN enclosed with it the Enquiry Report of the Designated Authority dated August 17, 2023 (hereinafter referred to as **"Enquiry Report**" or **"ER"**).

2. On examination of the following prima facie violations against the Noticee, DA has submitted the Enquiry Report;

2.1. Failure to comply with qualification and certification requirements, thereby violated the provisions of Regulation 15(13) read with Regulation 7 of Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as "**IA Regulations**") and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of the IA Regulations and Paragraph 2(iv) of SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 on Guidelines for Investment Advisers (hereinafter referred to as "**SEBI circular dated September 23, 2020**"),

2.2. Failure to submit documents in respect of qualification requirement sought by SEBI in violation of Regulation 15(12) of IA Regulations for non-submission of documents sought by SEBI.

2.3. Failure to follow proportionate fee structure which is in violation of Regulation 15A of IA Regulations r/w provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations,

2.4. Failure to follow the prescribed format of agreement and thereby violated the provisions as specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 and Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations,

2.5. Failure to maintain proper records which is in violation of Regulation 19(2), 25(1) and 25(2) of IA Regulations and Paragraph 2(vi) of SEBI circular dated September 23, 2020,

2.6. Failure to maintain proper client samples and thereby violated the provisions of Regulations 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of

Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020,

2.7. Failure to comply with AML guidelines which is in violation of the provisions of SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019,

2.8. Promised assured returns, offered trial to prospective clients and charged part payment for providing services in violation of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, (hereinafter referred to as the "**PFUTP Regulations**") read with section 12A (a), (b) and (c) of SEBI Act, Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III read with Regulation 15(9) of IA Regulations, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019,

3. 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 IA Regulations, the DA had recommended that:

"*In view of the facts of the case, in terms of Regulation 26(1)(i) of the Intermediaries Regulations, I recommend that the proceedings against M/s. Money Capital Height Research Investment Advisers Pvt. Ltd., having certificate of registration bearing Registration No: INA000001423, may be disposed of without any adverse action*."

Post Enquiry Proceedings:

4. Thereafter, Post–enquiry Show Cause Notice dated October 26, 2023, was issued to the Noticee enclosing the copy of the ER vide Speed Post AD on the same day and also vide e-mail dated October 27, 2023 at the email ids – compliance.officer@capitalheight.com and support@capitalheight.com . While the

SCN issued by SPAD had returned undelivered, the SCN served vide the aforesaid e-mail dated October 27, 2023, was duly delivered.

5. Thereafter, the matter was placed before me to conduct of further proceedings. In this regard, Regulation 27(5) of the Intermediaries Regulations, 2008 states as follows:

"Order

27.(1) ….

"(5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavour to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later."

6. In the present matter, as there was no response received even after 21 days of receipt of the SCN, in terms of Regulation 27(4) of the Intermediaries Regulations, 2008, an opportunity of personal hearing was granted to the Noticee on March 12, 2024, vide e-mail dated March 04, 2024 at the above-mentioned e-mail ids. However, the Noticee did not attend the scheduled hearing and later vide its e-mail dated March 13, 2024, sought for another opportunity of personal hearing stating that the SCN issued by SEBI vide e-mail dated March 04, 2024 had inadvertently been missed out by it. Accordingly, another opportunity of personal hearing was granted to the Noticee on March 15, 2024 vide e-mail dated March 14, 2024. The said Notice was duly delivered. Accordingly, the AR of the Noticee appeared on the scheduled date of the personal hearing and made an oral submission, wherein he stated that the Noticee would be submitting a reply in the matter on or before March 18, 2024 along with the copy of the surrender application containing certificate from the competent authority that no dues are pending. In this regard, subsequently, vide e-mail dated March 18, 2023, the Noticee submitted its reply in the matter to the undersigned.

Consideration of Issues and Findings:

7. After considering the allegations levelled in the SCN against the Noticee, observations made thereon in the ER by DA, reply submitted by the Noticee, the

documents / material available on record, the following issues arise for consideration;

<u>Issue No. I</u>: Whether the Noticee has violated the provisions of Regulation 7, 15(1), 15(12), 15(13), 15(9), 15A, 17(a), 17(e), 19(2), 25(1) and 25(2) of IA Regulations and clause 1, 2, 6 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule and Paragraphs 2(ii), 2(iii) 2(iv), 2(vi), 2(viii) of SEBI circular dated September 23, 2020, SEBI Circular SEBI/HO/MIRSD/DOP/CIR/P/2019/113 dated October 15, 2019, Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019?

<u>Issue No. II</u>: ***If the issue(s) framed above are answered in affirmative, whether the Noticee is liable for action under Regulation 26 of the Intermediaries Regulations, 2008***?

8. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, IA Regulations, PFUTP Regulations, and provisions of SEBI circulars alleged to have been violated by the Noticee. The same are reproduced herein below:

Regulation / Clause of Circular	***Provision specified in the SEBI Act / IA regulation/ PFUTP+ Regulation / SEBI Circular***
SEBI Act	
Section 12A	*Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.* *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 recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
PFUTP Regulations	

Regulation 3	*3. Prohibition of certain dealings in securities No person shall directly or indirectly—* *(a) buy, sell or otherwise deal in securities in a fraudulent manner;* *(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;* *(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;* *(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*
Regulation 4	*4(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.* *Explanation.– For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.* *4(2)(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;* *4(2)(s) mis-selling of securities or services relating to securities market;* *Explanation- For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—* *knowingly making a false or misleading statement, or* *knowingly concealing or omitting material facts, or* *knowingly concealing the associated risk, or* *not taking reasonable care to ensure suitability of the securities or service to the buyer;*
IA Regulations	
Regulation 2(1)(r)	*"persons associated with investment advice" shall mean any member, partner, officer, director or employee or any sales staff of such investment adviser including any person occupying a similar status or performing a similar function irrespective of the nature of association with the investment adviser who is engaged in providing investment advisory services to the clients of the investment adviser;* *Explanation. — All client-facing persons such as sales staff, service relationship managers, client relationship managers, etc., by whatever name called shall be deemed to be persons associated with investment advice, but do not include persons who discharge clerical or office administrative functions where there is no client interface.*
Regulation 7	***Qualification and certification requirement*** *7. (1) An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations, shall have the following minimum qualification, at all times -* *(a) A professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science*

	from a university or an institution recognized by the Central Government or any State Government or a recognised foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than one year or a professional qualification by obtaining a CFA Charter from the CFA Institute; *(b) An experience of at least five years in activities relating to advice in financial products or securities or fund or asset or portfolio management;* *(c) Persons associated with investment advice shall meet the following minimum qualifications, at all times -* *(i) a professional qualification as provided in clause (a) of sub-regulation (1) of regulation 7; and* *(ii) an experience of at least two years in activities relating to advice in financial products or securities or fund or asset or portfolio management:* *Provided that investment advisers registered under these regulations as on the date of commencement of these regulations shall ensure that the individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice comply with such qualification and experience requirements within three years:* *Provided further that the requirements at clauses (a) and (b) shall not apply to such existing individual investment advisers as may be specified by the Board.* *(2) An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations and persons associated with investment advice shall have, at all times a certification on financial planning or fund or asset or portfolio management or investment advisory services -* *(a)from NISM; or* *(b)from any other organization or institution including Financial Planning Standards Board of India or any recognized stock exchange in India provided such certification is accredited by NISM:* *Provided that fresh certification must be obtained before expiry of the validity of the existing certification to ensure continuity in compliance with certification requirements:* *Provided further that fresh certification before expiry of the validity of the existing certification shall not be obtained through a CPE program.*
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(9)	*An investment adviser shall abide by Code of Conduct as specified in Third Schedule.*
Regulation 15(12)	*Investment advisers shall furnish to the Board information and reports as may be specified by the Board from time to time.*
Regulation 15(13)	*It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements as specified under Regulation 7 at all times.*
Regulation 15A	***Fees*** *Investment Adviser shall be entitled to charge fees for providing investment advice from a client, including an accredited investor, in the manner as specified by the Board.*
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) ……*

	(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 19	*Maintenance of records* *19. ….* *(2) All records shall be maintained either in physical or electronic form and preserved for a minimum period of five years:* *Provided that where records are required to be duly signed and are maintained in electronic form, such records shall be digitally signed.* *(3) ….*
Regulation 25	*Obligation of investment adviser on inspection* *(1) It shall be the duty of every investment adviser in respect of whom an inspection has been ordered under the regulation 23 and any other associate person who is in possession of relevant information pertaining to conduct and affairs of such investment adviser, including partners, directors, principal officer and persons associated with investment advice], if any, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with such statements and information as the inspecting authority may require for the purposes of inspection.* *(2) It shall be the duty of every investment adviser and any other associate person who is in possession of relevant information pertaining to conduct and affairs of the investment adviser to give to the inspecting authority all such assistance and shall extend all such co-operation as may be required in connection with the inspection and shall furnish such information as sought by the inspecting authority in connection with the inspection.*
Code of Conduct for Investment Advisers as specified under Third Schedule	***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 Board. 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.*
SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/182 dated September 23, 2020 on Guidelines for Investment Advisers	
Paragraph 2(ii)	***Agreement between IA and the client*** *a. Regulation 19 (1) (d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients. The said agreement shall mandatorily cover the terms and conditions provided in Annexure-A.* *b. IA can include additional terms and conditions in the agreement without diluting the provisions of SEBI (Investment Advisers) Regulations, 2013 and amendments thereto as well as circulars issued thereunder.*

	c. IA shall ensure that neither any investment advice is rendered nor any fee is charged until the client has signed the aforesaid agreement and provided copy of signed agreement to the client. *d. IA shall enter into investment advisory agreement with its clients including existing clients latest by April 01, 2021 and submit a report, confirming the same to SEBI latest by June 30, 2021.*
Paragraph 2(iii)	***Fees*** *Regulation 15 A of the amended IA Regulations provide that Investment Advisers shall be entitled to charge fees from a client in the manner as specified by SEBI, accordingly Investment Advisers shall charge fees from the clients in either of the two modes:* *(A) Assets under Advice (AUA) mode* *a. The maximum fees that may be charged under this mode shall not exceed 2.5 percent of AUA per annum per client across all services offered by IA.* *b. IA shall be required to demonstrate AUA with supporting documents like demat statements, unit statements etc. of the client.* *c. Any portion of AUA held by the client under any pre-existing distribution arrangement with any entity shall be deducted from AUA for the purpose of charging fee by the IA.* *(B) Fixed fee mode* *The maximum fees that may be charged under this mode shall not exceed INR 1,25,000/- per annum per client across all services offered by IA.* *General conditions under both modes* *a. In case "family of client" is reckoned as a single client, the fee as referred above shall be charged per "family of client".* *b. IA shall charge fees from a client under any one mode i.e. (A) or (B) on an annual basis. The change of mode shall be effected only after 12 months of on boarding/last change of mode.* *c. If agreed by the client, IA may charge fees in advance. However, such advance shall not exceed fees for 2 quarters.* *d. In the event of pre-mature termination of the IA services in terms of agreement, the client shall be refunded the fees for unexpired period. However, IA may retain a maximum breakage fee of not greater than one quarter fee.*
Paragraph 2(iv)	***Qualification and certification requirement*** *Regulation 7 of the amended IA Regulations specifies the minimum qualification and certification requirements for IAs. Further, in terms of second proviso of regulation 7 (1), existing individual IAs above fifty years of age (as on September 30, 2020) shall not be required to comply with the qualification and experience requirements specified under Regulation 7(1)(a) and 7(1)(b) of the amended IA Regulations. However, such IAs shall hold NISM accredited certifications and comply with other conditions as specified under Regulation 7 (2) of the amended IA Regulations at all times.*
Paragraph 2(vi)	***Maintenance of record*** *Regulation 19 (1) of the SEBI (Investment Advisers) Regulations, 2013 provides that IA shall maintain records with respect to his activities as an investment adviser. In this regard, it is clarified that:* *a.IA shall maintain records of interactions, with all clients including prospective clients (prior to onboarding), where any conversation related to advice has taken place inter alia, in the form of:* *i. Physical record written & signed by client,* *ii. Telephone recording,* *iii. Email from registered email id,* *iv. Record of SMS messages,*

	v. Any other legally verifiable record. *b. Such records shall begin with first interaction with the client and shall continue till the completion of advisory services to the client.* *c. IAs shall be required to maintain these records for a period of five years. However, in case where dispute has been raised, such records shall be kept till resolution of the dispute or if SEBI desires that specific records be preserved, then such records shall be kept till further intimation from SEBI.*
Paragraph 2(vii)	***Audit*** *a. As per regulation 19 (3) of the amended IA Regulations, IA shall ensure that annual audit in respect of compliance of SEBI (Investment Advisers) Regulations, 2013 and circulars issued thereunder is conducted. The audit shall be completed within six months from the end of each financial year.* *b. The adverse findings of the audit, if any, along with action taken thereof duly approved by the individual IA/management of the non-individual IA, shall be reported to respective SEBI office (based on the registered address of IA) within a period of one month from the date of the audit report but not later than October 31st of each year for the previous financial year starting with the financial year ending March 31, 2021.*
Paragraph 2(viii)	***Risk profiling and suitability for non-individual clients*** *a. Regulation 16 and 17 of SEBI (Investment Advisers) Regulations, 2013 mandates risk profiling and suitability for all categories of clients.* *b. In order to further enhance the risk profiling and encompass suitable factors in case of non-individual clients, IA shall use the investment policy as approved by board/management team of such non-individual clients for risk profiling and suitability analysis.* *c. The discretion to share the investment policy/relevant excerpts of the policy shall lie with the non-individual client. However, IA shall have discretion not to onboard non-individual clients if they are unable to do risk profiling of the non-individual client in the absence of investment policy.*
SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 on Measures to strengthen the conduct of Investment Advisers (IA)	
Paragraph 1(i)	*As per SEBI (Investment Advisers) regulations, 2013, investment advice can be given after completing risk profiling of the client and ensuring suitability of the product. It has come to the notice that IAs are providing advice on free trial basis without considering risk profile of the client. Hence the IAs shall not provide free trial for any products / services to prospective clients. Further, IA shall not accept part payments (where some part of the fee is paid in advance) for any product / service.*

IA Regulations

Liability for action in case of default

28. An investment adviser who -

(a) contravenes any of the provisions of the Act or any regulations or circulars issued thereunder;

(b) fails to furnish any information relating to its activity as an investment Adviser as required by the Board;

(c) furnishes to the Board information which is false or misleading in any material particular;

(d) does not submit periodic returns or reports as required by the Board;

(e) does not co-operate in any enquiry, inspection or investigation conducted by the Board;
(f) fails to resolve the complaints of investors or fails to give a satisfactory reply to the Board in this behalf, shall be dealt with in the manner provided under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

9. I note that SEBI conducted an inspection of the Noticee. On the basis of the findings of the inspection, the DA has issued a Show Cause Notice dated May 19, 2023 (hereinafter referred to as **"DA SCN"**) to the Noticee. Since no reply was received by July 18, 2023, in the interest of justice, vide hearing notice dated July 21, 2023, an opportunity of personal hearing was granted to Noticee on July 31, 2023. However, vide letter dated July 27, 2023, the Noticee requested for adjournment of personal hearing scheduled on July 31, 2023 and also requested for extension of time to file reply to the SCN. Accordingly, the request of the Noticee was acceded to and fresh opportunity of personal hearing was granted to the Noticee by the DA. Thereafter, another opportunity of personal hearing was granted to the Noticee on August 11, 2023 and the same was conveyed to it vide email dated July 27, 2023, wherein the Noticee was also advised to file the reply within extended timeline i.e. August 03, 2023. Consequently, the Noticee vide its letter dated July 31, 2023 filed its written submissions to the SCN. Subsequently, the AR of the Noticee attended the personal hearing on August 11, 2023 and reiterated the aforesaid submissions made by the Noticee. Thereafter, the DA had submitted the ER dated August 17, 2023 containing his recommendation. Therefore, in this order, I would be examining the sustainability of the findings given in the ER on the allegations made in the DA SCN, which are as under;

I. <u>Failure to comply with qualification and certification requirements:</u>

i. In the present matter, it is alleged that the Noticee has not complied with the qualification and certification requirement in line with Regulation 7(1) (a) of IA Regulations. In this regard, I note that as per this Regulation, partners and representatives of registered investment adviser shall have at all times a professional qualification or post-graduate degree or post graduate diploma or a graduation in any discipline with an experience of at least five years in activities

relating to advice in financial products. Further, I also note that as per the Amended Regulation of 7(1) (a) of IA Regulations, which came into effect on 30/09/2020, a principal officer of a non-individual investment adviser shall have, at all times, a professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration). Thereafter, I also observe that as per Regulation 15(13) of the IA Regulations, it is the responsibility of the IA to ensure compliance with the certification and qualification requirements as per Regulation 15 (19) of the IA Regulations as well as all IAs shall abide by the code of conduct specified in Schedule III.

ii. In light of the above, I note from the DA SCN that on the basis of qualification details and business model submitted by the Noticee, it was observed that though executives working in sales / support and compliance department were acting as persons associated with investment advice, such executives were not in compliance with the qualification and certification requirements as per the provisions of Regulation 7(1) and 7(2) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

iii. Further, I note that from the list of employees/ persons associated with investment advice along with qualification details submitted by the Noticee, it was noted during the inspection that there were 2 directors and 1 compliance officer, of which, only one director had a post graduate degree and the other director, Mr. Ajay Kumar, (who was also the Principal Officer) as well as the compliance officer Ms. Nikita Navlani were not having post graduate degree. Further, out of 17 employees, only 1 employee was qualified with NISM Level 1 and Level 2 certification, and 12 employees were not having the professional qualification or post-graduate degree or post graduate diploma (minimum two years in duration) in finance, accountancy, business management, commerce, economics, capital market, banking, insurance or actuarial science from a university or an institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or a professional qualification by completing a Post Graduate Program in the Securities Market (Investment Advisory) from NISM of a duration not less than

one year or a professional qualification by obtaining a CFA Charter from the CFA Institute. It was also noted that 8 employees out of 9 in compliance department, who were from sales also worked in HR department, which had a different function/role from that of compliance and were not qualified with any level of NISM certification during the period of investigation as specified in the IA Regulations.

iv. Further, it was observed that the Compliance Officer Ms. Nikita Navlani was only a Graduate and did not possess a professional or post graduate qualification as specified in Regulation 7(1)(a) read with Regulation 2(1)(r) of IA Regulations.

v. Based on the above, it is alleged that Noticee has violated Regulation 15(13) read with Regulation 7 of IA Regulations and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020.

vi. In response, the Noticee has submitted that the 8 Employees as referred by SEBI were actually management trainees, who did not have any direct contact with the company's clients and therefore the said qualification requirement was not applicable to them. Further, the Noticee also submitted that Mr. Sunil Bhadauriya and Ms. Anshita Kandari who were responsible for giving advice to the clients had Level 1 and 2 certifications. It was also submitted that in September 2020, the Noticee retained a few employees within the company and provided training to the existing employees to ensure compliance with the Amended IA Regulations and various SEBI Circulars. The Noticee also submitted that the principal officer was Mr. Ajay Kumar and not Ms. Nikita Navlani, therefore there was no specific requirement in respect of the said qualification requirement for her.

vii. With regard to the aforesaid submission of the Noticee, I note that DA has recorded his observation that Mr. Ajay Kumar, who was the principal officer, did not meet the above criterion as he was only a graduate without having a

professional or post graduate qualification. Similarly, the Compliance Officer Ms. Nikita Navlani who was required to comply with Regulation 7(1)(a) of amended IA Regulation as she comes under the definition of "*Persons associated with investment advice*", as given under Regulation 2(1)(r) of IA Regulations, had failed to comply with the same. As regards to the remaining employees, the DA found that the Noticee has not provided any clear response and therefore the DA considered the non-response as an admission to non-compliance with the provisions of IA Regulations as well as the amended IA Regulations and has established the violation as alleged in the SCN.

viii. In light of the above and as the Noticee has made the similar submission during the proceedings, I note that the said facts clearly establish that in line with the aforesaid regulation, with regard to some of its employees, the Noticee has not complied with the qualification requirements fully, till date. I note that the registration criteria for an investment advisor as laid down in the IA Regulations inter-alia provides that the persons associated with investment advice shall have, at all-time a certification on financial planning or fund or asset or portfolio management or investment advisory services from NISM etc. These requirements in the IA Regulations are aimed at ensuring that the interest of investors is protected and the entity granted with registration is qualified enough to do so. As the Noticee has admitted to the allegation, I find that the Noticee was in violation of Regulation 15(13) read with Regulation 7 of IA Regulations and clauses 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations.

II. <u>Failure to submit documents sought by SEBI.</u>

i. I note that as per Regulation 15(12) of the IA Regulations, IAs are required to furnish to the Board information and reports as may be specified by the Board from time to time.

ii. Accordingly, I note from the DA SCN that SEBI vide letter dated April 07, 2021, *inter-alia, sought* information with regard to application of Noticee for prior

approval for Change in Control with respect to the current directors cum shareholders viz. Ajay Kumar and Sunil Singh Bhadauriya including the documents to prove how they met the requisite qualification, experience, certification requirements mentioned in the amended Regulation 7(1) and 7(2) of IA Regulations, along with supporting documents. The Noticee provided only the NISM certificates for Level 1 and Level 2 with regard to both Ajay Kumar and Sunil Singh Bhadauriya, while submitting the MBA mark sheet of Mr. Sunil Singh Bhadauriya. Thereafter, the Noticee was also advised on September 28, 2021 to provide additional documents with respect to the qualifications and application for prior approval for change in control. However, not all the relevant documents were submitted and some of the documents were submitted beyond the stipulated time period. Based on the above, it is alleged that Noticee has violated Regulation 15(12) of IA Regulations.

iii. In respect of the above, I note from the ER that the Noticee has submitted to the DA the requisite documents i.e. Degree Certificate, Appointment Letter and experience certificates pertaining to individual designated as Principal Officer i.e. Ajay as required by SEBI during the inspection vide its letter dated July 31, 2023. Thereafter, vide the said letter the Noticee also stated to the DA that the change in control did not materialize therefore no change of control took place. In fact, in the SI Portal history and Audit Trail, it is mentioned that the application was rejected. Hence, the Noticee feels that there is no alleged violation of Regulation 15 (12) of the IA Regulations since there was no change in control which is the basis for which documents are required. With regard to the above submissions of the Noticee, the DA took a lenient view on the non-compliance by the Noticee on this issue, as he felt that there was no change in control as alleged in the SCN.

iv. In respect of the above, the Noticee made similar submission in the present proceeding. Here, I note that the Noticee had executed a Board resolution dated February 12, 2021, vide which it had intended to transfer the 10,000 shares of its current shareholders namely Mr. Mukul Vij and Mr. Atul Kumar Singh to Mr. Sunil Singh Bhadauriya and Mr. Ajay Kumar in equal share of

5,000 share each and made an online application to SEBI. In this regard, I note that upon observing that directors of the Noticee company were looking to become the shareholders in the company, SEBI had sought for relevant qualification and experience documents from the Noticee vide its letter dated April 07, 2021. Thereafter, since only the NISM certificates for Level 1 and Level 2 with regard to both Ajay Kumar and Sunil Singh Bhadauriya, along with the MBA mark sheet of Mr. Sunil Singh Bhadauriya were submitted to SEBI, vide its letter dated September 28, 2021, SEBI had sought for additional documents with respect to the qualifications and application for prior approval for change in control from the Noticee. As the Noticee could not produce the additional documents with application for prior approval for change in control, due to insufficiency of documents, the relevant approval sought by the Noticee could not be sanctioned and it seems that the Noticee's application for prior approval of change in control was rejected by SEBI in SI portal. In this connection, I note that the Noticee contented that as the change in control did not materialize due to the rejection of SEBI in SI portal there is no violation on the part of the Noticee in this regard. Here I am of the view that as the documents in this case were sought from the Noticee only with regard to the prior approval for change in control, which could not be effected due to insufficient documents, this does not tantamount to a violation. Therefore, this violation against Noticee does not stand established.

III. <u>Failure to follow proportionate fee structure.</u>

i. I note that the Noticee is alleged for the failure to follow proportionate fee structure which is in violation of Regulation 15 of the IA Regulations read with paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations. In this regard, I also note that the said provisions specify the guidelines that how the IA has to charge the fees from its clients in compliance with all the regulatory requirements applicable to conduct its business activities so as to promote the best interest of clients and integrity of the market.

ii. Accordingly, I note from the DA SCN that SEBI observed that the fees charged by the Noticee from its clients were not in accordance with the provisions as specified by SEBI. Fees for all the subscription packages offered by the Noticee for the period April 01, 2021 - September 30, 2021 were examined wherein it was observed that fees charged to the certain clients, were more than Rs.1,25,000/- on annual basis. On perusal of the fees structure, it was noted that there were 12 services offered and for which different fee was charged by the Noticee i.e. fees are charged for 7 days, 15 days, monthly, quarterly and on half yearly subscription basis. The details of the same as under;

- The IA charges fees from the client through fixed fee mode by offering various price packages.
- Fees charged by IA for 7 days (weekly) for a product named super value service was Rs. 8,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 4,16,000/- (52 weeks*8,000).
- Fees charged by IA for 15 days (half month) for a product named intraday service was Rs. 7,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 1,68,000/- (24 half months*7,000).
- Fees charged by IA for 15 days (half month) for a product named super value service was Rs. 16,000/-. Thus, on annual basis, the minimum advisory fees amounts to a sum of Rs. 3,84,000/- (24 half months*16,000).
- Fees charged by IA for monthly for a product named intraday service was Rs. 11,800/- and fees charged by IA for monthly for a product named super value service was Rs. 29,500/- for Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs. 1,41,600/- (12*11,800) and minimum advisory fees for super value service amounts to a sum of Rs. 3,54,000/- (12*29500).
- Fees charged by IA for a quarter for a product named intraday service was Rs. 35,400/- and fees charged by IA for a quarter for a product named super value service was Rs. 70,800/- Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs.

1,41,600/- (4*35,400) and minimum advisory fees for super value service amounts to a sum of Rs. 2,83,200/- (4*70800).

- Fees charged by IA for a half year for a product named intraday service was Rs. 70,800/- Thus, on annual basis, the minimum advisory fees for intraday service amounts to a sum of Rs. 1,41,600/- (2*70,800).
- It was observed that minimum amount of subscription packages offered by the IA for 7 days, 15 days, monthly, quarterly and half yearly duration exceeds the fees amount of Rs. 1,25,000/- if such advisory product fees were charged on an annual basis.
- With respect to the fees charged by IA to its clients, the client master of FY 2021-22 (till September 30, 2021) providing details of fees charged to the clients, as submitted by the IA vide email dated October 25, 2021, were analyzed.
- The Guidelines prescribed with regard to the fees specified in SEBI circular dated September 23, 2020, was applicable with effect from April 01, 2021. From the analysis of client master of FY 2021-22 (April 01, 2021 to September 30, 2021), it was observed that:
- IA received 103 payments from multiple clients amounting to total of Rs. 23,31,590/-.
- Out of 103 payments, there are 99 payments in which it was observed that the fees charged by the IA amounts to more than Rs. 1,25,000/- on annual basis. The total of excess fee charged for 99 payments was Rs. 11,55,902/-.
- From the samples taken for inspection, observation with regard to excess fee charged from the clients during the FY 2021-22 (till September 2021) was as under:

Client Name	**Invoice date**	**Service Name**	**Duration of service as mentioned in the invoice (A)**	**Amount (Rs) Paid (including GST) (B)**	**Max Service charge per day (Rs) =125000/365 (C)**	**Max charges allowed as per service duration (D) = (A)*(C)**	**Extra fees charged by the IA (Rs) (E) = (B) – (D)**

Tunuguntla Soma Sekhar	06/04/2021	Super Value Future Package	90	70,800/-	342/-	30,780/-	40,020/-
	17/08/2021	Super Value Option Package	90	70,800/-	342/-	30,780/-	40,020/-
Sugnana Murthy K	19/04/2021		90	70,800/-	342/-	30,780/-	40,020/-
	30/07/2021		30	29,500/-	342/-	10,260/-	19,240/-
	31/08/2021		30	29,500/-	342/-	10,260/-	19,240/-
Sanghvi Deep Jayantilal	08/04/2021	Stock Option Package	15	7,000/-	342/-	5,130/-	1,870/-
	04/05/2021		15	7,000/-	342/-	5,130/-	1,870/-
	31/05/2021		15	7,000/-	342/-	5,130/-	1,870/-
	30/06/2021		15	7,000/-	342/-	5,130/-	1,870/-
	03/08/2021		15	7,000/-	342/-	5,130/-	1,870/-
Ganesh V Kolkar	09/07/2021	Super Value Cash Package	90	59,000/-	342/-	30,780/-	28,220/-
Alok Kumar Mohanty	10/09/2021	Super Value Option Package	30	29,500/-	342/-	10,260/-	19,240/-
Ramakrishna Rao G Bapat	13/08/2021	Super Value Option Package	90	70,800/-	342/-	30,780/-	40,020/-
Kamal P Gupta	08/04/2021	Super Value Cash Package	7	8,000/-	342/-	2,394/-	5,606/-
Shubham Patil	14/09/2021		15	7,000/-	342/-	5,130/-	1,870/-
Ayush Jain	24/09/2021	Super Value Option Package	7	6,400/-	342/-	2,394/-	4,006/-

iii. In respect of the aforesaid disproportionate fee structure followed by the Noticee which is alleged to be in violation of Regulation 15A of IA Regulations read with provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations, the Noticee has submitted that none of the fees for the services provided by it exceeds Rs1,25,000/-. Further, it was submitted that as a policy decision, the Noticee had not provided services for a period more than 6 months. It was also stated that even in terms of the fees of Rs.70,800/- collected for an Half Yearly basis is actually Rs.60,000/- + GST @ 18%. In other words, even if the said fee is considered for a year, the total amount comes to Rs.1,20,000/- + GST @ 18% for the entire year which is less than the annual maximum fees of Rs.1,25,000/- Hence, the Noticee submitted that the fees collected between 01.04.2021 to 30.09.2021 by it also did not exceed the prescribed limit.

iv. In this regard, I note the observation of the DA that the maximum fees that can be charged from a client as per the provisions is Rs.1,25,000/- per annum per

client across all services offered by IA. However, in the absence of any detailed methodology under the provisions to calculate the fees, the DA was not inclined to agree with the manner in which the fees charged for shorter duration has been extrapolated in the inspection report and hence did not find that the Noticee has violated Regulation 15A of IA Regulations read with provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations.

v. In the light of the aforesaid charge and the submission made by the Noticee stating that at any cost the annual charges collected from the client did not exceeded the prescribed limit of Rs.1,25,000/- as well as the opinion of the DA that there is no detailed methodology under the provisions to calculate the fees, I note that the said facts are not in line with the complaint dated August 03, 2020 stating that the Noticee collected Rs.6,25,000/- as fees towards advisory service promising the complainant the assured return was more than the prescribed limit of Rs.1,25,000/- thought it was stated to have been refunded Rs.5,50,000/- subsequently. It is observed that the amounts paid by the client for such packages were not in proportion to the service offered by the Noticee. Thus, such acts of the Noticee was not in line with aforesaid Regulation and also 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. In view of the above, I find that the charge against the Noticee that it has violated the provisions of Regulation 15A of IA Regulations read with the provisions prescribed for fees in paragraph 2(iii) of SEBI circular dated September 23, 2020 and Clauses 6 and 8 of Code of Conduct for Investment Advisers specified in Third Schedule of IA Regulations stands established.

IV. <u>Failure to follow the prescribed format of agreement.</u>

i. I note that paragraph 2(ii) of SEBI Circular dated September 23, 2020 specifies the terms and conditions that needs to be followed when an IA enters into an agreement with its clients while Clause 8 of the Code of Conduct specifies that

an IA along with its partners, principal officers and persons associated with investment advice have to comply with all the regulatory requirements applicable to the conduct of its business. Further, Regulation 19(1)(d) of the amended IA Regulations provides that IA shall enter into an investment advisory agreement with its clients.

ii. Accordingly, I note from the DA SCN that SEBI observed that the format of the agreement with which the Noticee had entered into with its client, was not in accordance with the provision as specified in Annexure A of the SEBI circular dated September 23, 2020 as the first page of the agreement did not specify the clauses as specified in Annexure A of the SEBI Circular such as consent of the client, various declaration prescribed and fees charged to the client. Therefore, it is alleged that Noticee has violated the provisions specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 and Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

iii. In this connection, the Noticee submitted during the DA proceeding that during the inspection, it had submitted the wrong agreement format due to a manual inadvertent mistake, however, the error was rectified as soon as it was realised. Further, it was submitted that the format submitted to SEBI during the inspection was merely a specimen copy and not the original client agreement. It also submitted that in its view, any agreement should include the client's name and the first party's name, which is Money Capital, along with their complete address, SEBI registration number and date of the agreement. Following that, it had mentioned the purpose of the agreement, mutual consent with the client, etc.,

iv. Thus the DA found that the first page of the Noticee's agreement in the instant case did not mention any of these requirements on the first page and the same were mentioned on the second page and hence the format was not according to Annexure A of the said SEBI Circular dated September 23, 2020, *inter-alia*, specified that the said agreement shall mandatorily cover the terms and conditions provided in Annexure-A of the SEBI Circular. Hence, the DA found

that the Noticee violated the provisions specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 read with Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

v. In respect of the above, during the present proceeding, the Noticee has submitted stating that it has followed the SEBI prescribed format while making its agreements and only due to the font size of the agreement the details of the company/client, the fees structure moved to the second page. Further, the Noticee submitted that the DA has also noted that no requisite information was missing from the agreement.

vi. In this regard, I note from the material available on record that the Noticee has been inconsistent in following the agreement format as specified with regard to its clients, for example, while executing agreement with Mr. Umesh Singh on April 17, 2021, it is observed that the Noticee has followed the prescribed format of SEBI, however, while executing agreement with Mr. Alok Kumar Mohanty, on September 09, 2021, the Noticee did not follow the same format.

vii. In respect of the above, it is pertinent to mentioned that the legally binding agreement are of much significance since the agreement format has specified in the circular that certain details should be form part of the agreement and it should be necessarily in the first page of the agreement. The reason being that the agreement entered with the clients not only determine the inter se responsibilities and obligations of the Noticee but also it should protect the interest of the investor in the securities market on the transaction carried out through the Noticee. It is therefore such agreement must be enforceable and binding on both a parties to the agreement as per applicable rules and regulation. From legal point of view as well as in commercial parlance, an agreement is used to depict and embody the understating of the parties in principle, without creating any right or obligation of binding nature. In this case it is clearly established that the Noticee did not executed a legally binding agreement in the specified format as prescribed in the aforesaid circular

provision. Thus the charge against the Noticee that it failed to follow the prescribed format of agreement stands established.

viii. In view of the above, I find that the Noticee has violated the provisions of paragraph 2(ii) of SEBI Circular dated September 23, 2020 read with Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations.

V. <u>Failure to maintain proper records</u>

i. I note that Regulation 19(1) of the IA Regulations specifies that all IAs need to maintain records either in physical form or electronic form, which has to be preserved for a minimum of five years and Regulations 25 (1) and (2) of the IA Regulations imposes an obligation on IAs along with its KMPs and employees associate with investment advice to produce to the inspecting authority books, accounts, statements, information and other documents available as may be required by the said investigating authority. I also note that Paragraph 2(vi) of SEBI circular dated September 23, 2020 specifies what kind of records have to be maintained by the IA with respect to its activities as an IA.

ii. Accordingly, I note from the DA SCN that SEBI observed that the email ID of IA (i.e. support@capitalheight.com) was used to communicate with the clients and to deal with complaints of the client. However, during the inspection, no emails were available in the said email ID while it was checked and hence the number of direct complaints that were received by the Noticee could not be ascertained. Upon seeking a clarification from the Noticee, SEBI received a response stating that there was a virus attack on the mail server of the company, due to which the “Inbox” and “Sent” items were deleted frequently. Therefore, it was observed that the Noticee was not in possession of all the mail communication from clients, which he is required to maintain as per SEBI circular.

iii. Further, SEBI sought sample call recordings of the clients from the Noticee, to which the Noticee provided 22 sample call recordings. Pursuant to listening to the aforesaid sample call recordings, SEBI, vide email dated October 28, 2021,

sought certain information with regards to the said call recordings of 22 clients. In this regard, the Noticee vide email dated November 02, 2021, replied that it has kept the call recordings of the clients but could not provide the same in the format sought by SEBI. There have also been a few instances of the Noticee not recording the calls of certain clients as explained in the SCN.

iv. Further, SEBI observed that, upon listening to the call records, the same appeared to be fake. Also, reply of the Noticee that call recordings given to the inspecting officials were the recordings made for training purpose showed that the Noticee misled the inspecting officials of the Board during inspection. SEBI observed from the call records provided for one client viz. Alok Kumar Mohanty that the Noticee was informing this client that he falls in high risk category despite being categorized under medium risk category. Based on the above, it is alleged that Noticee has violated Regulation 19(2), 25(1) and 25(2) of IA Regulations and Paragraph 2(vi) of SEBI circular dated September 23, 2020.

v. I note that the Noticee in defense submitted to the DA that during the inspection it had informed SEBI that its server was affected by a virus attack, resulting in data corruption, which could not be recovered. However, the Noticee had provided physical copies of e-mails available with it during the period of inspection. The Noticee also submitted that it had a daily practice of preserving data and was ready to present the same as and when required, it also stated that it did not received any direct complaints from clients related to other issues in any manner whatsoever, it has provided all the available e-mails and call recordings to SEBI during inspection. However, in one such instance, inadvertently, the folder of clients in which the recordings were kept got replaced with the training recordings. As regards, the Clients Mr. Alok, he was classified as a medium risk client, however, only upon his insistence he was provided with high risk category products.

vi. In respect of the above I note that on the basis of response of the Noticee and the evidence regarding communication with Alok Kumar Mohanty, the DA was inclined to take a lenient view in this matter. Further, since the Noticee has not

provided a specific response to the undersigned, taking into consideration the submission of the Noticee made to the DA, I note that as regards the allegation of not maintaining proper call records, the information sought by SEBI were basic in nature, which could not be extracted from the call records indicating that the Noticee has not maintained the call records properly. Further, the call recordings of 4 clients as requested by SEBI vide e-mail dated January 11, 2022 was not maintained by the Noticee as informed vide its reply e-mail dated January 11, 2022. Thereafter, I note that the Noticee has admitted to not being able to save several e-mails from its clients which would have been evidence reflective of its conduct and affair as an IA, as required under IA Regulations and SEBI circular, due to virus attack and data corruption. It was only subsequent to this event that the Noticee started to maintain hardcopies of its client emails, which were required to be maintained for a period of five years as per IA Regulations. In view of the above, I find that the Noticee has violated the provisions of Regulation 19(2), 25(1) and 25(2) of IA Regulations and Paragraph 2(vi) of SEBI circular dated September 23, 2020.

VI. <u>Failure to maintain proper client samples.</u>

i. I note from Regulation 15(9) of the IA Regulations that all IAs have to abide by the code of conduct specified in the third schedule, Regulation 17 (a) IA Regulations specifies that all investments on which advice is provided should be appropriate to the risk profile of the client and as per Regulation 17 (e) IA Regulations of whenever a recommendation is given to a client to purchase a particular financial product it should be based on a reasonable assessment which balances the risk and capacity to absorb loss, etc.

ii. Accordingly, I note from the DA SCN that samples of 23 clients' documents were pursed by SEBI with regards to risk profile, copy of agreement executed, call recording, invoice of fees charged, copy of KYC documents, email communication, and the following observations were made:

S. No.	Client's Name	Observation	Evidence

i.	Umesh Singh HAAPS9340L	An agreement was made on April 17, 2021 for which invoice no. 190 was generated on April 19, 2021. However, two dates are mentioned on the agreement executed by the client for invoice no. 190. Dates mentioned against client's signature on the agreement is April 17, 2021, whereas the date mentioned in the same agreement against IA name is January 08, 2021. Further, different signature was observed on the agreement executed by the client on April 17, 2021. Signature of the client on PAN, KYC and agreement dated January 08, 2021 and signature on the agreement dated April 17, 2021, appear to be different. The agreement dated January 08, 2021, has been made for 1 month for Stock Option, for a fee of Rs 29,500/- whereas invoice no. 108 generated on January 09, 2021, mentions Stock Option for 60 days for Rs 20,000/-.	Copy of agreements, copy of invoice, copy of PAN, copy of KYC form.
ii.	Parth Trivedi AVJPT2739B	The agreement dated December 24, 2020, has been made for 1 month for Stock Cash and Stock Option, for a fee of Rs 8,000/- whereas invoice no. 97 generated on December 24, 2020, mentions Stock Option for 8 days for Rs 8,000/-.	Copy of agreement and copy of invoice.
iii.	Ashish Kumar Tiwari ADOPT6503C	Signature flow of the client on KYC, PAN and that on the signed risk profile appears to be mismatching. A call was made to the client on his mobile number 7869956436 by the inspection team and was asked whether he submitted signed Risk Profile sheet. The client denied signing any sheet.	Copy of PAN, copy of KYC form, copy of risk profile.
iv.	Sanghvi Deep Jayantilal AVJPJ4841N	The agreement dated December 31, 2020, has been made for 30 days for Stock Option + Stock Cash, for a fee of Rs 8,000/- whereas invoice no. 103 generated on December 31, 2020, mentions Stock Option Package for 15 days for Rs 8,000/-.	Copy of agreement, copy of invoice.
v.	Alok Kumar Mohanty ARFPM4642Q	As per the risk profile signed by the client on 06/09/2021, the client falls in medium risk category but has been given high risk category product i.e. super value option.	Copy of signed risk profile, copy of agreement, copy of invoice.
vi.	Mousumi Jena BAMPJ5369N	Signature on risk profile of this client is of another person. Date against the client signature is not mentioned on the agreement.	Copy of risk profile, copy of agreement.
vii.	Kamal Prakash Gupta ACSPG3999E	The agreement dated 07/04/2021, has been made for 8 days for Super Value Cash, for a fee of Rs 8,000/- whereas invoice no. 181 generated on	Copy of agreement, copy of invoice.

		08/04/2021, mentions Super Value Cash for 7 days for Rs 8,000/-.	
viii.	Anurag Jain AIAPJ6137H	Flow and angle of signature observed on the agreement executed by the client on 29/06/2021 and that on agreement dated 19/03/2021, appear to be different.	Copy of agreements.

iii. From the above it was observed that the Noticee was engaged in forgery of signature, mis-selling of products by providing products / services which are not in accordance with the risk profile of the client, not obtaining signature of the concerned client on documents and not providing services / products in accordance with the agreement executed. The abovementioned activities of IA are covered under the definition of "fraud" as defined under regulation 2(1) (c) of PFUTP Regulations. Based on the above, it was alleged that Noticee has violated provisions specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

iv. I note that the Noticee in defence submitted a detailed client wise response to the DA as specified in the ER and has submitted documents to support its statement viz. proof of communication with Alok Kumar Mohanty, Anurag Jain, Ashish Kumar Tiwari, etc.

v. I note that the DA has noted that the Noticee has accepted the error with regard to Umesh Singh and accepted the Noticee's submissions as regards Parth Trivedi, Sanghvi Deep Jayantilal and Kamal Prakash Gupta. Then, as regards Mousumi Jena, the DA could not accept the Noticee's submission as the agreement must be signed by the client itself. However, in case of Anurag Jain, the DA noted from the agreement executed on 29/06/2021 and 19/03/2021 that the signature is totally different. Thereafter, the DA also noted that in the case of Ashish Kumar Tiwari, the signature on the Risk Profile sheet do not match with KYC. Accordingly, the DA has found that Noticee has violated provisions specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of

Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

vi. In view of the above, I note that the Noticee has not submitted any specific counter with regard to the relevant allegation. Further, I note that there are certain instances where the Noticee has defaulted as observed from the para above and the DA has not accepted the submissions with regard to the same. Thus, the said facts clearly establish that the Noticee has violated the provisions as specified in Regulation 15(9), Regulation 17(a), 17(e), Clauses 1, 2 and 8 of Code of Conduct specified in Third Schedule of IA Regulations and paragraphs 2(ii), 2(iii) and 2(viii) of SEBI circular dated September 23, 2020.

VII. <u>Failure to comply with the AML guidelines</u>.

i. I note that as per SEBI Circular No. SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019, the intermediaries are required to have an AML policy in place and also appoint Principal Officer and intimate the same to Financial Intelligence Unit (FIU), New Delhi and requires that the intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures.

ii. I note from the DA SCN that the Noticee has put AML policy in place and has appointed Mr Ajay Arya as its Principal Officer. However, the Noticee submitted a declaration that during the inspection period no training related to PMLA was provided to employees and accordingly no training record for the same was available. Therefore, it was alleged that Noticee has violated the provisions of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019.

iii. In defence the Noticee submitted to the DA that it has been diligently following the AML policy guidelines since 2016, such as appointing a principal officer, providing training to its employees, etc. and has detailed all the compliances made with regard to the same, as provided in the ER.

iv. With regard to the same, I note that the DA has noted that Noticee has put AML policy in place. Then, while taking into consideration the submission of the Noticee and considering that the situation of pandemic during the inspection period, the DA has taken a lenient view on the non-compliance by the Noticee.

v. In this regard, I note that the Noticee has not submitted any specific response to the undersigned. However, I note from the Noticee's submission to the DA that it has implemented AML guidelines and has ensured the same by not accepting cash payments from its clients, not engaging in large financial transactions with clients, conducting thorough KYC procedures for its clients through registered KRA's, training its employees on AML guidelines as a part of their professional development, etc. Further, I note from the Clause 2.12.2.1 of SEBI Circular No. SEBI/HO/MIRSD/DOP/ CIR/P/2019/113 dated October 15, 2019 that there is no mention of period training for employees of intermediaries. Considering the employees of the Noticees were long-time employees and were have been received training on AML guidelines, I note that the Noticee has in fact followed the AML guidelines and has not violated the said circular. Accordingly, I find that the charge against the Noticee that it has violated the provisions of SEBI Circular SEBI/ HO/ MIRSD/ DOP/ CIR/ P/ 2019/113 dated October 15, 2019 does not stand established.

VIII. Promised assured returns, offered trial to prospective clients and charged part payment for providing services

i. The Noticee is alleged to have provided assurance of profits/ unrealistic returns to its clients and offered trial to prospective clients and charged part payment for providing services 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. In this regard, I note that Regulation 3 of the PFUTP Regulations, prohibits certain dealings in securities wherein manipulative or deceptive methods are used, or any entity employs any devise or scheme or artifice to defraud in connection with dealing in or issuing securities and also engage in any act, practice, course of business which operate as fraud or deceit

upon any person in connection any dealing in or issue of securities. Further, I also note that Regulation 4(2)(k) of the PFUTP Regulation provides that dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities. Also, Regulation 4(2)(s) of the PFUTP Regulations prohibits mis-selling of securities or services related to securities market. Mis-selling has further been explained in the said Regulations to mean knowingly making false or misleading statements or not taking reasonable care to ensure suitability of the securities or services to the buyer.

ii. Thereafter, I note that Regulation 15(9) of the IA Regulation requires an investment adviser to abide by Code of Conduct as specified in Third Schedule, while the provisions of Paragraph 1(i) of the SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2019/169 dated December 27, 2019 specifies the measures to strengthen the conduct of Investment Advisers.

iii. Accordingly, I note from the DA SCN that vide complaint dated August 03, 2020 the employees of the Noticee promised the complainant assured returns and took Rs. 6,25,000/- as fees towards advisory services and the same was noted from the chat record submitted by the complainant. SEBI observed that with regard to the said complaint, the Noticee had refunded the Rs 5,00,000/- to the complainant. Further, during a site visit of the Noticee office by SEBI officials for verification of change in address, an application for which was submitted by the Noticee, it was found that one of the employees was talking to a prospective client on phone and was promising assured returns to him. Accordingly, the call recordings of the incident were sought by SEBI officials from the Noticee, which was provided vide email dated January 15, 2021.

iv. From the transcript of the call recording between the employee of the Noticee and the prospective clients, it was noted that employee of the Noticee was promising assured returns to the investor. It was also noted that the employee

of the Noticee was offering trial to the client and was also seeking part payment from the client. Therefore, it is alleged that Noticee has violated Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III read with Regulation 15(9) of IA Regulations, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019.

v. In its defence, the Noticee clarified to the DA that it does not provide trial services to clients and has discontinued the practice of offering trial services as per the Regulations. The Noticee further submitted that it has a robust communication and training programs in place for our employees to ensure them to understand the business processes and Regulations. However, there were instances where an employee may inadvertently use words or phrases that they have learned or used in other companies. If an employee uses prohibited words or discusses services that are not offered by Capital Height, it takes immediate and strict action against them. In this particular case, both employees who were involved in the recording have been terminated as a result of their actions. The Noticee also emphasized on the facts that it maintains a strong commitment to compliance and always prioritize the best interests of its clients and continues to follow all SEBI Regulations to ensure that our services are provided in a compliant and ethical manner.

vi. Therefore, the DA found that the inspection has not brought out any systemic issue involving large number of clients and believes that this being a one-off instance is not sufficient to prove beyond doubt that the Noticee has violated the provisions as alleged in the SCN on this issue.

vii. From the above-mentioned facts, I find that the Noticee was clearly promising assured returns to clients. I also note that the Noticee has not denied the veracity of these facts and collection of the amount of Rs.6,25,000/- from the complainant but subsequently refunded of Rs.5,00,000/- to the complainant. I am of the view that the Noticee cannot take recourse of the general disclaimer

on one hand whereas making specific promises of assured returns to its clients on the other hand. I also note that Regulation 15(1) and code of conduct under Schedule III of IA Regulations, 2013 inter alia provides that an investment adviser shall act in a fiduciary capacity towards its clients. The Code of Conduct contained in Schedule III of the IA Regulations, 2013 also casts a duty on the registered investment advisor to act honestly, fairly and in the best interests of its clients and with due skill, care and diligence. The Code of Conduct also mandates that an investment adviser shall make adequate disclosures of relevant material information while dealing with its clients. I find that the Noticee promised assured return to the clients knowing fully well that investment in equity, equity derivatives, and commodity derivatives are subject to market risk. Therefore, the Noticee has indulged in concealment and misrepresentation of facts and has failed to act in the best interest of its clients and also failed to exercise care and due diligence. In view of the same, the Noticee has violated Regulation 15 (1) of IA Regulations, 2013 and Clause 1,2 and 5of the Code of Conduct in Schedule III read with regulation 15 (9) of IA Regulations, 2013

viii. In this regard, I note that in one of the instances the Noticee had promised assured returns and accordingly, charged the complainant with Rs.6,25,000/-, out of which Rs.5,00,000/- was later returned to the complainant. Further with regards to other instances that the employee of the Noticee assuring returns to its client over the phone, the Noticee contended that the employees who were promised assured returns during their respective calls have been terminated. However, the aforesaid actions of Noticee of refunding and termination of the employees, does not take away from the fact that the Noticee promised assured returns to the clients.

ix. From the above, it is clear that the Noticee promised guaranteed returns to its clients intended to induce/influence them to invest their money in share market. The said assurance of maximization of returns is an active concealment of the material fact that every investment in the market is subject to market risk. In this regard, I note that the Noticee adopted business tactics to induce the clients into availing the services it offered. Further, the act of conveying high/maximum

returns or certainty of profit, is nothing but indulging in for the purposes of luring customers in its net and thereby increasing its income. In light of the same, the act of the Noticee to actively conceal material information, is a non-genuine and a deceptive act and has been made with an intent to influence the clients to avail of its advisory services and deal in securities. In my view, promising assured returns/ assured loss recovery in securities market amounts to misrepresentation and misleading the investors. Such reckless conduct intended to induce investors to deal in securities constitutes 'fraud' under the PFUTP Regulations.

x. In this regard, I further rely upon the decision of the Hon'ble SAT in the matter of **MSS Trading System Centre and Anr. Vs. SEBI**, dated December 12, 2022, wherein the Hon'ble Tribunal has held that "*We are of the opinion that such assurance of profit given by the appellant was totally fraudulent and in violation of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003*" also I find that the Noticee has made descriptions regarding returns in a very reckless and careless manner. Further, the Noticee, by assuring guaranteed returns by investing in shares, has violated the fundamental canon of the securities market i.e. investments are subject to market risks and therefore, has knowingly misled the investors at large by engaging in acts, practices, course of businesses which operated as 'fraud' as defined under Regulation 2(1)(c) of the PFUTP Regulations.

xi. Further, It is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of **SEBI Vs. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, which are as under-

"*The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement*

and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"..... .....to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient."

xii. In this regard, the observation recorded by the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Kanaiyalal Baldevbhai Patel** [(2017) 15 SCC 1] is worth quoting: *"...A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did..*". Therefore, I am constrained to observe that the acts of the Noticee of resorting to misrepresentation and spreading falsehood about, promise of assured profit/unreasonably high returns/assured loss recovery etc., are fraudulent in nature, having the potential to fraudulently induce the investors to deal in securities by availing of the services of the Noticee.

xiii. In view of the above, I find that the Noticee has violated the provisions of Regulations 3 (a), (b), (c) and (d), 4(1), 4(2)(k), 4(2)(s) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act, Regulation 15(1) of IA Regulations and clauses 1 and 2 of Code of Conduct for IA as specified in Schedule III read with Regulation 15(9) of IA Regulations, provisions of paragraph 1(i) of SEBI circular no. SEBI/HO/IMD/DF1/ CIR/P/2019/169, dated December 27, 2019.

Issue No. II: If the issue(s) framed above are answered in affirmative, whether the Noticee is liable for action under Regulation 27 of the Intermediaries Regulations?

10. Further, I note that Investment advisors play an important role in retail and small investor participation in the securities market. For this reason, investment advisors are expected to strictly comply with the provisions of the IA Regulations, both in letter and in spirit. In the instant case, as already concluded in previous paragraphs of this Order, the Noticee has defaulted on various obligations mandated under IA Regulations. The DA has concluded that the violations with respect to risk profiling, suitability assessment and unreasonable fees are technical in nature. Accordingly, the DA has taken lenient view on some of the established violation and justified the same by stating that *"the number of violations brought out in the inspection, considering that the Noticee served around 18,500 clients are not sufficient in numbers, and are more or less technical/ procedural* in *nature and do not establish mens rea on the part of Noticee to gain undue advantage or destabilize the securities market. I note that there is no material on record to indicate any specific disproportionate gains or unfair advantage which accrued to the Noticee,* or loss *suffered by the investors. The role of an Investment advisor* is *crucial* to *the development of the securities market, especially for the entry of the small investors who may rely on the advice of such IAs".* In view of the above, despite establishing almost all the charges against the Noticee, except in very few violations, I note that the DA had recommended that the proceeding against the Noticee may be disposed of without any adverse action.

11. However, upon an evaluation of the entire facts and circumstances, I find that the Noticee has not followed the procedure detailed in the IA Regulation relating to the risk profiling and suitability assessment of clients in respect of a client named Mr. Alok Kumar Mohanty. Further, the Noticee also failed to satisfy the qualification requirement with regards to some of its employees and thereby violating Regulation 15(13) read with Regulation 7 of IA Regulations and clause 1, 2 and 8 of Code of Conduct for Investment Advisers as specified under Third Schedule read with Regulation 15(9) of IA Regulations and Paragraph 2(iv) of SEBI circular dated September 23, 2020. In addition, the Noticee did not follow the format of agreement as prescribed consistently as it did not mention the required details including the fees charged to the client and thereby violating the provisions

specified in paragraph 2(ii) of SEBI Circular dated September 23, 2020 and Clause 8 of Code of Conduct specified in Third Schedule of IA Regulations. I also find that the Noticee did not maintain records and provide the same to SEBI as provided in the circular. Most significantly, I find that the Noticee violated the provisions of PFUTP Regulations and the Code of Conduct of IA Regulations by promising assured profit in securities market, inducing investors to deal in securities.

12. In light of the above, I am of the view that with respect to the aforesaid several established violations, more particularly the violations such as conducting business without requisite prescribed certification and inducing the client giving assured returns by charging higher fees cannot be considered as merely technical or procedural violation but are very serious by nature. Further, as an intermediary operating in the securities market, the Noticee is duty bound to comply with the statutory provisions including the various circulars issued by SEBI from time to time. The Noticee has an obligation as an IA towards the securities market. The various requirements under the Act and Regulations in respect of an intermediary are conceived in the interests of investor protection and further to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principle. Also as an intermediary, the Noticee is inter alia required to maintain high standards of fairness, finesse and promptitude while conducting its business. Thus, taking into consideration all of the above, I do not agree with the recommendation made by the DA vide report dated August 17, 2023 to dispose of the proceedings against the Noticee (having SEBI registration number – INA000001423) without any adverse action, instead taking into account the overall conduct of the Noticee throughout the circumstances of the present case and the noncompliance of statutory requirements on its part, I am of the opinion that the situations warrants an action.

13. In view of the above and keeping in mind the intention of the Noticee to surrender/close its practice as an IA, communicated vide the reply dated March 18, 2024, wherein the Noticee has submitted that it had stopped taking new clients since June 2022 and is looking to surrender its certification of registration, the details of which has been uploaded in the SI portal including pending action list, I

find that cancellation of the Certificate of Registration of the Noticee seems to be appropriate.

Directions:

14. In view of the foregoing, I, in exercise of the powers conferred upon me in terms of Section 12(3) and Section 19 of SEBI Act, 1992 read with Regulation 27 (5) of the Intermediaries Regulations, 2008 and Regulation 28 of the IA Regulations, hereby cancel the Certificate of Registration of the Noticee, i.e., M/s. Money CapitalHeight Research Investment Advisers Pvt. Ltd., having SEBI registration number – INA000001423.

15. This order comes into force with immediate effect.

16. A copy of this order shall be forwarded to the Noticee.

DATE: April 24, 2024 **G. RAMAR**

PLACE: Mumbai **CHIEF GENERAL MANAGER**

SECURITIES AND EXCHANGE BOARD OF INDIA