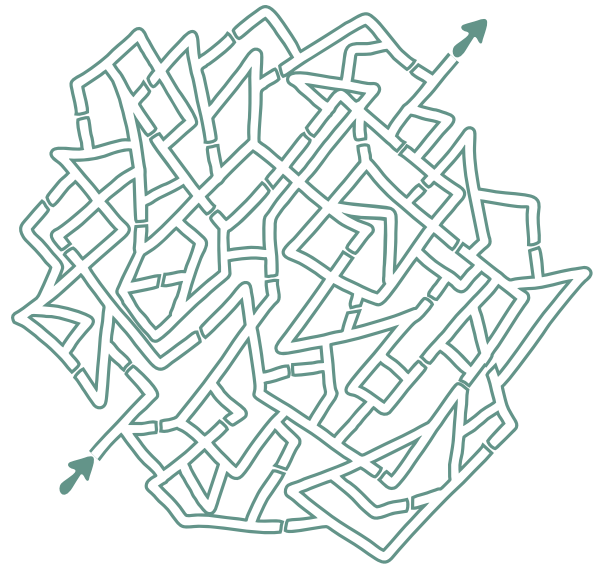




LEXTECH
Centre for Entrepreneurship,
Innovation and Law



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A GET RICH QUICK SCHEME

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A GET RICH QUICK SCHEME

SEBI CRACKDOWN ON UNREGISTERED ADVISORS

DEVANSH SEHGAL AND RISHAB RAJIV RAJ



GETTING A PERSPECTIVE

The pandemic has had an adverse financial impact on the working class. To tackle this impact, there has been an influx of cash which eventually got some disposable income in the hands of the people. Among other things, this has also led to an acute rise of part-time traders and new investors in the stock market. Add to that, the convenience of trading and investing brought by online-broking platforms such as Zerodha, Groww etc, entering the stock markets have become effortless for these rookie traders. Unfortunately, this has also led to a rise in the number of fraudulent and bogus stock market consultants and advisors.

Recently, it came to the notice of the Securities and Exchange Board of India (“**SEBI**”) that certain persons who have not been registered or authorized by SEBI under the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013 (“**Advisers Regulations, 2013**”) are functioning as ‘investment advisors’. These advisors use platforms like Telegram and Twitter to manipulate the stock prices and make profits by using their subscribers.

Who is an ‘Investment Adviser’?

Any person who is engaged in the business of providing investment advice to clients or other persons for a consideration and holds out themselves as an investment adviser, is called an investment advisor under law.

These advisors first bait their potential subscribers to join the Telegram Channel by displaying attractive advertisements spread across various platforms. Once the subscriber takes the bait, they display baseless and fraudulent messages showing high possibilities of price hikes in small-cap companies. This often leads the subscribers to take a bullish position, and once the price increases, the so-called advisors sell their previous holdings in those stocks, thereby booking huge profits through such illicit trades.

After multiple complaints, SEBI recently examined a Telegram Channel, “bullrun2017”/ “Bull Run Investment Educational Channel”. Shockingly, as of December 14, 2021, the number of subscribers on that Channel had swelled up to 51,980. This Channel recommended users to trade in the Cash and Derivatives segment for both intraday and positional trades.

Are TV Channels registered as ‘Investment Advisers’?

Any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product, is exempt from mandatory registration as an investment advisor.

THE INVESTIGATION

The great lie began with the Telegram Channel’s description where the administrators claimed to be a team of four research analysts with a combined 40 years of expertise who were now attempting to obtain SEBI Research Analyst Registration. Importantly, giving investment advice in ‘closed groups’ which are accessible only to limited members or work on subscription models on social media platforms by those who are not registered with SEBI is considered illegal as per the Advisers Regulations, 2013.

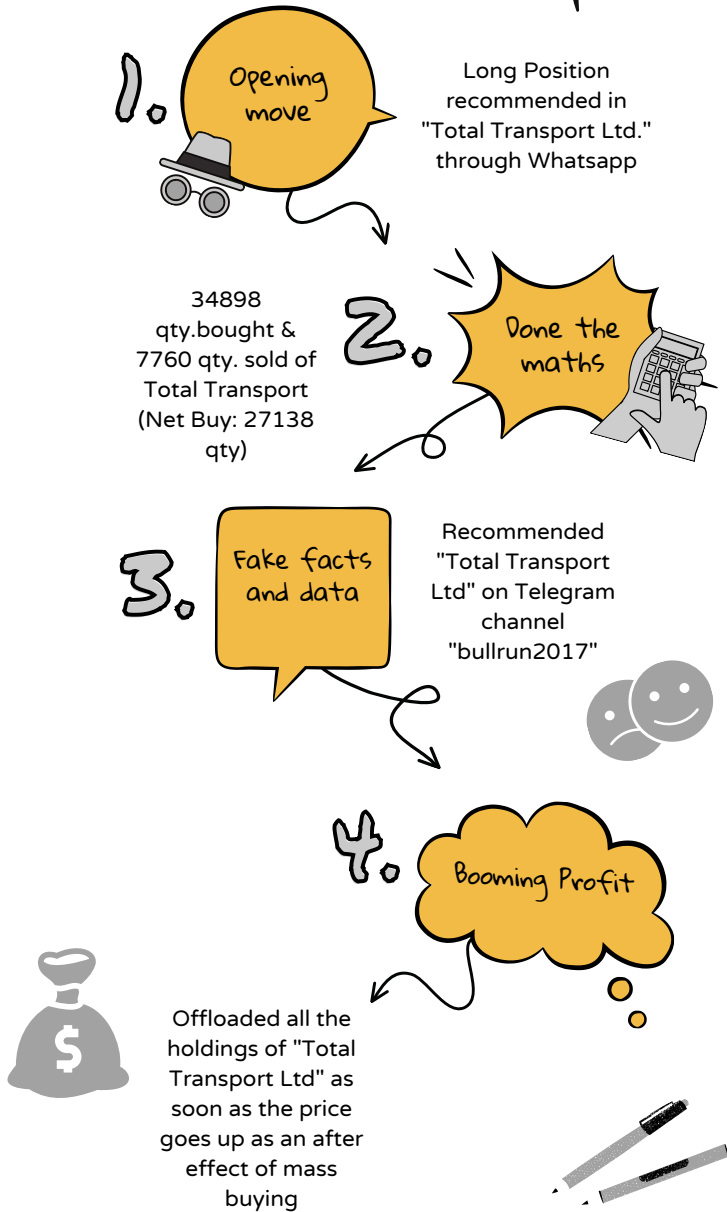
However, discussing broad ideas and stock market patterns, as well as presenting suggestions on mass public mediums such as television or newspapers, is allowed and will not be considered as ‘investment advice’ under the said regulations.

After becoming suspicious of the channel’s operations, SEBI decided to monitor it for a few days, which led to an investigation into the activities of a WhatsApp Group called “Stock Gujrati 3,” which had three administrators with valid Indian phone numbers.

Following that, SEBI contacted the respective telecom service providers, examined the KYC details linked with the mobile numbers, and conducted a TrueCaller check, which revealed that the numbers were registered in the names of Himanshu Patel, Raj Patel (who were brothers), and Jaydev Zala (who was their friend) collectively referred to as “**Group Admins**”.

INFOGRAPHIC

The trail of Telegram



Between April and July 2021, the Group Admins posted a recommendation on the said Channel to invest in a company called M/s. Total Transport Sys Limited, through which the Group Admins made a combined profit of Rs. 9 lakhs because they had accumulated large quantities of Total Transport shares before and then squared off their position by earning a substantial profit.

The benefits of hiring a Registered Investment Advisor

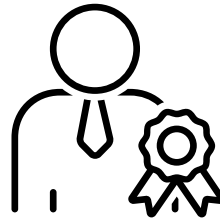
FIDUCIARY RELATIONSHIP

Prioritizes the interests of the clients above everything else, even their own.



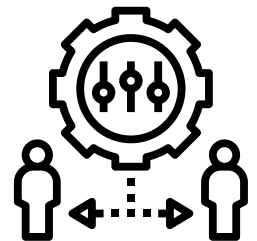
ADVANCE QUALIFICATIONS

Graduates/post-graduates with the necessary experience and professional certification are required.



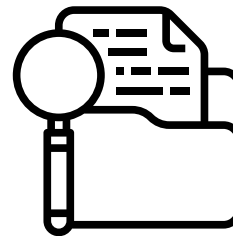
SEBI-REGULATED

Processes, compliance, record keeping, the quality of advise must etc. must be adhered to as prescribed by SEBI.



AUDITS

Each year, submit to an audit for process, compliance, and issues.



FORMAL WORKING

There are no conflicts of interest. Advisors are neutral, client-centric, and only get paid by clients.



Later on, SEBI conducted a search and seizure operation at the address of Group Admins to acquire conclusive evidence against them, and their digital devices were seized. At that point, it was apparent that Himanshu, Raj, and Jaydev were the administrators of the Telegram Channel ‘bullrun2017’ based on the investigation of the confiscated devices.

Primarily, Himanshu used to send recommendation messages on the Telegram Channel and tell Jaydev about the scrip before it was recommended. Moreover, Himanshu and Raj also used the mobile numbers and trading accounts of their family members to buy and sell stocks, all of whom lived at the same address.

MODUS OPERANDI & ILLUSTRATIONS

The *modus operandi* of the Group Admins was to first buy shares of specified scrips of illiquid small-cap stocks with low trading activity as they can be manipulated easily. After that, they used to send out positive messages about those scrips enticing people and inducing them to buy those shares. Then, the Group Admins would sell their pre-acquired shares of those specific scrips immediately or within a few days, pocketing large profits.

For example, between April and July 2021, the Group Admins posted a recommendation on the said Channel to invest in a company called M/s. Total Transport Sys Limited, through which the Group Admins made a combined profit of Rs. 9 lakhs because they had accumulated large quantities of Total Transport shares before and then squared off their position by earning a substantial profit.

Another example of the Group Admins’ identical modus operandi was in the scrip of Metro Global on 20th & 28th July 2021, where the Group Admins’ trading pattern followed the same fraudulent and deceptive mode as before, and the Group Admins were successful in making a cumulative profit of Rs. 8.21 lakhs in a similar manner.

WHAT THE LAW SAYS

According to existing law, an entity that is not registered with the SEBI as a financial advisor or research analyst is forbidden from providing financial advice to anybody through any means like Telegram Channels. The SEBI found the Group Admins to be in flagrant violation of provisions of the SEBI Act, 1992 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations”) for the commission of deceptive acts with the dubious intent to make money at the expense of innocent investors.

Are family members accomplices?

“Persons associated with investment advice” may be defined as 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.

Their family members, on the other hand, knowingly allowed access and operation of their trading accounts in the hands of the Group Admins and thus, aided and abetted them in carrying out their nefarious acts of deceit, fraud, and manipulation.

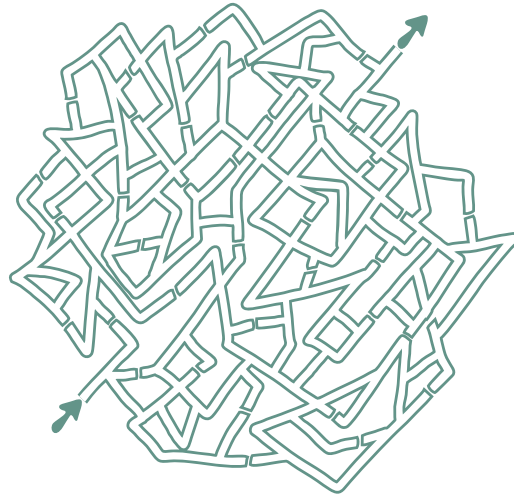
In light of this violation and a cumulative illicit profit earned by the Group Admins and their family members of ₹2,84,29,948, SEBI barred all of them from purchasing, selling, or dealing in securities in any way, until further orders. Additionally, SEBI also impounded their bank accounts for the aforementioned amount (alleged unlawful gains) and mandated them to pay this fine in a new escrow account maintained by SEBI.

Who can give 'Investment Advice'?

As per the Advisers Regulations, 2013, no person shall act as an investment adviser or hold itself out as an investment adviser unless he has obtained a certificate of registration from the Board under these regulations.

Market manipulation causes unwarranted interference in the operation of ordinary market forces of supply and demand and thus undermines the integrity and efficiency of the market. The scheme of enticing and inducing others to deal in certain securities, thereby creating an adverse and artificial impact on the price and volume of those scrips, has been so cleverly crafted and implemented that ordinary investors can't identify any dubious hidden intent behind such messages and tips.

Nonetheless, SEBI, which is tasked with safeguarding investors' interests, cannot remain a passive observer, regardless of the technology employed by delinquents, and such delinquents must be kept beyond the securities market's walls. The Apex Court has also repeatedly highlighted the importance of SEBI and has observed that if market abuse is not properly curbed, the very object of the SEBI Act stands defeated. It would be interesting to see how SEBI responds to these expanding sources of 'tips/calls' for the stock market and protects retail investors from being duped.



#SIMPLIFIED #4

09.02.2022

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