

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

ORDER

UNDER SECTIONS 11, 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF Highbrow Market Research Private Limited (WAYS 2 CAPITAL).

IN RE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AND SECURITIES AND EXCHANGE BOARD OF INDIA (INVESTMENT ADVISERS) REGULATIONS, 2013.

IN RESPECT OF

S. No.	NAME	PAN
1	Highbrow Market Research Private Limited (ways 2 Capital).	AACCH8077M
2	Chandan Singh Rajput	AWYPR5207Q
3	Rahul Trivedi	AQNPT9607R
4	Sunil Atode	PAN - Not available: DIN - 07857476
5	Girish Kumar Pahwani	CILPP0738B
6	Laxmikant Sharma	BNYPS4320M
7	Mohit Chhapparwal	AGOPC0896Q
8	Hemant Agrawal	AOBPA3520Q
9	Swapnil Prajapati	BTWPP9571K

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1. Highbrow Market Research Private Limited (also known as "ways2capital") (hereinafter referred to as the "Highbrow/IA") is registered as an Investment Adviser under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (hereinafter referred to as the "IA Regulations") with effect from February 21, 2014. Highbrow is a corporate body and the Corporate Identification Number of Highbrow is U74140MP2011PTC027364. Registered office of Highbrow is at 515-516, Shagun Arcade, Scheme no. 54, Vijay Nagar

Square, A B Road, Indore – Madhya Pradesh. Website address of Highbrow is <https://www.ways2capital.com>.

2. Details of the promoters, past directors and present directors of Highbrow are as under:

DIN	Name	PAN	Address	Designation / category	Tenure of directorship
08138036	Chandan Singh Rajput	AWYPR 5207Q	173, Ring Road, Swarn Bag Colony, Khajrana, Indore MP-452011	Present Director	May 21, 2018 – till date
08295371	Rahul Trivedi	AQNPT9 607R	NA	Present Director	December 19, 2018 – till date
07857476	Sunil Atode		Makan No. 422 Kankad, Gram BicholiHapsi, Indore MP-452016	Past Director	June 23, 2017 to May 1, 2018
07857317	Girish Kumar Pahwani	CILPP07 38B	31/2 Bairathi Colony, Khatiwala Tank, Indore MP- 452014	Past Director	June 23, 2017 to December 19, 2018
05134983	Laxmikant Sharma	BNYPS4 320M	202, Palak Apartment, 91 Goyal Nagar Indore, MP- 452010	Past Director & Promoter	26 December 2011 to 01 April 2016
05135004	Mohit Chhparwal	AGOPC0 896Q	Chandra Colony Madanganj, Kishangarh Rajasthan – 305801	Past Director & Promoter	26 December 2011 to 01 April 2016
05137703	Hemant Agrawal	AOBPA3 520Q	30-A, Statwe Bank Colony , Dewas Road, Ujjain, MP – 456776	Past Director & Promoter	26 December 2011 to 01 July 2017
05151962	Swapnil Prajapati	BTWPP9 571K	Near Old Jain Temple Singhwahniward, Mandla MP -481661	Past Director & Promoter	26 December 2011 to 01 July 2017

3. The shareholding pattern of Highbrow is as under:

S.no	Name	Promoter/shareholder	No. of shares	% of shares
1	Laxmikant Sharma	Promoter	52,500	25
2	Mohit Chhapparwal	Promoter	42,000	20
3	Hemant Agrawal	Promoter	42,000	20
4	Swapnil Prajapati	Promoter	52,500	25
5	Manjit Singh Mongia (PAN: Not available)	Shareholder	10,500	5
6	Sumeet Singh Mongia (PAN : ANGPM0732J)	Shareholder	10,500	5
Total			2,10,000	100%

4. SEBI has been receiving large number of complaints against Highbrow since 2015. Till March 31, 2019, total 488 complaints have been received against Highbrow in SCORES portal. Many of them are duplicate/ multiple complaints. The number of unique complaints (by unique complainants) received against Highbrow is 281 and as on March 31, 2019, 91 complaints were pending.
5. As can be seen from the above table, consistently large number of complaints were received against Highbrow. Further, delays on part of Highbrow were observed in resolving the said complaints.
6. Further, SEBI also received references from Vijay Nagar Police Station, Indore, Madhya Pradesh and Office of the Commissioner of Police, Cyberabad whereby it has been informed that several complaints/FIRs have been filed by investors alleging cheating by Highbrow. It has also been learnt that one of the directors of Highbrow namely, Mr. Swapnil Prajapati was arrested by the Police in connection with alleged cheating/fraud by Highbrow.
7. SEBI carried out an examination in relation to the affairs of Highbrow. The examination entailed *inter alia* an analysis of the details available on the website of Highbrow, payment receipts issued by Highbrow, risk profiling of clients conducted by Highbrow, written correspondence between Highbrow and its clients, other documents available on record, complaints filed by the complainants, the call records between Highbrow's representatives and its clients (who have complained) provided by the complainants, etc. The *prima facie* findings based on the examination are noted in the subsequent paragraphs.

8. **Profit counter run by Highbrow**

8.1. It is observed that Highbrow on its website link <https://www.ways2capital.com/profit-count.php> runs a profit counter which essentially shows the amount of profit which an investor can earn on his investment value across different market segments such as stock, derivative, forex and commodity. The said link also provides contact details for “quick trial” and the toll free number to contact Highbrow. Thus, the said profit counter is apparently used by Highbrow to market its performance to investors and to lure them into using the services of highbrow. The profit counter provides for investment returns across different time horizon i.e. one day, one week, one month, six months and one year. It is surprising to note that the profit calculation projected on this link remains unchanged regardless of the market segment in which the investment is made. The only disclaimer provided on the link is that “*Profit calculation are based on hypothetical data*”. The returns revealed on this link appear to be assured and are not supported by any analysis or rationale. In my view, any information on the website of a SEBI registered intermediary has to be placed responsibly and has to be backed real data. Projecting returns on the basis of “hypothetical” data tantamount to a representation made in a reckless and careless manner without having any regard to it being true or false. Further, showing fixed returns on investments regardless of the market segment or security in which the investment is made, knowing fully well that the same is practically impossible, is equal to knowingly misrepresenting the truth on part of Highbrow. Such representation is therefore *prima facie* fraudulent and is covered within the definition of “fraud” defined under regulation 2(1)(c) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”).

9. **Promise of Target returns by Highbrow having the prima facie nature of assurances:**

9.1. It is noted from payment receipts issued to the clients by Highbrow and MOU/agreement it entered into with the clients that Highbrow has been promising targeted returns (terming them as “*approachable profit*”) under various pre-defined packages on the investments made by the clients.

9.2. The payment receipts issued to the clients and MOU/agreement it entered into with the clients contain the approachable profit. The terms listed in the payment receipts and the MOU/agreements which specify the target returns are reproduced below:

- MOU (on sample basis) read as under:
*“But in case the party of the second part can’t touch the **approachable profit** of his paid service charges the time limit shall be increased till achievement”*
- The service holding term in the payment receipts (on sample basis) provides as under:
*“The service tenure is of 200 days on minimum basis, after this period advisor company will provide complementary services for rest of the **approachable profit**”.*

9.3. Some examples of returns promised in the payment receipts/ MOU of the following clients are as under:

Target returns promised to the clients

(Figures in Rs.)

Client Name	Proposed investment as per Risk Profile	Payment date	Name of the service*	Target Return (in Rs)	Service Fee (in Rs) Exclusive of GST (18%)**
Mr. Ashish Kumar Makati	2-5 Lakhs	20/02/2018	Tip Top Future Package	21,76,000	5,44,000
Mr. Dipak Kumar Thakkar	More than 5 lakh but his annual income is only 1 – 5 lakh	04/01/2016	Bonanza Agri Grand Premium	31,50,000	5,25,000
Mr. Antos Vaz	2-5 Lakhs	17/11/2017	Tip Top Future Packages	21,76,000	5,44,000
Mr. Sanjay Kadian	2-5 Lakhs	31/12/2017	Smudge MCX Package	27,00,000	6,75,000
Mrs. Chandamitra Chakrabarti	1-2 lakhs	15/05/2018	Happening MCX Package	17,36,000	3,64,406
Mr. Uma Shankar Sharma	2-5 Lakhs	06/10/2017	Decisive cash package	06,50,000	2,60,000

* The package referred in the column is one of the multiple packages sold to the client.

** The service fee is shown in respect of the corresponding package only. However, such exorbitant fee was charged in respect of various packages sold to the clients.

9.4. As noted in the above table, in most of the cases, the service fee itself is more than the proposed investment of the clients. Taking the example of Mr. Makati noted in the table above, Highbrow charged him a service fee of Rs. 5,44,000 when his proposed investment was only 2 to 5 lakh, and the target return promised to him is Rs. 21,76,000, which is practically impossible to be achieved considering his financial appetite. In my view, charging exorbitant fee from a client, which is much more than the proposed investment of the client and promising unrealistic target returns to the client in total disregard of his financial capacity is deceitful conduct of part of highbrow.

9.5. It is also pertinent to note from the payment receipts issued by Highbrow that on an average, the “target” profit mentioned in the payment receipts is around 4 times of the service fee charged by Highbrow from its clients. The tenure of service committed by highbrow to its clients continues till the time the “target” is achieved. Further, under the tab “service holding”, it has been mentioned in the payment receipts that *“the service tenure is of 180 days on minimum basis, after this period, Adviser Company will provide complementary service for rest of the approachable profit, if required”* (noted on a sample basis in respect of Mr. Anto S Vaz). It is surprising to note that the payment receipts issued by Highbrow mention a target and the service fee to be paid to Highbrow for achieving such target but nowhere do they mention the amount which the investor / client would be required to invest in order to achieve the profit.

9.6. The above conduct of Highbrow is equivalent to concealing the material fact of the investment which the client would be required to invest. Further, since every investment in the market is subject to market risk and any investment made by the client can also run into losses and even become zero, an assurance on part of Highbrow to the client that its services will continue till the target / approachable profit is achieved, is an active concealment of truth that investment in the market is subject to market risk and can even erode his capital, on part of Highbrow.

9.7. Further, on a perusal of the complaints received from the clients, it appears that they subscribed to the packages offered by Highbrow with the understanding/interpretation that Highbrow has promised them assured profit. Extract of the relevant portion of their complaints is reproduced below which clearly shows that they have been given to understand that assured returns will be delivered by Highbrow.

- i. Complaint of Ashish Kumar Makati received in SCORES on November 12, 2018 wherein the complainant has stated *“That till date I have made*

a total investment of Rs 72,45,738 in the scheme of the company from my various bank accounts and credit cards to the various payment methods of the company. I was asked by their promoters to subscribe to higher package with a commitment to me of return of 2.5 times of my investment in 45 days' time”.

- ii. Complaint of Dipak Kumar Thakkar received in SCORES on April 04, 2018 wherein complainant has stated that *“My father got many calls from highbrow and company executive told him that we provide operator base work and it's sure call so you will not have chance to lose money. Company executive lured my father to earn 30 crores by investing 68 lac...”*
- iii. Complaint of Antos Vaz received at SCORES on April 11, 2018 wherein complainant has stated that *“...If I pay and Opt for a service of X amount I will be provided intra-day tips which will provide a profit of 3.5 X amount...”*

9.8. From the above, it is noted that Highbrow has been providing assurance of target or approachable profit to the clients and is providing commitment to continue its service of providing recommendations till the time the target or approachable profit is not achieved. Though, Highbrow in the payment receipts mention that the target is not guaranteed or assured, but on a holistic consideration of the factors discussed above such as the target / approachable profit mentioned in the receipts, the tenure of the service, the quantum of service fee charged, the commitment of Highbrow to continue services till the target is achieved and the understanding of the clients as reflected in their complaints, I prima facie find that Highbrow has been assuring / committing profits to the clients knowing fully well that all the investments in securities market are subject to market risk, and that such returns cannot be assured no matter how long the service period is fixed.

10. Highbrow sold multiple packages to clients with threat of forfeiture, has charged unreasonable and undisclosed fee and has indulged in unfair dealings

10.1. On analysis of payment receipts of the complainants it is noted that in the very first month of their association with Highbrow, large number of packages were sold and substantial amount by way of fee was extracted by Highbrow. Analysis of the fees collected from the clients (sample basis) in the first month of the association with Highbrow is tabulated as under:

Fee collected from clients for multiple services in a short period

(Figures in Rs.)

S. No	Name	Date	No. of product/ package sold	Proposed investment as per Risk Profile	Amount of fees collected
1.	Anto S Vaz	11/09/2017 to 13/10/2017	06	2-5 Lakhs	12,71,820
2.	Dipak Thakkar	22/12/2015 to 11/01/2016	04	More than 5 lakh but his annual income is only 1 – 5 lakh	9,35,000
3.	Uma Shankar	07/09/2017 to 11/10/2017	04	2-5 Lakhs	3,09,998
4.	Ganesh Chakrabarti	28/03/2017 to 26/04/2017	05	5-10 lakhs	3,18,116
5.	Ashish Makati	06/02/2018 to 08/03/2018	05	2-5 Lakhs	11,28,227

10.2. As seen from the above table, in complete disregard of the proposed investment of the clients, huge amount of service fee was extracted from the clients by allotting multiple packages to the clients in a very short span of time.

10.3. On a sample basis, the payment receipts issued by Highbrow to Mr. Antos Vaz have been analyzed, the following table contains the relevant particulars i.e. payment made by Mr. Anto S Vaz for particular packages and the duration of the period for the service and the quoted profit amount, etc. ∴

(Figures in Rs.)

S. no.	Date	Payment Amount (including GST)	Remaining amount + GST (18 % on Remaining amount)	Name of the Service	Period of service as per bills provided	Approx period of service in date format	quoted profit amount
1	11-Sep-17	5,900	6,000	Stock Cash	3 months	11 sept to 11 dec	0
2	13-Sep-17	59,000	2,05,000	Decisive Cash Package	50 trading session	13 sept to 13 dec	6,50,000

S. no.	Date	Payment Amount (including GST)	Remaining amount + GST (18 % on Remaining amount)	Name of the Service	Period of service as per bills provided	Approx period of service in date format	quoted profit amount
3	15-Sep-17	46,801	46,425	Candid Cash Package	20 trading session	15 sept to 30 oct	2,15,217
4	28-Sep-17	1,60,008	1,24,335	Weekly Report 65	65 weeks	Sept 2017 to December 2018	0
5	28-Sep-17	1,17,004	NA	Bounce Cash Package	nothing mentioned	nothing mentioned	10,53,500
6	06-Oct-17	1,95,100	36,505	Bounce Cash Package	nothing mentioned	nothing mentioned	0
7	11-Oct-17	2,88,006	2,54,927	Locomote Cash Package	nothing mentioned	nothing mentioned	19,96,000
8	13-Oct-17	2,00,000	Not available	Not available	Not available	Not available	0
9	13-Oct-17	2,00,001	3,29,508	Locomote Cash Package	nothing mentioned	nothing mentioned	19,96,000
10	10-Nov-17	5,45,000	Not available	Not available	Not available	Not available	Not available
11	17-Nov-17	4,82,501	2,30,941	Call of the week 160	160 weeks	November 2017 to January 2021	0
12	17-Nov-17	1,00,005	1,75,185	Call of the Week 65	65 weeks	November 2017 to January 2019	0
13	17-Nov-17	4,83,000	1,34,678	Tip Top Future Package	nothing mentioned	nothing mentioned	21,76,000
14	20-Nov-17	69,945	1,28,725	Income Future Package	nothing mentioned	nothing mentioned	5,64,000

S. no.	Date	Payment Amount (including GST)	Remaining amount + GST (18 % on Remaining amount)	Name of the Service	Period of service as per bills provided	Approx period of service in date format	quoted profit amount
15	20-Nov-17	4,99,996	75,075	Locomote Cash Package	nothing mentioned	nothing mentioned	19,96,000
16	25-Nov-17	3,80,001	2,21,965	Tip Top Future Package	nothing mentioned	nothing mentioned	21,76,000
17	27-Nov-17	2,00,001	1,44,508	Crack Future Package	nothing mentioned	nothing mentioned	10,99,000
18	28-Nov-17	78,641	1,34,355	Float Forex Package	nothing mentioned	nothing mentioned	6,03,000
19	27-Nov-17	99,120	1,76,000	Tried Blue Currency Package	50 trading session	27- nov to Feb 28, 2018	6,50,000
20	27-Nov-17	99,120	1,76,000	Future Leader Package	50 trading session	27- nov to Feb 28, 2018	6,50,000
21	28-Nov-17	99,120	1,52,000	Desire Option Package	nothing mentioned	nothing mentioned	7,08,000
22	21-Nov-17	1,00,000	2,57,254	HNI Option	12 months	November 2017 to November 2018	0
23	21-Nov-17	46,641	1,18,474	Move Cash Package	nothing mentioned	nothing mentioned	4,74,000
24	27-Nov-17	2,00,010	60,499	Option Signature Pack 99 Calls	99 calls	no dates	0
25	21-Nov-17	1,00,000	2,57,254	HNI Future	13 months	nov 2017 to dec 2018	0
26	26-Oct-17	1,75,680	NA	Locomte Cash Package	nothing mentioned	nothing mentioned	19,96,000

S. no.	Date	Payment Amount (including GST)	Remaining amount + GST (18 % on Remaining amount)	Name of the Service	Period of service as per bills provided	Approx period of service in date format	quoted profit amount
27	28-Oct-17	4,05,971	6,075	Locomote Cash Package	nothing mentioned	nothing mentioned	0
28	09-Nov-17	49,678	2,17,835	Call of the Week 65	65 weeks	November 2017 to January 2019	0
29	10-Nov-17	1,00,000	2,16,254	Bounce Cash Package	nothing mentioned	nothing mentioned	10,53,500
30	10-Nov-17	4,63,770	1,05,975	Locomote Cash Package	nothing mentioned	nothing mentioned	19,96,000
		60,50,020					2,20,52,217

10.4. An analysis of the information tabulated above revealed the following

- a) Mr. Vaz subscribed for the services of Highbrow and paid Rs. 5,000 on September 13, 2017.
- b) Within the very first month of his joining, Highbrow had taken payment of Rs. 8,71,819 (till October 11, 2017) from him. During this very month 5 packages (i.e. Decisive Cash Package, Candid Cash Package, 2 separate Bounce Cash Packages and Locomote Cash Package) were sold to him.
- c) The receipts mention the target profit or approachable profit but do not mention the amount which has to be invested by the client to achieve the said target or approachable profit.
- d) The packages that are sold to the client promise target returns of 4 times of the amount paid to Highbrow as service fee.
- e) Multiple Packages have been sold to Mr. Vaz over a period of around 2 months. Several packages have been sold twice or more. It is surprising to note that the payment receipts mention the tenure of service till the target profit is achieved, but even then, the same package is again sold to the client. For instance, Locomote Cash Package was first sold to Mr. Vaz

on October 11, 2017 and then again on October 13, 2017 another Locomote Cash Package was sold to him before the tenure of the earlier package could end or the target could be achieved.

- f) It is a matter of common sense that if any amount is due from a client then any further payment should be used first to repay the payment due and then any new service or package should be provided. In the present case, it appears to be the strategy of Highbrow that some amount is always shown as remaining to be paid by the client and then the client is put under pressure to pay the same. Thus, complete payments are not accounted towards any package. It is visible from columns 3 and 4 of the table above that in respect of none of the packages, when payments were received they were not used to adjust the old dues, rather a new package was mentioned against the client's name and some amount was shown as pending.
- g) The client is never told about why a new package is given to him every time he makes a payment.

10.5. As noted above, complete payments are not accounted towards any package by Highbrow and with every payment, only partial adjustment is done with the old dues and a new demand is raised. Then strict deadlines are provided to the client. The relevant portions of the mails from Highbrow Mr. Antos Vaz noted below:

➤ Mail from Highbrow to client (Anto S Vaz) on October 26, 2017

Highbrow has mailed to the client for payment of pending amount on very short notice. IA had provided subscription of multiple services and created demand of INR 1,48,882/- + G.S.T @18%, payment to be made on 26th October 2017 (same day of mail communication) by 5:00 P.M.

➤ Mail from Highbrow to client (Anto S Vaz) on October 28, 2017

Highbrow has mailed to the client for payment of pending amount on very short notice. IA had provided subscription of multiple services and created demand of INR 2,88,000/- & INR 1,17,970.5/- payment to be made on 28th October 2017 (same day of mail communication) by 2:10 PM.

- Mail from Highbrow to client (Anto S Vaz) on November 17, 2017
02:46 pm

Highbrow has mailed to the client for payment of pending amount on very short notice. IA had provided subscription of multiple services and created demand of INR INR 4,33,938/- +, payment to be made on 17th November 2017 (same day of mail communication) by 04:30 P.M.

10.6. The above mails also contained a rider from Highbrow stating that “Further your services will be continued post completion of pending formalities (i.e. Amount + Documents).” It is important to note that these mails did not require the client to submit any documents. Thus, reading the content of the mails it appears that by way of these mails the client is informed that in the event of failure to make the balance payment within the timelines, the services agreed upon will cease to continue thereby implying that the amount already paid will be forfeited.

11. Highbrow has manipulated the risk profiles of clients and has failed to conduct due diligence.

11.1. The IA Regulations envisage that Risk profiling should be communicated to the client so that the client can assess his risk profile before agreeing to accept the advice. Further the purpose of risk profiling can be meaningful only when the Investment adviser verifies the information necessary for risk profiling. Such a requirement is mandatory, as the requirement for risk profiling is on the Investment Adviser. In the instant case, it is noted that Highbrow is not adhering to any of above requirements of the IA Regulations. Some of the instances are discussed as under:

- a) In the Risk Profile Questionnaire of Ashish Makati, his source of income has been recorded as “business” but he has informed that he is a *salaried employee*. The same is also apparent from his Employee ID card enclosed with Risk Profile questionnaire. Further, the risk profile shows that the client has experience in derivatives market for 2-3 years but moderate experience in commodity market and forex market. However, the client in his complaint has mentioned that he does not hold any experience in derivatives, forex and commodity market as he does not have any forex or commodity trading account.
- b) From the Risk Profile Questionnaire of Raj Kumar Sidam, it is noted that his recorded age is *under 45* whereas supporting documents enclosed

therewith i.e. PAN & Aadhar card, show date of birth as 07/02/1967. The client in the Risk Profile questionnaire has disclosed at one place that he has experience in all market segments including forex market whereas at another place it is mentioned that he has no experience in Forex market.

- c) Risk profile of Ganesh Chakrabarti has recorded that he has Investment experience in all the segments i.e. in commodity, equity, forex for more than 05 years, however, client denied the same vide e-mail dated December 21, 2018.
- d) Risk profile of Uma Shankar Sharma has recorded that his income is between Rs. 5 and 10 lakh. However, the client has submitted his Form-16 vide letter dated November 05, 2018 which shows that his gross annual income is Rs 2,78,478 Lakhs. Risk profile has recorded that the client has Royalty income, but the client has denied the same.
- e) Risk profile of Uma Shankar Sharma has recorded that his current worth of portfolio is between Rs 1 and 2 Lakhs and he has experience in the securities market, however client says otherwise. The client has submitted that he has no trading experience or investment exposure.

11.2. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice and accordingly risk profiling should precede suitability exercise. However, in case of Highbrow, there are instances, where the package/service (suitability) is decided and sold upfront and fee is collected before the risk profiling or KYC is done. For instance from the Risk Profile Questionnaire of Ashish Makati and KYC have been communicated to the client on February 22, 2018, however the payment receipts issued by Highbrow show that till then fee of more than Rs 8 Lakhs had been charged and collected by Highbrow.

11.3. Since the suitability is preceding Risk profiling, it is noticed that the risk profiling is manipulated/fixed to justify package subscribed (suitability) and in doing so, Highbrow manipulates the risk profile data that is captured in the questionnaire for Risk Profiling. This is corroborated by descriptions given by the complainants wherein they have stated that they were asked by the employees of Highbrow to sign on pre-filled risk profile. For instance, one of the clients, Anto S Vaz has informed vide e-mail dated September 24, 2018 that he has received pre-filled Risk profile questionnaire and was asked to sign it. The investors are either made to sign on the manipulated risk profile or

manipulate their risk profile under the coercion of forfeiture of fee which was taken upfront.

11.4. It is the duty of IA to do due diligence of data filled in the Questionnaire so that he can correctly ascertain suitable advice in the best interest of the client. The fact that pre-filled risk profile is handed over to the clients and the failure of verification of data relating to risk profile clearly indicates, the Highbrow has scant regard for conducting any due diligence that its advice is offered only after thorough analysis of all data including the risk profile as the data itself if manipulated. Therefore, the IA has failed to carry out the due diligence expected from it.

12. Failure of Highbrow to abide by principles of Suitability

12.1. Regulation 17 of the IA Regulations requires that investment advice should be, *inter-alia*, based on client's investment objectives and his financial situation. Further, the investment advice should be such that the client is able to bear any related investment risks consistent with its investment objectives and risk tolerance. The regulation envisages that IA shall carry out risk profiling of the client for ascertaining the suitability of advice and accordingly risk profiling should precede suitability exercise.

12.2. However, in case of Highbrow, there are instances, where the package/service (suitability) is decided upfront and fee is collected before the risk profiling or KYC is done. Certain instances are noted below:

- a) From the Risk Profile Questionnaire of Ashish Makati, it is noted that the client in his Risk Profile questionnaire has stated that his proposed investment amount will be 2-5 Lakhs, however Highbrow, without having regard to the client's financial capacity, had sold 8 packages and had taken more than RS. 72 Lakhs as fee from February to August 2018.
- b) From the Risk Profile Questionnaire of Raj Kumar Sidam, it is noted that the client in his Risk Profile questionnaire submitted that his proposed investment amount will be less than Rs 1 Lakhs and annual income is Rs 5 to Rs 10 Lakhs, however, without any regard to his financial strength and investment capacity, Highbrow has sold him several packages and charged more than Rs. 43 lakhs as service fee from the client.

- c) From the Risk Profile Questionnaire of Ganesh Chakrabarti, it is noted that the client has recorded proposed investment amount as Rs.5-10 Lakhs. However, without any regard to the financial capacity of the client, Highbrow has collected more than Rs. 17 Lakhs as fee from the client, which is apparent from the payment receipts issued by Highbrow.
- d) Risk profile of Uma Shankar Sharma has recorded that the client proposed to make an investment of less than Rs 2-5 Lakhs. However, without any regard to the financial capacity of the client, Highbrow has collected more than Rs. 13 Lakhs as fee from the client, which is apparent from the payment receipts issued by Highbrow.
- e) The client, Anto S Vaz in his Risk Profile questionnaire has stated that his proposed investment amount will be 2-5 Lakhs, however Highbrow, without having regard to the client's financial capacity, had sold 16 packages and had taken more than Rs. 60 Lakhs as fee from him during September to October 2017.

12.3. In addition to the above it is seen that large number of tips/calls have been sent to each client every day. As per the practice, Highbrow provides 3-4 calls per day for each package. Therefore, more the number of packages subscribed by the client more would be the number of tips/calls received by the client each day. Additionally, the client received additional messages for each call/tip, advising the client to hold or informing him that target 1 is achieved or target 2 is achieved. In many cases it was seen that the clients have received more than 100 messages in one day. Further, in many cases it is seen that tips/calls have been given to the clients advising them to take positions in more than 25 contracts. Most of the tips are provided for intraday trading and in the payment receipt given to the clients, Highbrow has advised that *"do trade in each & every recommendation with uniform quantity"*.

12.4. Considering the large number of tips sent, it is very difficult for the client to execute and keep track of price movement as these are intraday tips and have to be closed before end of the day. Further to execute such large number of calls/ tips, which are contracts in F&O, Commodity, Currency derivatives where ticket size is huge, large amount is required as margin obligations. It is seen in many cases that the margin obligation arising from execution of such tips is a substantial amount and significantly more than the client has expressed his willingness to invest in Risk Profile. This further goes to show that Highbrow has not taken into account the risk profile of the clients and did not follow the

requirement that the investment advice should be suitable to the client. Few instances are noted below:

- a) For instance, in the case of Raj Kumar Sidam, from the message log submitted by Highbrow, it is noted that on a daily basis on an average, the client was sent 30 messages and on some days the client was sent more than 100 messages. I note that these messages contain call/tips for taking position in many contracts ranging from 7 to 27 contracts every day. These are intraday calls and the client is expected to square-off by the end of the day. It is seen from Mr. Sidam's Risk Profile questionnaire that he has shown willingness to invest only Rs 1 lakh whereas Highbrow has sold him multiple packages which result in 7 to 27 tips/call per day and exposure/ position in such contracts would require significant amount much more than the amount the client has shown willingness in his Risk Profile to invest.
- b) From the message log of Dipak Kumar Thakkar submitted by Highbrow, it is noted that on 27th October 2017, the client was sent 90 messages to take exposure in 18 contracts. On Nov 1, 2017, 78 messages were sent to him to take position in 15 contracts. On 18th August 2017, 46 messages were sent to the client to take exposure in 15 contracts. However, as per the Risk Profile the proposed Investment amount of the client was more than Rs. 5 lakhs. Further gross annual income of the client is only Rs. 1 to Rs. 5 Lakhs. This clearly indicates that exposure/ position in such contracts would require significant amount much more than the amount the client has shown willingness in his Risk Profile to invest.

12.5. Thus, as noted above, Highbrow has, in order to maximize its own fee (benefit), sold multiple packages to the clients. Each package/product leads to 3 to 4 calls on a day in a derivative contract and requires investment of substantial money as margin requirement. It is seen that in almost all cases the investment required for a client is significantly more than the client's willingness to invest and his/her annual income as disclosed in Risk Profile. In view of the above, it is inferred that Highbrow has selected and sold package/product without any regard to the financial situation of the client and the amount he is willing to invest. Such an advice by Highbrow without taking into the financial position of the clients indicates that Highbrow has not followed the requirement of suitability of advice to its clients Further, Highbrow has kept his own interest ahead of his clients interest and has failed to carry out his fiduciary duties thereby violating regulation 17 (suitability of advice) and 15 (1)

read with clause 3 of Schedule III (Code of Conduct) for Investment Advisers provided in the IA Regulations.

13. Examination of the details available on website of Highbrow

13.1. Products/ package in the name of advisory are offered/ sold to the clients wherein the clients receive intra-day tips/calls in F&O contracts (Stock futures & Options, Index futures and Options), Commodity futures contracts (Agri, Bullion, Energy, Metal), etc. The fees charged depends on such products/package based on subscription period and varies from Rs 7,000 to Rs 6,75,000. It is stated on the website that for every product/package, Highbrow will provide 3-4 calls on daily basis.

13.2. From the details available on the website of the Highbrow, the following was observed:

- The advisory business of Highbrow is based on 'subscription model'.
- The fee charged is based on the product/ package subscribed and the subscription period.
- In the name of advice, Highbrow provides tips/calls to its client.
- The tips/calls are given to clients through SMS and/or telephone support.
- The tips/calls, as per records available, are based upon technical analysis and is in the nature of momentum calls.

14. Undisclosed additional fee

14.1. In addition to the fee as mentioned above, Highbrow has been charging additional fee without proper disclosure of the grounds on which such fee is being charged. One such additional fee is in the name of GST and taxes. It is observed that the clients are never informed upfront about the GST or other taxes applicable on his/her transactions. It has been observed in certain cases (e.g. in case of Anto S Vaz) that Highbrow had taken the payment first and then issued the invoice / payment receipt which indicated the GST applicable on the transaction.

14.2. Furthermore, Highbrow is charging additional fee for buying weekly reports on a pretext that calls/tips given based on such reports will only deliver profit to the clients. From the analysis of complaints it is seen that payment for weekly reports was not informed to the clients upfront.

Additional fee taken from the clients for buying weekly reports

S. No	Name	Subscription period	Amount charged for Weekly Report in lakhs
1.	Anto S Vaz	160 weeks	7.92
2.	Dipak Thakkar & Lalitaben Thakkar	Not defined, however as per receipt charges is Rs 3999/week thus weekly report is subscribed for minimum of 1075 weeks(4300000/4000)	43.8
3.	Uma Shankar	153 weeks	7.1
4.	Ashish Makati	40 weeks	1.8

14.3. From the above table, it is seen that clients have been sold subscription of weekly reports for year or more. In this regard, it is noted that Highbrow never offered any written explanation to its clients as to why the weekly report were required and how the same would generate the profit to the client. Also no justification has been provide by Highbrow to its clients so as to why weekly reports for such long durations are required to be purchased when the service tenure for achieving the target is 180 days or 200 days (as mentioned in the payment receipts). It *prima face* appears that the charge for weekly reports was only being levied to extract more and more money from the clients.

15. **Obtaining details of trading account of clients**

15.1. It was also noted that in certain cases, Highbrow had obtained the details of trading accounts including user ID and password. For instance, Uma Shankar Sharma and Durgesh Kumar hailing from Bhopal (MP) and Mahadipur (Bihar) have claimed that they have provided the trading account details to Highbrow as the same trading accounts were opened through Highbrow. In this regard, from the IP details obtained from their stock broker (Angel Stock Broking Ltd.) it is noted that multiple trades have been executed from Indore (MP) where Highbrow is located. This shows that trades on behalf of Uma Shankar Sharma and Durgesh Kumar were executed by employees of Highbrow.

16. Splitting of fee among the relatives of the client and denying to acknowledge clients even after receiving payment:

16.1. From the analysis of complaints it is observed that Highbrow has been following a practice of obtaining details of relatives of the clients. These relatives are also treated as clients. The payment received from the primary client and services provided is then split among his relatives to show that Highbrow is not charging exorbitant fee from a single client.

16.2. It has been noted that the relatives don't even hold any Demat or trading accounts or have no exposure in the market. In one case, it is seen that wife of a client (Raj Kumar Sidam) was shown as a client and a fee of more than RS 8 Lakhs was accounted under her name during April 2016 to September 2016. When enquired, Highbrow vide letter dated November 5, 2018 admitted to having made her a client, and also informed that she has not signed any document such as risk profile, KYC, etc. and therefore no service was provided. It is noted that the payment made by and the fees have been forfeited. This clearly shows that Highbrow charges fee before KYC, risk profile and subscription of product/package.

16.3. As seen from the payment receipts issued by Highbrow, risk profiling done by Highbrow and the complaints received by SEBI, the cases where details of relatives were obtained by highbrow are tabulated as under:

S. No	Clients name	Relative's name	Relationship	Remarks
1	Raj Kumar Sidam	Manda Sidam	Wife	1.No income level. 2.Does not have any demat/trading account.
2	Ganesh Chkrabarty	Chandamitra Chakrabarti	Wife	1. No income level. 2.Does not have any demat/trading account.
3	Anto S Vaz	Meenu Jennifer	Wife	1.No income level. 2.Does not have any demat/trading account.
4	Dipak Kumar Thakkar	Lalitaben Thakkar	Wife	No details available
5	Uma Shankar Sharma	Suraj Sharma	Nephew	1. Age 19 years and is a student with no income level. 2. Does not have any demat/trading account.

16.4. Apart from the above, Highbrow has also not acknowledged a person as a client from whom it had taken payment and had also issued a receipt. In case of Mr. Dipak Karpate, vide the above mentioned letter dated November 5, 2018, Highbrow has stated that *“Mr. Dipak Karpate has not made any payment nor opted for nay services so he is not our paid client”*. However, it is noted from the record that Highbrow has issued a payment receipt in the name of Mr. Dipak Karpate and has also acknowledged the payment of Rs. 1,30,050 therein.

17. Creation of fake email ID by Highbrow:

17.1. In one case, it is noted from the complaint of Mr. Dipak Thakkar that a fake email ID was created by Highbrow and was misused. This is corroborated by the fact that in the KYC documents of Mr. Thakkar, the email ID is dipakthakkar1973@gmail.com but on the payment receipts issued by Highbrow, the email ID is dipakkumar8569@outlook.com and 20061973dipakbhaithakkar@gmail.com. These email IDs are the same as alleged to have been made by Highbrow in the complaint by Mr. Thakkar.

18. To summarize, the following was observed from the documentation of Highbrow, written correspondence with its clients, emails exchanged between Highbrow and its clients, material available on the website of Highbrow and the material submitted by Highbrow / its officials during the examination carried out by SEBI pursuant to complaints received against Highbrow:

- a) Highbrow is running a profit counter which is aimed at luring the investors to subscribe for packages offered by Highbrow.
- b) Highbrow was promising and assuring unrealistic targets/approachable profits to investors, which were practically impossible to be achieved.
- c) Highbrow was making such assurances being fully aware of the fact that the advice related to investments in stocks, derivatives, commodity derivatives, etc. which are subject to market risk.
- d) Highbrow’s operations are aimed at maximizing its profits (i.e. service fee) by selling more and more packages to clients in complete disregard of the financial capacity or investment objective of the clients.
- e) Highbrow is opaque in its dealings with the clients as it does not even disclose the amount which the client is required to invest to achieve the target or approachable profit.
- f) Highbrow is fabricating Risk Profile of clients to advice risky products to maximize fee for its own benefit rather than acting in the interest of his clients.

- g) Investors are initially lured and inducted as clients with payment of smaller amounts for a basic package. Once the clients are lured with partial payment, several packages are allotted to them without their consent and then strict deadlines are put on them for the remaining payment and they are told that in the event of their failure to make the balance payment, no service would be provided thereby implying that the amount earlier paid by them would be forfeited.
- h) The payment made by client is not completed adjusted towards old dues, rather newer and more expensive packages are allotted to the client without his/her consent and some amount is again shown as due from the client.
- i) The same modus operandi is used again and again to extract more and more money from the clients.
- j) In certain cases, once the investors were inducted as clients, money was extracted from them in the garb of weekly reports and GST (which was not informed to the clients upfront).
- k) Highbrow has also indulged in other unfair dealings such as obtaining the details of trading accounts including user ID and password from clients, splitting fee among the relatives of the client and denying to acknowledge clients even after receiving payment, creation of fake email IDs in the name of clients, etc.

19. It is noted that as per regulation 2(m) of the Investment Adviser Regulations “investment adviser” means any person, who for consideration, is engaged in the business of providing **investment advice** to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called. The term “investment advice” has been defined under regulation 2(l) as *advice relating to investing in, purchasing, selling or otherwise dealing in securities or investment products, and advice on investment portfolio containing securities or investment products, whether written, oral or through any other means of communication for the benefit of the client and shall include financial planning*. On a perusal of these definitions, it becomes clear that the role of an “investment adviser” envisaged under the Regulations is that of a person rendering advice relating to investing, buying, selling or dealing in securities or investment products and advice relating to investment portfolio containing securities / investment products. In my view, looking at the scheme of IA Regulations, the role of an investment adviser is to provide honest and fair advice to its clients considering their financial situation, investment experience, investment goals, etc. The investment adviser should also make adequate disclosures of the relevant material information to its clients and should charge fair and reasonable fee from its clients, which is also stipulated under the Code of Conduct for Investment Advisers under the IA Regulations.

20. An investment Adviser is required to comply with SEBI Act and other applicable Regulations. An IA cannot make a false statement without reasonable ground for believing it to be true as mandated in PFUTP Regulations, 2003. An investment adviser cannot sell products promising assured targets to investors as was being done by Highbrow in the present case. Knowing fully well that all investments in stocks, derivatives, commodity derivatives, etc. in respect of which it was offering investment advice are subject to market risk, Highbrow was falsely promising approachable profit/ targets which are practically impossible to be achieved.
21. It is also noted from the payment receipts, email exchanges and other material discussed earlier that the advisory process being followed by Highbrow was akin to selling pre-fixed plans and extracting more and more money from the clients. The *modi operandi* adopted by Highbrow discussed hereinabove *prima facie* show that Highbrow was actually not practicing investment advisory in the manner envisaged under the IA Regulations, which essentially would involve advising the client considering his/her financial situation, risk appetite, financial goal, prior experience, etc. From the findings of the preliminary examination and the overall *modi operandi* discussed in this order, it *prima facie* appears that Highbrow was running a pre-meditated device, plan or scheme where under, the tele-callers / employees / representatives of Highbrow would lure gullible investors by making unrealistic profit commitment and then more money would be extracted from them by putting strict deadlines for making payments, refusal to provide any services in the event of delay, upgradation/change from one package to another without consent of the client, demanding various types of fees such as fee for weekly reports, etc. Highbrow by making practically impossible target commitments was also inducing the investors to deal in securities, and was thereafter charging unreasonable fee from them thereby making wrongful gains.
22. The above discussed non-genuine and deceptive activities of Highbrow are, *prima-facie* fraudulent and are covered under the definition of 'fraud' under regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations") which provides as under:

"(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
...”

23. It is noted that *prima facie* fraudulent activities / dealings of the nature discussed in this order are prohibited under the provisions of section 12A(a), (b) and (c) of the SEBI Act, 1992 and regulations 3 (b), (c) and (d) and 4(1) and 4(2) (k) of the PFUTP Regulations. I therefore, *prima-facie* find that Highbrow has contravened these provisions and the same are reproduced hereunder:-

SEBI Act, 1992

“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;”

PFUTP REGULATIONS, 2003

“Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*

-*
- (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”*

EXAMINATION OF RECORDS OF CONVERSATIONS BETWEEN HIGHBROW’S REPRESENTATIVES AND CLIENTS:

24. In addition to the documents, written communications and other material examined above, SEBI also examined the records of telephonic conversation between the clients / complainants and the employees / representatives of Highbrow, which were submitted by the complainants. It is noted that the telephone numbers registered in the name of Highbrow were used for these telephonic conversations by the employees / representatives of Highbrow. While these records of telephonic

conversations were clearly listened, for the sake of brevity the key points have been noted. These records of telephonic conversations corroborate the findings against Highbrow recorded earlier in this order.

25. It was also *prima facie* noticed that Highbrow lures clients, makes false promises of assured returns, obtains payment method details, obtains demat account details and indulges in other unfair dealings through a tele-caller set up. It is astonishing to note from the information provided by Highbrow itself that it around 514 telephone numbers registered in its name. Further, on the website of Highbrow there are few more numbers that do not figure in the list of 514 numbers given by it. Of the total employee strength of Highbrow, 90 % are call center operators or sales executives. Their job is to make cold calls pan India on the basis of random database of numbers or to numbers obtained from references or to those persons who visit Highbrow's website. These Tele-callers remain in constant touch with the clients. During such engagements, clients are informed that a team is assigned to them for advisory service and other ancillary activities. Fictitious names and designations are used by the sales executives while interacting with the clients so as they cannot be traced back. This is apparently done in order to deny any claim by the client in case of any dispute by informing that there is no such person employed with Highbrow. The subsequent paragraphs describe the unfair dealings carried out by Highbrow through its representatives while interacting with clients on telephone.

26. Assurance of profit to the clients by employees of Highbrow:

Employees of Highbrow in their communications with the clients have specifically stated the total profit they (clients) will make from their investment. Relevant extract of the transcript of telecommunication (on sample basis) which the clients had with employees of Highbrow are as under.

- i. Tele-communication from 0731-2428881 (Highbrow's number) with Antos Vaz dated December 07, 2017

Employee of Highbrow to Antos Vaz – *The package amount is Rs. 76,94,132 and return would be 3 times of investment. The total profit would be delivered by the end of this financial year i.e., March 2018. By end of December 2017, 80 lakhs or 1 crore may be recovered. Further by January end Rs. 1.5 Crore would be recovered.*

It is noteworthy that the during the telephonic conversation with Antos Vaz, the employee / representative of Highbrow has also promised returns of 3 times the investment within a span of 4 months

- ii. Tele-communication from 0731-2428812 (Highbrow's number) with Ashish Makati: August 27, 2018
Employee of Highbrow (Arjun Mahadev) to Ashish Makati - *Sir me itna surety de skta hun ke aap ne jo bhi investment kiya he ushka 2.5 times profit to apko milna he hai.* (Translated to "Sir, I can tell you surely that you will get 2.5 time profit of whatever investment you have made").
- iii. Telecommunication dated July 28, 2017 between Mr. Dipak Thakkar and employee of Highbrow using phone number 0731-6626215, 6626723 and 6612686 (Highbrow's numbers): The employee has guaranteed a profit of Rs. 15 crore on an investment of 60 lakh.
- iv. Telecommunication between Mr. Ganesh Chakrabarti and employee of Highbrow using phone number 0731-2428836 (Highbrow's number):
When the client sought clarification from the employee that profit was committed to him but the payment receipt states that the profit is not guaranteed, then the employee assured the client that the profit committed will be delivered to him regardless of what has been mentioned in the payment receipt.

27. Use of fictitious names and designation by highbrow's representatives

It is observed from the complaints that one single client is handled by different set of executives every time they call and the executives use pseudo names. From the transcript and call record it is also noted that employees are using fake designation to influence them and their decision making.

- i. On another occasion, Mr. Ashish Makati was called from the number 0731-2428812 (Highbrow's registered number) on August 28, 2018 and the person speaking with him namely, Varun Singh introduced himself as the "Compliance Officer" of Highbrow. However, when the same was verified with the records of Highbrow, no person with the name of Varun Singh was found to have worked as compliance officer for Highbrow.
- ii. In another instance, on December 19, 2017, Mr. Antos Vaz was called from the number 0731-2428875 and the person introduced himself as Rajat Singhania – relationship manager. When a clarification in this regard was

sought from Highbrow, vide letter dated September 26, 2018, it informed that it does not have any employee with the name Rajat Singhania.

28. Obtaining Credit Card / Demat account details from client to indulge in fraudulent activity

From the documents and call records submitted by the complainants, it has been observed that Highbrow has indulged in fraudulent activity by obtaining bank account/ credit card details to withdraw the money for payment of advisory fee. Highbrow has also obtained trading and demat account details of the clients in some cases and has attempted to transact in these accounts without the authorization of the client. By obtaining the bank account/ card details payments for advisory fees were initiated by the employee/ executive of highbrow. Certain sample instances are described below:

- i. **Raj Kumar Sidam** - From the analysis of E-mail records and call records provided by Raj Kumar Sidam (Complainant) it is seen that Highbrow has taken credit card details from him and used it to withdraw advisory fee. Raj Kumar Sidam told Highbrow's representatives that he did not want to continue with the service and during the telecom with Highbrow, when there was demand for advisory fee, he took a plea that credit limit in his credit card has been exhausted. While discussing with him and demanding the advisory fee, Highbrow's representative obtained the credit card details in order to check his credit limit and withdrew the money from his credit card without informing him. Vide an email dated July 18, 2015, Highbrow has admitted that the credit card details of the client were taken by Highbrow.
- ii. **Ashish Makati** – The transcript of telecom with number 0731-2428812 (Highbrow's registered number) on August 28, 2018 which Ashish Makati had with Highbrow brings out the fact that Highbrow had asked for details of demat ID and password from the client claiming to transfer the profit in his account. Once the client refused to part with the information of his bank account, Highbrow asked for details of demat account claiming that they have a process of transferring future profit to his demat account.

It is pertinent to note here during the telephonic conversation dated August 28, 2018 using number 0731-2428812, an employee of Highbrow named Varun Singh (claiming to be compliance officer of Highbrow) had sought details of Mr. Makati's bank account and demat account. Subsequently, vide an e-mail dated August 31, 2018, Ashish Makati had sent his bank

account details for fund transfer as well as the user ID and password of his trading account to Swapnil Prajapati – past director and promoter of Highbrow.

- iii. **Anto S Vaz:** Call record of November 29, 2017 (telecom with highbrow's representative on 0731-2428881) revealed that employee of highbrow was trying to obtain the details of trading account.

29. Misrepresentation by the employees of highbrow

- i. **Anto S Vaz** (conversation with Arthi Sharma on 731-2428881 dated December 1, 2017)
 - Packages were allotted to the client before informing the same to the client.
*“Client :lot of the packages has not been opted
Employee: yeah sir all the packages has been designed as per my supervision”*
 - Client has informed that he has opted only for the basic services but additional amounts were charged and he was forced to subscribe for multiple package. *“Client I started for basic services*
 - From the emails dated October 26, 28 and November 17, 2017 (noted earlier in the order) sent by Highbrow to Mr. Vaz, it was noted that client was informed if he does not pay further money, the services for the amount already paid by client (close to 9 Lakhs) will not be started.
- ii. **Ashish Makati** – Conversation from number 0731-2428812 dated June 21 & 22, 2018: Highbrow's representative called the client and informed that the client has been shifted to high package services without any prior consent from client. On objection client was told for the time being only pay the GST and rest would be paid after realization of profit. It was even told that 48 % of the payment may be contributed by the employee of the company but rest has to be arranged by the client.
- iii. **Ashish Makati** – Conversation from number 0731-2428812: The person introduced himself as Arjun Mahadev and said that he would be Mr. Makati's Manager. Mr. Arjun informed Mr. Makati that he will have to make payment to buy additional 100 research reports. The Client informed that he had already made payment for 60 weekly reports and he could not make any further payments. Then the client was told that

he will have to buy minimum 100 research reports for his profile and then only Highbrow would be able to deliver the profit to Mr. Makati.

iv. In one of the transcript it is noted that client was emotionally fooled by employee to take the money. The brief of transcript is provided as under:

➤ Ashish Makati – Conversation from number 0731-2428812 dated June 21 & 22, 2018: *The employee called the client and informed that the client has been shifted to high packages services without any prior consent to client. On objection client was told for the time being only pay the GST and rest would be paid after realization of profit. Even it was told 48 % of the payment may be contributed by the employee of the company but rest has to be arranged by the client.*

➤ June 25, 27 & 29 2018:

- a. *Employee said that he came to Ujjain to arrange the money and forcing the client if employee is arranging the money client should also expeditiously arrange money and make the payment.*
- b. *Employee now says company came to know about the money paid by the employee and that amount has been sealed and so client has to make more payment. If this payment is done then client will get huge payout.*
- c. *Client says that he has taken loan on everything - ornaments, house and personal loans. Even the employee is asking payment to be done by 03 PM so that payout slot should not miss.*
- d. *Client is also asked to drop a mail that he is supposed to make a payment of Rs. 440640*

Coercing the clients and dictating them to write appreciation letter for Highbrow

30. It is noted from the complaints that Highbrow is involved in coercing the complainants to write appreciation mails. These mails are dictated by the employees/executives of Highbrow over their mobile to the complainant. For instance, in the case of Ganesh Chakrabarti, the representative of Highbrow in his telephonic conversation from the number 0731 – 2428836 (Highbrow' number) has dictated as under

“My all problems are solved and thank you”

31. Further, the following mails were sent by Ganesh Chakrabarti to Highbrow which were dictated by an employee/executive of Highbrow.

- GANES CHAKRABARTI <gchakrabarti9@gmail.com>
Fri, Jul 20, 4:10 PM

"I am writing this mail acknowledging that I am one of the prestigious client of your company and have invested in equity services provided by Ways2capital. Also I am getting proper service & support with proper follow-up through Purbi on daily basis. I am quite satisfied with the working and surely continue trading with you in near future."

- GANES CHAKRABARTI <gchakrabarti9@gmail.com>
Fri, Jul 6, 6:24 PM

"Dear Team,

I coordinated with Mrs Aditi and Mrs Purbi and my all queries are resolved. I am expecting some good calls in Bank Nifty and Nifty now. I have paid complete amount for services and don't want any refund of any amount just due from good profitable trade. As your company is a research house. you should provide good trades.

*With regards,
ganeschakrabarti
chhandamitrachakrabarti"*

- GANES CHAKRABARTI <gchakrabarti9@gmail.com>
Wed, Apr 25, 2:59 PM

"Dear Team,

I know your company only provide the services to me. I am the only person who contacted with the broker over phone in case there is no internet connection otherwise all the calls received from your company are routed over phone through broker."

The language of these emails makes it apparent that the language thereof has been dictated to the client / complainant. Otherwise, any reasonable person on his own volition would not write an email in such language to his investment adviser.

32. I note that since the operation model of Highbrow is based on the tele-caller set up, most of the communication of Highbrow's representatives / employees with the clients takes place over phones, and therefore the records of telephonic conversations bring out the detailed manner of operation of Highbrow.

33. The above recordings of telephonic conversations (on sample basis) between the clients and the employees of Highbrow using telephone numbers registered in the name of Highbrow corroborate the findings of *prima facie* fraudulent investment advisory by Highbrow recorded earlier in the order.

34. Non-Redressal of Investor Grievances:

34.1. SEBI has vide Circular CIR/OIAE/2014 dated December 18, 2014 regarding Investor grievances through SEBI Complaints Redress System (SCORES) platform has advised that all SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The SEBI registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. Further, the said circular has stated that in case of failure by SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance, it shall be treated as failure to furnish information to SEBI and deemed to constitute non-redressal of investor grievance.

34.2. As per the data obtained from the SCORES and examination of complaints, it is apparent that highbrow has not redressed Investor grievances as per the prescribed timelines by SEBI. The reports of SCORES provide that till date **91 unique complaints** are long pending against highbrow.

34.3. In view of the above, Highbrow is in violation to SEBI Circular CIR/OIAE/2014 dated December 18, 2014 read with regulation 21(1) of IA Regulations.

35. In addition to the above, the following is *prima facie* observed with respect to Highbrow:

- a) It is noted that Highbrow has not been fair in its dealing with his clients. Highbrow is not transparent about the fee charged from its clients and has not been informed of all the charges upfront. The fee charged to the client is also unreasonable. Furthermore, it is observed that Highbrow is charging additional fee in the name of GST, Taxes, weekly reports which was not disclosed upfront

to the clients. Highbrow has adopted unethical business practices/ *modus operandi* (promising assured returns, recouping losses, shifting the client to high price package claiming the package is beneficial for the client, etc.) to hoodwink the clients into buying/subscribing multiple packages in order to maximize fee for his own benefit. The act of Highbrow is in complete disregard to the responsibility entrusted on him under IA regulation to act in fiduciary capacity and in the best interest of its clients and keeping his own interest ahead of his client's interest. In view of the above, it is noted that Highbrow has failed in its responsibility to act in fiduciary capacity towards its clients and has violated regulation 15 (1) of IA regulation and has also failed to abide by Code of Conduct under regulations 15 (9) read with clause 1, 2, 5 and 6 of Code of Conduct for Investment Advisers provided under the IA Regulations.

- b) Regulation 15(2) of the IA Regulations provides that an investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form *from any person other than the client being advised*, in respect of the underlying products or securities for which advice is provided. In the present case on account of showing the relatives of clients as clients and splitting the fee in their names, Highbrow has *prima facie* violated regulation 15(2) of the IA Regulations.
- c) Regulation 16 of the IA Regulations, *inter alia*, requires that the IA shall obtain from its clients information necessary for the purpose of giving investment advice such as their age, investment objective, income details, prior experience, existing investments, risk appetite, liabilities / borrowings, etc. The said regulation also requires that the IA after carrying out the risk assessment in the manner indicated therein, shall communicate the client's risk profile to him/her, and also that the information provided by the client and the risk assessment is updated periodically. In the present case, it is noticed that Highbrow did not carry out appropriate risk profiling of its clients which is *prima facie* evident from the fact that it sold pre-fixed plans promising unrealistic target commitments to the clients and also upgraded/changed the packages offered to them without their consent. Thus, Highbrow *prima facie* violated regulation 16 of the IA Regulations.
- d) Regulation 17 of the IA Regulations, *inter alia*, stipulates the IA to ensure that the investment advice provided to the clients is appropriate to their risk profiles. The regulation further requires that the IA should have a documented process for selecting investments based on clients' investment objectives, and the IA shall also have a reasonable basis for believing that a recommendation provided meets the investment objectives. In the present case, it is noted that

there does not appear to be any documented process for selecting investments based on client's investment objective and financial situation, rather majority of the clients have been sold pre-fixed plans promising unrealistic returns irrespective of their financial situation, investment objective, etc. with the sole purpose of extracting more and more service fee from the clients. I, therefore, find that assured has *prima facie* violated regulation 17 of the IA Regulations.

- e) Regulation 21 of the IA Regulations, *inter alia*, stipulates that an IA shall redress investor grievances promptly and shall have adequate procedure for expeditious grievance redressal. As noted earlier, several complaints have been filed against Highbrow by its clients. Looking at the current status of the complaints filed against Highbrow, it is noted that it has failed to redress investor grievances satisfactorily. In view thereof, Highbrow has *prima facie* violated regulations 21 of the IA Regulations read with SEBI Circular CIR/OIAE/2014 dated December 18, 2014.

36. I note that a person acting as a securities market intermediary is expected to protect the interest of investors in the securities market in which he/she/it operates and it ill-behooves him to become a party to any market misconduct. Every market intermediary is required to maintain high standards of integrity, promptitude and fairness in the conduct of his business dealings, and not be motivated purely by prospects of financial gain. The intermediary should not abuse the certificate of registration granted to it, in any manner, for carrying out any non-genuine, deceptive or fraudulent acts. Under Regulation 15 (1) of SEBI (Investment Advisers) Regulations, 2013, an IA shall act in a fiduciary capacity towards its clients. In order to maintain fiduciary relationship, one of the essential elements is to strictly adhere to the Code of Conduct for an Investment Adviser prescribed under the IA Regulations, relevant provisions whereof are reproduced below:

“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.

3. Capabilities

An investment adviser shall have and employ effectively appropriate resources and procedures which are needed for the efficient performance of its business activities.

4. Information about clients

An investment adviser shall seek from its clients, information about their financial situation, investment experience and investment objectives relevant to the services to be provided and maintain confidentiality of such information.

5. Information to its clients

An investment adviser shall make adequate disclosures of relevant material information while dealing with its clients.

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, if any. The investment adviser shall ensure that fees charged to the clients is fair and reasonable.

...

8. Compliance

An investment adviser including its representative(s) 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.

...”

37. Looking at the activities and manner of operation of Highbrow in the present case, which have been discussed in detail in the preceding paragraphs, I am of the *prima facie* view that Highbrow has failed to abide by the code of conduct on all counts mentioned above. I, therefore, find that Highbrow, while carrying out his activities as an Investment Adviser has *prima facie* contravened the provisions of Clause 1, 2, 3, 4, 5, 6 and 8 of the Code of Conduct for Investment Advisers read with regulation 15(9) of IA Regulations, 2013.
38. Incidentally, during the preliminary examination carried out by SEBI, the following was also noted from the description provided by the complainants in the complaints filed by them:
- a) The manner of operation of Highbrow is similar to a sales call center wherefrom the tele-callers / employees / representatives of Highbrow interact with the clients.
 - b) The plans offered by Highbrow were being actively marketed over telephone, SMS, E-mail, etc. to gullible investors.
 - c) Its SEBI registration was being marketed as validation of all the products and schemes it was offering to its investors.

- d) In several instances, Highbrow or his representatives had obtained and operated the user ID and passwords of the demat accounts of clients of Highbrow.
- e) In certain cases, the complainants were asked to sign on prefilled risk profiles and no separate risk profiling of clients was done by Highbrow.

39. As a regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. Since the conduct of Highbrow mentioned above does not *prima facie* appear to be in the interest of investors and the securities market, necessary action has to be taken against it immediately, else it may lead to loss of investors' trust in the securities market. Considering the facts and circumstances of this case and such a fraudulent scheme, plan, device and artifice as *prima facie* found in this case, I am convinced that this is a fit case where, pending detailed examination, effective and expeditious preventive and remedial action is required to be taken by way of *ad interim ex - parte* order to protect the interests of investors and preserve the safety and integrity of the securities market. Such action needs to be taken not only to prevent any further harm to investors but also to send a stern message to prevent any person from indulging in acts as observed in this case.

40. It is noted that the total amount paid by the complainants as fee for the advisory services provided by Highbrow identified from SCORES complaints is Rs 13,90,38,757.

41. It is noted that on its website, Highbrow under the head "Payment Options" has provided details of 6 bank accounts (i.e. accounts held in ICICI Bank, Axis Bank, Punjab National Bank, HDFC Bank, Union Bank and State bank of India) and the clients / investors may make payments in any of these bank accounts.

(Figures in Rs.)

Bank/FY		ICICI	Axis	PNB	SBI	HDFC	UNION bank
2012-13	Debit	26,94,190	32,77,715			Consolidated for the period 2012 – 19 since year wise breakup is not available	Consolidated for the period June 2015 to January 2019 since year-wise breakup is not available
	Credit	31,58,333	31,63,122				
2013-14	Debit	80,42,428	1,93,99,056		14,41,067		
	Credit	82,06,563	1,96,27,813		16,67,455		
2014-15	Debit	1,59,65,676	2,83,79,547	4,355	40,37,165		
	Credit	1,57,02,759	2,87,51,988	20,15,316	64,31,730		
2015-16	Debit	3,36,27,652	1,70,83,815	50,36,472	2,28,71,432		
	Credit	3,36,53,504	1,75,48,953	43,22,561	3,23,83,978		
2016-17	Debit	4,19,10,568	1,72,36,369	28,64,976	3,03,88,027		
	Credit	4,18,63,826	1,62,01,351	25,66,878	2,77,64,094		
2017-18	Debit	3,86,47,420	2,66,18,575	1,04,55,734	2,96,85,254		

Bank/FY		ICICI	Axis	PNB	SBI	HDFC	UNION bank
	Credit	4,00,36,180	3,20,68,281	1,00,02,226	3,20,75,483		
2018-19	Debit	3,79,55,016	1,45,26,615	70,61,067	2,02,32,916		
	Credit	3,81,55,150	1,23,17,157	71,83,576	1,26,18,202		
Total	Debit	17,88,42,950	12,65,21,691	2,54,22,604	10,86,55,861	59,00,45,682	88,64,761
	Credit	18,07,76,315	12,96,78,667	2,60,90,557	11,29,40,942	59,29,09,912	91,57,313

42. From the account statements of Highbrow's accounts maintained with the above mentioned banks, it is noted that Rs. 105,15,53,706 was credited and Rs. 103,83,53,549 was debited since 2012-13 (i.e. Inception of Highbrow) till 2018-19. Since these bank accounts were designated by Highbrow itself for the purpose of receiving payments for its investment advisory activity, it can reasonably be inferred that the amount credited in these bank accounts was paid by the investors towards advisory fee. Considering the above, it is noted that an amount of Rs. 105,15,53,705 has been collected by Highbrow *prima facie* through fee for fraudulent investment advisory activity.

43. As noted earlier, in the present case, *prima facie* violations of securities laws have been noticed on the basis of the examination carried out by SEBI. It is pertinent to mention that a huge number of complaints have been filed against Highbrow alleging perpetration of fraud on the clients and in almost all the complaints, the complainants have claimed refund of the money given by them to Highbrow. In the event, upon detailed examination of the matter, it is found that the money was taken by Highbrow from the clients in *prima facie* violation of the applicable law, and the claims of the clients are found to be genuine, Highbrow would be liable to refund the money collected by it from the clients subject to the adjudication of the allegations on merits. While the detailed examination in the matter is pending there is a possibility that Highbrow may divert the money collected from the clients. I, therefore find that pending detailed examination, in view of the alleged liabilities and the *prima facie* evidence against Highbrow, it is also essential to take urgent steps to prevent Highbrow from alienating any assets, whether movable or immovable, or any interest or investment or charge in any of such assets, so that the final remedies, if any, do not become infructuous.

44. It has already *prima facie* been found that many of Highbrow's clients have been sold pre-fixed plans promising unrealistic target returns irrespective of their financial situation, investment objective and risk profiling. The selling of such pre-fixed plans goes against the customized advice which would be required based on the investors' risk profile. This requirement of risk profiling goes to the very root of suitability of investment advice as clients are required to get the investment advice based on their risk profile. Exposing the existing clients to such advice, which has no co-relation to their risk profile, is against the interest of those investors. Thus, in

order to prevent the existing as well as the prospective clients from getting such advice which has no co-relation to their risk profile, urgent steps need to be taken against Highbrow. Further, as discussed hereinabove, the very nature of the investment advisory activity being practised by Highbrow has been found to be prima facie fraudulent and in violation of the provisions of SEBI Act, PFUTP Regulations and IA Regulations. In view thereof, allowing Highbrow to continue its services to its clients, regardless of whether they have complained against Highbrow or not, would tantamount to allowing the prima facie fraudulent investment advisory activity to continue, which will be inimical to the interests of clients and will also be in contravention of what has been envisaged under the IA Regulations. Considering the above, in my view, the balance of convenience lies against highbrow and immediate steps needs to be taken against Highbrow to protect the investors / clients from freshly subscribing to or continuing to get such prima facie fraudulent investment advisory service by Highbrow.

45. Any Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors being responsible for the conduct of the business of a company are liable for any non-compliance of law and such liability shall be upon the individual directors also. Hon'ble Supreme court while describing what is the duty of a Director of a company held in *Official Liquidator v. P.A. Tendolkar* (1973) 1 SCC 602 that “A Director may be shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially”. Further, in cases of fraud, it is a settled position of law that the corporate veil can be lifted and the directors can be held liable for the fraud of the Company. In the present case, as noted earlier in paragraph 2, Chandan Singh Rajput and Rahul Trivedi are the present directors of Highbrow. Further, Sunil Atode (from June 23, 2017 to May 1, 2018), Girish Kumar Pahwani (from June 23, 2017 to December 19, 2018), Laxmikant Sharma (from 26 December 2011 to 01 April 2016), Mohit Chhapparwal (from 26 December 2011 to 01 April 2016), Hemant Agrawal (from 26 December 2011 to 01 July 2017) and Swapnil Prajapati (from 26 December 2011 to 01 July 2017) were the past directors of Highbrow. Four of these persons namely, Laxmikant Sharma, Mohit Chhapparwal, Hemant Agrawal and Swapnil Prajapati are also the promoters of Highbrow holding substantial

shareholding therein. The *prima facie* violations committed by Highbrow which have been discussed above also pertain to the time periods when these persons were acting as directors of Highbrow. Therefore, all the present and past directors of Highbrow are *prima facie* responsible for the violations committed by Highbrow.

46. Further, as regards the employees of Highbrow, the findings recorded exhibit that the operations of Highbrow are mainly carried out by its employees who inter alia made cold calls to people across the country, contact the investors, lure investors into subscribing for services of Highbrow, make false assurances, obtain trading account / bank account details, sell additional packages to clients and extract more and more money from the clients. As has been discussed above, modus operandi of Highbrow is *prima facie* fraudulent and it is practically impossible that the employees had no idea that Highbrow indulges in non-genuine investment advisory activity. Various instances of the employees giving fake names and designations, making false assurances, attempting to obtain confidential information from the clients, etc. have been noted earlier in this order. In my view, the modus operandi of Highbrow cannot be executed without the complicity of its employees. Thus, appropriate directions also need to be issued against the employees of Highbrow.

47. In view of the foregoing, pending detailed investigation, in order to protect the interests of the investors and the integrity of securities market, I, in exercise of the powers conferred upon me under sections 11, 11B and 11D read with section 19 of the SEBI Act, 1992, direct as under :

- a) Highbrow and its directors (present and past) are restrained from buying, selling or dealing in the securities market or associating themselves with securities market, either directly or indirectly, in any manner whatsoever, till further directions.
- b) The Noticees and any other employee/person working under them as part of the overall modus operandi discussed in this order shall cease and desist from undertaking any activity in the securities market including the activity of acting and representing through any media (physical or digital) as an investment advisor, directly or indirectly, in any manner whatsoever till further directions.
- c) The Noticees are directed to provide a full inventory of all assets held in their name, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.
- d) Highbrow is directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets,

held in their name, including money lying in bank accounts except with the prior permission of SEBI.

- e) The depositories are directed to ensure that till further directions no debits are made in the demat accounts, of Highbrow held jointly or severally.
- f) The banks are directed to ensure that till further directions, no debits are made in the bank accounts held by Highbrow jointly or severally.
- g) The Registrar and Transfer Agents are also directed to ensure that till further directions the securities held in the name of Highbrow, jointly or severally, are not transferred.

48. The order shall come into force with immediate effect. A copy of the order shall be sent to the Banks, Stock Exchanges, Depositories and Registrar and Transfer Agents to ensure that all the above directions are strictly enforced.

49. This order is without prejudice to the right of SEBI to take any other action that may be initiated against the aforementioned entities in accordance with law. The entities against whom this order has been passed may file their objections, if any, within twenty one days from the date of this order and, if they so desire, avail themselves of an opportunity of personal hearing before SEBI, on a date and time to be fixed on a specific request, received from the said persons.

Sd/-

DATE: May 23, 2019

PLACE: MUMBAI

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA