

**BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD
OF INDIA [ADJUDICATION ORDER NO. Order/PM/AN/2020-21/10118]**

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of –

**M/s Asit C Mehta Investment Intermediaries
Ltd. (PAN: AAACA5009N)**

(SEBI Registration Nos.: NSE: INB/INF/INE 230607239,
BSE: INB/INF010607233, MSEI: INB/INF/INE 260607230 and IN-DP-CDSL-2829)

In the matter of M/s Asit C Mehta Investment Intermediaries Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), the National Stock Exchange (hereinafter referred to as “**NSE**”), the Bombay Stock Exchange (hereinafter referred to as “**BSE**”) and the Central Depository Services (India) Limited (hereinafter referred to as “**CDSL**”) conducted a comprehensive joint inspection of the broking and depository participant operations of Asit C Mehta Investment Intermediaries Ltd. (hereinafter referred to as “**Noticee**”). Noticee is registered with SEBI in the capacity of a stock broker having registration nos. NSE: INB/INF/INE 230607239, BSE: INB/INF010607233 and MSEI: INB/INF/INE 260607230 and in the capacity of Depository Participant having registration no. IN-DP-CDSL-2829. The period of inspection was from April 2017 to September 2018 (hereinafter referred to as “**IP**”).
2. Based on the findings of inspection, SEBI initiated adjudication proceedings against the Noticee in terms of Section 23D of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) and 15HB of Securities and Exchange Board of

India Act, 1992 (hereinafter referred to as “**SEBI Act**”) for the alleged violations of provisions of the below mentioned SEBI Regulations/ Circulars and NSE Circulars:

- (i) Section 23D of the SCRA read with (r/w) clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 (**hereinafter referred to as SEBI Circular dated November 18, 1993**) and clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 (**hereinafter referred to as SEBI Circular dated September 26, 2016**)
- (ii) Clause 3.2 of Annexure of SEBI Circular dated September 26, 2016
- (iii) Clause 2 of Annexure of SEBI Circular dated September 26, 2016
- (iv) SEBI Circular SEBI/MIRSD/SE/CIR-19/2009 dated December 3, 2009 (**hereinafter referred to as SEBI Circular dated December 3, 2009**) and Clause 8.1 of Annexure of SEBI Circular dated September 26, 2016
- (v) Clause A(5) of Schedule II r/w regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 (**hereinafter referred to as Stock Brokers Regulations**) r/w NSE Circular no. NSE/MEMB/3574 dated August 29, 2002 (**hereinafter referred to as NSE Circular dated August 29, 2002**), NSE Circular no. NSE/MEMB/3635 dated September 25, 2002 (**hereinafter referred to as NSE Circular dated September 25, 2002**) and NSE/MA/22732 dated February 13, 2013 (**hereinafter referred to as NSE Circular dated February 13, 2013**)
- (vi) Clause 2.4.2 of Annexure of SEBI Circular dated September 26, 2016 and
- (vii) Clause 12(e) of Annexure A of SEBI Circular dated December 3, 2009

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as ‘**AO**’) vide order dated January 20, 2020 to inquire into and adjudge under section 23D of the SCRA and section 15HB of the SEBI Act for the alleged violations as aforesaid, against the Noticee. The appointment of the AO was communicated vide communique dated January 22, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice having reference no. SEBI/EAD/PM/RR/12905/1/2020 dated August 12, 2020 (hereinafter referred to as 'SCN'), was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties#) Rules, 1995 r/w Section 15-I of the SEBI Act and Rule 4 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties #) Rules, 2005 r/w Section 23-I of the SCRA in the matter of Asit C Mehta Investment Intermediaries Ltd. SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 shall hereinafter be referred to as "**Adjudication Rules**".

[# With effect from March 8, 2019, (i) SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was amended to SEBI (Procedure of Holding Inquiry and Imposing Penalties) Rules, 1995, and (ii) Securities Contracts (Regulation) (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 was amended to Securities Contracts (Regulation) (Procedure of Holding Inquiry and Imposing Penalties) Rules, 2005]

5. The following violations were alleged to have been committed by the Noticee in the SCN:

Failure to segregate securities and monies of client(s)

- (i) *It was observed that in 39 out of 39 sample instances, the Noticee had misused credit client funds. Funds of credit balance clients were misutilised to meet the obligations of debit balance clients and/or for its own purposes. The amount of misutilisation ranges from Rs. 7.3 crore to Rs. 28.9 crore. It was also observed that in 31 instances reported to exchange, funds of credit balance clients were misutilised to meet the obligations of debit balance clients and/or for its own purposes. The amount of misutilisation ranges from Rs. 1.1 crore to Rs. 14.9 crore. Relevant documents in this regard are placed at Annexure-A.*
- (ii) *With regard to the above, the Noticee, vide its reply dated January 10, 2019 to the inspection team, had submitted that it had enough stock to cover the shortage of cash collaterals. All the debtors are realizable in nature and same*

needs to be considered for liquid funds against Creditors' dues. Further, the unutilized overdraft balance was also not considered in the calculations.

- (iii.) However, as per enhanced supervision norms, securities received from clients and other non-cash margins, unutilized overdraft balance are not considered in the calculation of mis-utilization. Therefore, Noticee's submission was not accepted by the SEBI inspection team.
- (iv.) It is alleged that the Noticee has violated Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Incorrect reporting of Enhanced Supervision data

- (v.) It was observed that in 9 out of 39 sample instances, data submitted by the Noticee to the stock exchanges on aggregate value of collateral deposited with clearing corporations and/or clearing member was not correct. In this regard, detail of samples are mentioned below:

Date	Collaterals as Reported by Broker under Enhanced Supervision	Collateral as calculated from Clearing Corporation & Clearing Member reports	Difference
04-May-18	166775000	165025000	-1750000
11-May-18	166775000	165025000	-1750000
18-May-18	170525000	170275000	-250000
25-May-18	154275000	185275000	31000000
01-Jun-18	185525000	185275000	-250000
08-Jun-18	173025000	172775000	-250000
15-Jun-18	168525000	172775000	4250000
22-Jun-18	173025000	177775000	4750000
29-Jun-18	123025000	122775000	-250000

- (vi.) With regard to the above, the Noticee had accepted the observation of the inspection team and had submitted that it has taken corrective steps.
- (vii.) It is alleged that the Noticee has violated Clause 3.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Non-reporting of Enhanced Supervision data

(viii.) It was observed that the Noticee had incorrectly reported data regarding bank account details wherein out of 5 bank accounts (own/client account), while 2 bank accounts were closed, with respect to 3 bank accounts, details were not uploaded to the exchange as per enhanced supervision norms. In this regard, details are placed at the table below:

Bank Code	Name
Bank-195	Bank Of India OD Account No 008625110000058
Bank-99	Bank of India OD account no-008625110000057
Bank-187	State Bank of India Term loan account no-305034691865
Bank-199	Axis Bank NPS Account No - 917020042142497
Bank-191	Yes Bank Account No 007880200000802 Escrow Account

(ix.) With regard to the above, the Noticee had accepted the observation of the inspection team.

(x.) It is alleged that the Noticee has violated Clause 2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Non-settlement of funds and securities of clients

(xi.) It was observed that, out of sample of 75 instances of active clients during March 2018 quarter, the Noticee had not made quarterly settlements in 3 instances. In this regard, details are placed at the table below:

Date Of Settlement as per TM	Quarter	Common Client Code	Client Name	Total Funds Available	Value of Securities available	Total funds/ Securities available	FO Segment Funds pay in for T day trades	Total Funds / Securities to be retained	Amount to be returned to client
Not settled	Mar-18	308555	Jayesh Desai Huf	Details of Funds and Securities as on end of quarter not provided by Trading Member					
02-Feb-18	Mar-18	39908	Ranjana Javeri	1430334	17098825	15668491	1232450	1232450	14436041
Not settled	Mar-18	885163	Thakorbbhai Nanubhai Desai Huf.	Details of Funds and Securities as on end of quarter not provided by Trading Member					

- (xii.) With regard to the above, the Noticee had accepted the observation of the inspection team and submitted that the said clients were settled subsequently.
- (xiii.) It was further observed that, during inspection period spanning 5 quarters, the Noticee had not made quarterly settlements for inactive clients. The amount of non-settlement was in the range of Rs. 7.3 lakh (March 2018 quarter for 1223 clients) to Rs. 51.4 lakh (June 2017 quarter for 3320 clients).
- (xiv.) With regard to the above, Noticee, vide its reply dated January 10, 2019 to the inspection team, submitted that clients were settled in subsequent quarters and certain amount was retained as per their internal policy. The said submissions did not counter the fact that the said inactive clients were not settled during the inspection period.
- (xv.) It is alleged that the Noticee has violated SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009 and Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Discrepancies in terminal related requirements

- (xvi.) It was observed that, in one instance, terminal seen at the inspection location by the inspection team were not operated by person as per Exchange records. Further, in 2 instances, terminals not found at the inspection location. In this regard, details are placed at the table below:

Sr. No	Login ID	Segment	Neat ID	12 Digit ID	Allotted to as per Exchange records	Remarks
1	ARB6102	CM	15740	400001024004	Ms Hina Samir Shah	Terminal Operated by Mr. Manoj Bhiku Jadhav
2a	6065	CM	38020	400001023002	Mr Swetang D Upadhyay	Terminal not found at Inspection Location
2b	6065	FO	30363	400001012002	Mr Mihir V Shah	Terminal not found at Inspection Location

- (xvii.) With regard to the above, Noticee, vide its reply dated January 10, 2019 to the inspection team, submitted that the user name had been changed in the

exchange records. However, it was observed by inspection team that the same was not updated at the time of inspection.

(xviii.) Further, for the terminals not found, Noticee had submitted that the same were not logged in regularly. The said submission was not accepted by SEBI inspection team as at the time of inspection, the terminals were not found at the location.

(xix.) It is alleged that the Noticee has violated Clause A(5) of Schedule II read with Regulation 9(f) of SEBI (Stock Brokers) Regulations, 1992 read with NSE Circular no. NSE/MEMB/3574 dated August 29, 2002, NSE Circular no. NSE/MEMB/3635 dated September 25, 2002 and NSE/MA/22732 dated February 13, 2013.

Non-maintenance of daily reconciliation statement

(xx.) It was observed that Noticee had not maintained a daily reconciliation statement in case of transfer of funds between client accounts and own account indicating the details of funds transferred.

(xxi.) With regard to the above, the Noticee had accepted the observation of the inspection team and stated that it has taken corrective steps.

(xxii.) it is alleged that the Noticee has violated Clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

Incorrect retention statement

(xxiii.) It was observed that out of 10 sample instances, in 2 instances there was mismatch in funds/Securities with that captured in retention statement. In this regard, details are placed at the table below:

Date Of Settlement	Quarter	Client Code	Client Name	Remarks
28-Mar-18	March-18	8617	Satya Prakash Mittal	Collateral not considered in Retention statement
28-Mar-18	March-18	879617	Sunita A Kejriwal	Total Scrip's as per Back office Holdings provided as on Settlement date is 37 As per Retention statement it was 31.

(xxiv.) *With regard to the above, the Noticee had accepted the observation of the inspection team and stated that it has taken corrective steps.*

(xxv.) *It is alleged that the Noticee has violated Clause 12(e) of Annexure A of SEBI Circular SEBI/MIRSD/SE/CIR-19/2009 dated December 3, 2009.*

6. The SCN issued to the Noticee was digitally signed and sent through email dated August 12, 2020. The Noticee was given 14 days' time from the date of the receipt of the SCN to file its reply. Vide email dated August 26, 2020, the Noticee sought an extension of one week to file its reply due to Covid -19 situation. The Noticee submitted its reply vide its emails dated September 02 & 03, 2020. An opportunity of personal hearing was granted to the Noticee on October 27, 2020. However, the same was postponed to November 09, 2020 at the request of the Noticee. The personal hearing was availed by the Noticee on November 09, 2020 through its Authorized Representatives and Noticee sought two weeks' time to file fresh reply. The Noticee filed its final reply vide its email dated November 24, 2020.
7. The submissions made by the Noticee in its aforesaid replies dated September 02, 2020 and November 24, 2020 are summarized below:

Noticees' Reply dated September 02, 2020

1. Failure to segregate securities and monies of client(s):

Reply: As mentioned in our reply dated January 10, 2019 referred to above, we have demonstrated to the inspection team that we had enough stock to cover the shortage of cash collaterals. There is no misutilisation of clients funds as alleged. It is not correct to treat shares as illiquid. We had vide our letter dated September 5, 2018 (copy enclosed herewith as Annexure 1.1) represented to SEBI that we had adequate own stock to cover the outstanding payable to clients and that being in share market, not treating shares as liquid is not fair. This is demonstrated from the following chart:

Quarter	Outstanding balance	Hold stocks available with company	Margin stocks available with company	Minimum Stocks under POA in BO accounts	Cash Collateral from Sub-broker	Total	Times cover
Mar-20	3.04	2.8	2.5	2000	2.6	2007.9	660.49
Feb-20	13.32	10	8.4	2000	2.6	2021	151.73
Jan-20	11.32	9.01	8.35	2000	2.6	2019.96	178.44
Dec-19	8.18	6.04	3.62	2000	2.61	2012.27	246.00
Nov-19	11.82	10.95	3.58	2000	2.63	2017.16	170.66
Oct-19	9.62	7.66	2.19	2000	2.65	2012.5	209.20
Sep-19	11.49	7.45	2.84	2000	2.65	2012.94	175.19
Aug-19	9.67	6.47	4.89	2000	2.65	2014.01	208.27
Jul-19	12.44	9.29	18.18	2000	2.68	2030.15	163.20
Jun-19	11.79	7.72	17.9	2000	2.7	2028.32	172.04
May-19	19.18	17.85	11.89	2000	2.7	2032.44	105.97
Apr-19	15.3	12.03	6.01	2000	3.51	2021.55	132.13

The Enhanced supervisory norms not taking this liquid asset in consideration leads to shortage in weekly and monthly reports, at the relevant point of time. However, as informed to SEBI via our letter reference number ACMIL/NUC/COMP/329/18-19 dated February 12, 2019 (copy enclosed as Annexure 1.2), we have made the necessary arrangements to ensure that there is no shortfall even as per the mandated format of the reporting formula for enhanced supervision reporting from reporting for date February 1, 2019 onwards till reporting for date 3rd January, 2020. The chart showing the same is enclosed herewith as Annexure 1.3.

The aforesaid credit facility expired on 9th January, 2020 and could not at that point of time be renewed due to some internal issues at ICICI bank end. This has resulted in us reporting shortfall during the end of January 2020 as well as during the past few months, we have already informed this issue to the Exchanges via our letter reference number ACMIL/NUC/COMP/176/19-20 dated 04/02/2020 (copy collectively enclosed as Annexure 1.4).

We have received 'Renewal credit arrangement letter' from ICICI Bank dated March 11, 2020 (received by us on March 17 2020) informing us that our credit facilities were restored subject to us providing the documentation mentioned therein. The copy of the said letter is enclosed as Annexure 1.5. We were in the process of completing the said formalities and could complete the formalities only in June 2020 due to the situation arising out of the COVID-19 pandemic. On our completing the formalities, ICICI Bank Limited reduced our credit limit to Rs. 7 crores, which has also since been withdrawn by the said bank. We are in the process of making alternative arrangements for availing credit facility in order to fulfil our obligations as required under the mandated format for enhanced supervision reporting.

While admittedly, there is a shortfall to fulfil our obligations as required under the mandated format for enhanced supervision, none of our credit balance clients have raised any complaint on us till date for non-receipt of funds payout. The above clearly indicates our bonafide intention to comply with the applicable regulatory provisions and hence we request you to take a lenient view with respect to non-compliance observed in respect of the aforesaid Exchange circulars and Regulations.

Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993 states that "It shall be compulsory for all member brokers to keep the money of the clients in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account". We have kept money of the clients in a separate account and have not made any payment for transactions in which we have taken a position as a principal from the client's account.

In any event, the alleged violation is that of shortfall in funds as per the mandated format for Enhanced supervision reporting and not that we have kept money of the clients in a separate account or that we have made any actual payment from the client's account for transactions in which we have taken a position as a principal. Thus, we are in compliance with and have not violated the provisions of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

Clause 3 of annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016 specifies the provisions for monitoring of clients' funds lying with the Stocks Broker by the Stock Exchange. We have complied with all the provisions of the said clause, except clauses 3.3.1 and 3.3.3, which also has since been complied with as mentioned herein above.

2. Incorrect reporting of Enhanced Supervision Data:

Reply: SEBI, in its communication of findings dated December 7, 2018 had provided the following data regarding its observation that data regarding aggregate value of collateral deposited with clearing corporations and/or clearing member was not correct, and had provided the following table for the same

Date	Collaterals as reported by Broker under enhanced supervision	Collaterals as calculated from Clearing Corporation and Clearing Member reports	Difference
04-May-18	16,67,75,000	16,50,25,000	-17,50,000
11-May-18	16,67,75,000	16,50,25,000	-17,50,000
18-May-18	17,05,25,000	17,02,75,000	-2,50,000
25-May-18	15,42,75,000	18,52,75,000	3,10,00,000
01-Jun-18	18,55,25,000	18,52,75,000	-2,50,000
08-Jun-18	17,30,25,000	17,27,75,000	-2,50,000
15-Jun-18	16,85,25,000	17,27,75,000	42,50,000
22-Jun-18	17,30,25,000	17,77,75,000	47,50,000
29-Jun-18	12,30,25,000	12,27,75,000	-2,50,000

The reason for the said difference is that while calculating the funded portion, we have inadvertently taken entire non-funded portion of BSE Cash segment. In 3 instances, i.e. 25th May, 2018, 15th June, 2018 and 22nd June, 2018 we have reported less funded portion as compared to actual available resulting in shortfall having been reported. We have subsequently improvised the process (maker-checker system) to ensure that such errors do not recur in future and reporting is done based on actual calculations. We submit that since the aforesaid

communication by SEBI, we have informed all figures for enhanced supervision reporting to the Exchanges correctly.

In view of the above, we humbly submit that we are in compliance with Clause 3.2 of Annexure of SEBI circular reference no. SEBI / HO / MIRSD / MIRSD2 /CIR /P /2016/95 dated September 26, 2016.

3. Non-reporting of Enhanced supervision data:

Reply: SEBI in its communication of findings dated December 7, 2018 had observed that details of 5 bank accounts were not uploaded under enhanced supervision, and we reiterate our reply thereto made vide our letter dated January 10, 2019, stating as under:

i. Bank-195 Bank of India OD account number 008625110000058 : We have reported the account on Member Portal on being informed of the same, at the time of inspection. The print screen of the same is enclosed as Annexure 3.1. This had remained inadvertently.

ii. Bank-99 Bank of India OD account number 008625110000057: There is no transaction in the said account during the financial year 2017-18. The said account was already closed on 18/02/2017 (Financial Year 2016-17), which is prior to the timeline for compliance of SEBI circular dated September 26, 2016, and hence it was not required to be reported under enhanced supervision norms. The copy of the bank statement showing closure status is enclosed as Annexure 3.2

iii. Bank-187 State Bank of India Term Loan account number 305034691865: The said account was closed on 03.01.2015 which is prior to the timeline for compliance of SEBI circular dated September 26, 2016. As such, there is no transaction in the said account during the financial year 2017-18. The same was already. The Copy of the document showing closure status enclosed as Annexure 3.3.

iv. Bank-199 Axis Bank NPS Account No. 91702002142497

SEBI circular reference number SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016, pertaining to stock broking and depository operations, inter alia, provides as follows:

1.2.1. Bank account(s) which hold client funds shall be named as “Name of Stock Broker- Client Account”

1.2.2 Bank account (s) which holds funds of the stock broker shall be named as “Name of stock broker – Proprietary account”

1.2.7. Bank account (s) held for the purpose of settlement would be named as “Name of stock broker – Settlement account”

2.1. The stock brokers shall inform the Stock exchanges of existing and new bank accounts in prescribed format containing the following details

- Name and address of the bank
- Name of the branch
- Account Number
- IFSC code
- Name of account
- Purpose of account (Own/Client/Settlement)

Date of opening

2.3.2. All existing bank accounts maintained by the stock brokers which do not have appropriate nomenclature, shall be assigned appropriate nomenclature within six months from the date of the circular

2.3.4. All new bank and demat accounts opened by the stock brokers shall be named as per the above given nomenclature and the details shall be communicated to the Stock Exchanges within one week of opening of the account.

2.3.5. In case of closure of any of the reported bank and demat accounts, the same shall be communicated to the Stock Exchanges within one week of its closure.

NSE circular NSE/INSP/31912 dated March 07, 2016 (copy enclosed as Annexure 3.4) mentions the following with respect to bank accounts:

“Members’ attention is also drawn to SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993 requiring every member holding client money to have a separate account at bank in the name of the member in the title of which the word "clients" shall appear. Accordingly, Members are also required to ensure that the word “Client Account” is mentioned / incorporated in the Bank accounts maintained for holding client funds.

NSE circular NSE/INSP/35184 dated June 23, 2017 encloses therewith SEBI circular reference number CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 (copy enclosed as Annexure 3.5) which inter alia states as under:

2. a. Clause 1.2.2 and 1.2.4 stands deleted; accordingly naming proprietary bank/demat accounts of the stock broker as 'Stock Broker- Proprietary Account' is voluntary. It is however clarified that bank/demat account which do not fall under the Clauses 1.2.1, 1.2.3, 1.2.5, 1.2.6 and 1.2.7 would be deemed to be proprietary.

2. b. After Clause 2.1, Clause 2.1.1 is inserted as, “Stock Broker which is also Bank, may be required to report to the Stock Exchanges only those bank accounts that are used for their stock broking activities”.

Our account with axis bank was opened pursuant to our registration with Pension Fund Regulatory Development Authority (PFRDA) as a point of presence for National Pension scheme (NPS) and pursuant to PFRDA regulations. Copy of our registration certificate is enclosed herewith as Annexure 3.6.

The said account does not hold any funds belonging to our clients who are registered with us for stock broking activities and is a medium for collecting NPS contributions and transferring these contributions further to the NPS trust within PFRDA prescribed timelines. Since this account is not pertaining to our stock broking activities, we had interpreted the circular to mean that we are not required to report those bank accounts which we have opened for other business activities. However, since at the time of inspection, and as per informal clarification received from exchanges, we have reported the said account to the Exchange as "Client Bank account" though this account does not hold funds of clients pertaining to their stock broking activities. The print screen reflecting the same is enclosed as Annexure 3.7. In our view, since this bank account is not related to any of our stock broking activities, it need not have been reported and we have reported this only on the basis of informal guidance received from Exchange officials.

Bank-191 Yes Bank Account No. 007880200000802 Escrow account: This account is also not pertaining to the stock broking activities of the company and pertains to the Merchant banking activities of the company. Though the said bank account also does not hold any funds of the clients pertaining to our stock broking activities, we have reported the account on Member Portal, based on the informal guidance received from the inspecting officials. The print screen of the same is already enclosed as Annexure 3.8.

In view of the above, we humbly submit that we are in compliance with

- *Clause 2 of Annexure of SEBI circular no. SEBI / HO / MIRSD / MIRSD2 / CIR /P /2016/95 dated September 26, 2016*

4. Non-settlement of funds and securities of

clients: Reply:

- (a) *With reference to non –settlement of 3 active clients for particular quarters,*

- (i) For Jayesh T. Desai HUF, client code 308555, we had provided the details of funds and securities as on end of quarter, i.e. as on March 31, 2018 to the inspecting officials. The said details are enclosed as Annexure 6.1. The Karta of the HUF is Mr. Jayesh T. Desai who is a shareholder of the company and the brother of the Managing Director of the company. We have disclosed him to be a related party in our financials. We have settled the accounts of the said client on 15/05/2018, which was demonstrated to the inspecting officials and the copy of the extract of the ledger reflecting the same is enclosed as Annexure 4.1.
- (ii) For Ranjana K. Jhaveri, client code 39908, we have settled the accounts of the said client on 31/05/2018 which was demonstrated to the inspecting officials. The copy of the extract reflecting the said settlement is enclosed as Annexure 4.2.
- (iii) For Thakorbhai Nanubhai Desai HUF, client code 885163, we state that we had provided the details of funds and securities as on end of quarter, i.e. as on March 31, 2018 to the inspecting officials. The said details are enclosed as Annexure 6.4. The Karta of the HUF is Mr. Jayesh T. Desai who is a shareholder of the company and the brother of the Managing Director of the company. We have disclosed him to be a related party in our financials. We have settled the accounts of the said client on 14/05/2018, which was demonstrated to the inspecting officials and the copy of the extract of the ledger reflecting the same is enclosed as Annexure 4.3.
- a) With reference to the non-settlement of funds for inactive clients, we state that
- (i) Of the total number of our clients, we have 20% clients in Tier I (Metro cities) , 29% clients in Tier II cities (mini metro cities) and the rest 51% are in remote locations. Many of the clients in remote locations do not have net banking facility or the banking connectivity is not very strong and hence these clients have requested us to release payouts only on their request.
- (ii) We further submit that the clients funds who remain unsettled in any quarter were settled in subsequent quarters.

(iii) Please find below table showing the comparison of inactive clients credit balance vis-à-vis total credit balance of all clients for the mentioned quarters:

Quarter ending	Total no. of clients traded during the quarter	Inactive clients	Total credit balance	Inactive clients credit balance (as per enhanced supervision reportings)	Percentage of inactive clients credit balance vs total credit balance
Jun-17	15384	3320	33,79,61,580	51,40,465	1.52
Sep-17	16639	2993	32,49,73,346	17,49,625	0.54
Dec-17	19564	3769	40,25,71,614	25,78,554	0.64
Mar-18	25131	1223	39,83,14,197	7,34,930	0.18
Jun-18	13905	3694	27,72,55,323	33,45,475	1.21

iv) The above table clearly indicates that non-settlement of funds in terms of percentage of inactive vs. total clients is about 1% only. Though the count of inactive clients is around 3000 for each quarter, the amount unsettled during the particular period for each inactive client is below Rs. 1,000/-. This is as per our internal policy and for recovery of our depository tariff charges which we recover in the month of January and February. The policy for the same was provided during inspection and is enclosed herewith as Annexure 4.4. The same is also disclosed while sending the retention statement to the clients on quarterly basis.

v) We further submit that we were sending statement of funds and securities to all the clients on a quarterly basis. They also have a facility to access their ledger through internet whenever possible. We therefore submit that all our clients are aware of their balances and securities lying with us in their account. We submit that we have received very few complaints (largely in the nature of

queries of those received) from our clients regarding non settlement of funds and securities. We submit that this is in compliance with the spirit of the SEBI circular.

We therefore humbly submit that we are in compliance with the provisions of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009 and clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

5. Discrepancies in terminal related requirements:

Reply: As stated in our reply dated January 10, 2019, we state that

(i) In case of Login ID ARB6102, Neat ID 15740, CM Segment, 13 digit ID 400001024004 we have changed the user name to Mr. Manoj Bhiku Jadhav on the Exchange records as well (snap shot enclosed as Annexure 5.1)

(ii) In case of Login ID 6065, Neat ID 38020, CM Segment, 13 Digit ID 400001023002 in the name of Mr. Swetang D Upadhyay was not regularly logged in since at that location we used Greek Software and not the aforesaid login id. This id was there only for emergency purpose as a back up to the Greek software. The said id has since been discontinued.

(iii) In case of Login ID 6065, Neat ID 30363, FO segment, 13 Digit ID 400001022002 in the name of Mr. Mihir V. Shah was also not regularly logged in, since at that location we generally use the greek software and not the aforesaid login id. This id was there only for emergency purpose as a back up to the Greek software. The said id has since been discontinued.

Since the said terminals were not logged into, and despite same being explained to the inspecting officials by the people manning the terminals, the same have been incorrectly observed as terminal not found at inspection location.

In any event, NSE circular reference number NSE/MEMB/3574 dated August 29, 2002 provides only for CTCL terminals to be located only in the office of the Trading Member or in the office of their registered sub-brokers. NSE circular

reference number NSE/MEM/3635 dated September 25, 2002 only provides the file format for reporting location of CTCL terminals. NSE circular reference number NSE/MA/22732 dated February 13, 2013 is a consolidated circular on user id requests, which is a consolidation of all circulars pertaining to terminal location.

We therefore humbly submit that we are in compliance with the provisions of

- Clause A (5) of Schedule II read with Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992, read with
- NSE Circular number NSE/MEMB/3574 dated 29-Aug-02,
- NSE Circular number NSE/MEMB/3635 dated 25-Sep-02, and
- NSE Circular number NSE/MA/22732 dated 13-Feb-2013

6. Non-maintenance of daily reconciliation statement:

Reply: As stated in our earlier letter dated January 10, 2019 to SEBI, we have started preparing reconciliation statement indicating the details of funds transferred between client and own bank accounts on a daily basis.

As per the provisions of Clause 2.4.2 of Annexure of SEBI Circular SEBI / HO / MIRSD / MIRSD2 / CIR / P /2016 /95 dated September 26, 2016, transfer of funds between client's bank accounts and own bank accounts is permitted for legitimate purposes, such as recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

We have done transfer of funds, between client bank accounts and own bank accounts only for legitimate purposes as is demonstrated from the enclosed Annexure 8. The non-maintenance of reconciliation statement is a mere procedural observation, and is non-material since the non-maintenance of reconciliation statement does not reflect any misutilisation of client funds on our part.

We, therefore humbly submit that we are in compliance with the clause 2.4.2 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016.

7. Incorrect Retention statement:

Reply: As stated in our reply dated January 10, 2019 referred to above, in both the instances, there was a mismatch in funds/securities retained vis-à-vis that captured in retention statement due to a bug in our in-house back software which we were using at the relevant period for which we were being inspected. We have procured and implemented integrated back office software from Comtek to ensure that the regulatory requirements are complied with. We have implemented a daily reconciliation of funds and securities available and retained in the said back office software in order to ensure that there is no mismatch in funds/securities retained vis-à-vis that captured in retention statement.

Clause 12 e of the SEBI circular SEBI/MIRSD/SE/CIR-19/2009 dated December 3, 2009 provides for actual settlement of funds and securities of clients to be done once a month or quarter depending upon the preference of the client, and sending a statement to the client while settling the account. It also provides for the statement to explain the retention of funds /securities, and the details of the pledge, if any. At the time of settling the accounts, we send the retention statements to the clients whose accounts are being settled. In the present 2 instances, the alleged violation is that of mismatch in retention statement and not that the retention statement has not been sent.

Notices' Reply dated November 24, 2020

A. Failure to segregate securities and monies of the clients

At the outset, it was submitted that, SEBI has conducted investigation for a period from April 1, 2017 to September 3, 2018. However, the enhanced supervision circular came into effect only on 1st July 2017. Thus, implementation of the circular was at a very nascent stage and the industry as a whole is trying its best to adhere to the circular since it created a huge need for additional capital. There were certain

interpretational issues faced not only by ACMIL, but other brokers too due to which there were unintentional lapses by the brokers.

It was also submitted that, the calculation in the Annexure A of the Shown Cause Notice is as per the Clause 3 of the Enhanced Supervision Circular. However, it is pertinent to mention that this calculation fails to take into account the hold shares i.e. shares in Client Unpaid Securities Account ("CUSA"). It was submitted that these liquid securities were bought by the ACMIL on behalf of its clients and were at its disposal.

It was submitted that, if these hold shares are taken into account, there is no shortfall even as per the Enhanced Supervision Circular. In fact, as per the table at Annexure A of the SCN, it is evident that if these shares are taken into account, there would be no shortfall. It did not create any pressure upon the system. The Noticee has recasted the table 4.1.2 at Annexure A of the Enhanced Supervision Circular. Hereto marked and annexed as 'Exhibit 1' is a copy of Table recasted by the Noticee. In addition to this, the Noticee submits that if the non-funded portion of the Bank Guarantee ("BG") is taken into account then there would not be any shortfall and the Noticee is in compliance of the Enhanced Supervision Circular.

B. Incorrect reporting of the Enhanced Supervision Data

It was submitted that, since the implementation of the enhanced supervision circular was at an incipient stage, therefore there were interpretational and teething issues faced by the Noticee. It is also submitted that the Noticee had at the time of calculating the funded portion, has also taken into account the non-funded portion of the BSE Cash Segment.

C. Non-reporting of the Enhanced Supervision Data.

It is alleged that, the Noticee has violated Clause 2 of the Annexure of Enhanced Supervision Circular because, out of 5 bank accounts, 2 bank accounts were closed and other 3 were not uploaded as per the provisions of the circular.

Following is submitted with regards to the bank accounts:

Sr. No.	Account	Explanation
1.	Bank 195 – BOI OD Account No. 0086251100000058	It was submitted that this was reported on Member Portal on being informed of the same.
2.	Bank 99 – BOI OD Account No. 0086251100000057	This account was closed on 18 th February 2017 i.e. before the Enhanced Supervision Circular came into effect i.e. July 2017.
3.	Bank 187 – State Bank of India Term Loan Account No. 305034691865	This account was closed on January 3, 2015 which is prior to the issue of the Enhanced Supervision Circular.
4.	Bank 199- Axis Bank NPS Account No. 917020042142497	It was submitted that the client was under the impression that those accounts which were opened for other business activities were not required to be reported. However, upon receiving of the clarification from exchange, we reported the same as 'client bank account'.
5.	Bank 191 - Yes Bank Account No. 007880200000802 Escrow Account	This account was not used for the stock broking activities. It was used for merchant banking activities. It was reported on Member's Portal

D. Non-Settlement of funds and securities of active clients.

It is submitted that these pertain to the following three instances:

Sr. No.	Account	Explanation
1.	Jayesh T. Desai HUF	The Karta of this HUF is Mr. Jayesh Desai who is brother of the MD of the Noticee. We have disclosed him as a related party in our financials. His accounts were settled on May 15, 2018. The details of funds and securities as on end of quarter, i.e. as on March 31, 2018 is enclosed herewith as Exhibit 2.

2.	Ranjana Jhaveri	We submitted that we have settled the said client on May 31, 2018 which was informed to the inspecting official.
3.	Thakorbhai Nanubhai Desai HUF.	The Karta of this HUF is Mr. Jayesh T. Desai who is brother of the MD of the Noticee. We have disclosed him as a related party in our financials. His accounts were settled on May 14, 2018. The details of funds and securities as on end of quarter, i.e. as on March 31, 2018 is enclosed herewith as Exhibit 2.

E. Non-Settlement of funds and securities of active clients.

It was submitted that out of the total number of Noticee's clients, it has 20% clients from Tier I (Metro cities), 29% clients in Tier II cities (mini metro cities) and the rest 51% are in remote locations. Many of the clients in remote locations do not have net banking facility or the banking connectivity is not very strong and hence these clients have requested the Noticee to release payouts only on their request. It was also submitted that the clients' funds which remain unsettled in any quarter were settled in subsequent quarters.

It was also submitted that the observation letter received from SEBI in December 2018 enclosed a list of 893 clients which as per SEBI were not settled for five quarters during inspection period. It was submitted that that only 46 of these clients have credit balance of Rs. 1,000/- and above, whereas as per Noticee's running account settlement policy, it retain an amount of Rs. 1000/- towards depository tariff (in the noticee's capacity as SEBI registered depository participants) and other statutory charges. Further, the amount of credit balance of 46 clients is miniscule to the total credit balance of all the 893 clients for which the table has been provided by SEBI. It is clear that the percentage of inactive clients' credit balance having more than Rs. 1000/- credit balance to total inactive clients' credit balance is very miniscule in nature. In any event, we have settled these balances in the subsequent

quarters. Hereto marked and annexed as Exhibit 3 is a tabular form giving a summary of the said balances.

It was submitted that, though the count of inactive clients is around 3,000 for each quarter, the amount unsettled during the particular period for each inactive client is below Rs. 1,000/-. This is as per our internal policy and for recovery of our depository tariff charges, which we recover in the month of January and February each year.

F. Discrepancies in Terminal Related Requirement.

It was submitted that the said terminals were not logged into regularly. Some of them were used as an emergency as a backup to the greek software.

G. Non-Maintenance of daily reconciliation statement

It was submitted that the Noticee has transferred funds between client bank account and own bank account for legitimate purposes as is demonstrated from the enclosed Annexure 8 to the Reply. The non-maintenance of daily reconciliation statement is merely a procedural observation and does not establish that client's funds are used by the Noticee.

H. Incorrect Retention Statement

It was submitted that in the 2 instance mentioned out of 10; there was a mismatch in funds/securities vis-a-vis to the captured retention statement. It was on account some software bug which was used by the Noticee during the relevant period. Noticee has now implemented a new integrated software from Comtek to ensure that regulatory requirements are met.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticee, reply of the Noticee dated September 02, 2020 and November 24, 2020 and the documents/ material available on record. The issues that arise for consideration in the present case are:

Issue No. I: Whether the Noticee has violated the following provisions of SCRA/ Regulations/ Circulars:

- (i) Section 23D of SCRA r/w Clause 1 of Annexure of SEBI Circular dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular dated September 26, 2016
- (ii) Clause 3.2 of Annexure of SEBI Circular dated September 26, 2016
- (iii) Clause 2 of Annexure of SEBI Circular dated September 26, 2016
- (iv) SEBI Circular dated December 3, 2009 and Clause 8.1 of Annexure of SEBI Circular dated September 26, 2016
- (v) Clause A(5) of Schedule II r/w Regulation 9(f) of Stock Brokers Regulations r/w NSE Circular dated August 29, 2002, NSE Circular dated September 25, 2002 and NSE Circular dated February 13, 2013
- (vi) Clause 2.4.2 of Annexure of SEBI Circular dated September 26, 2016 and
- (vii) Clause 12(e) of Annexure A of SEBI Circular dated December 3, 2009

Issue No. II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 23D of the SCRA and Section 15HB of the SEBI Act?

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act?

9. Before proceeding further, I would like to refer to the relevant provisions of Acts, Regulations and SEBI Circulars:

SCRA

Penalty for failure to segregate securities or moneys of client or clients

23D: *If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Stock Brokers Regulations, 1992

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

SEBI Circular dated November 18, 1993

Clause 1 of Annexure of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993

REGULATION OF TRANSACTIONS BETWEEN CLIENTS AND BROKERS

1. It shall be compulsory for all Member brokers to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the Member broker is taking a position as a principal will be allowed to be made from the client's account. The above principles and the circumstances under which transfer from client's account to Member broker's account would be allowed are enumerated below.

A] Member Broker to keep Accounts: Every member broker shall keep such books of accounts, as will be necessary, to show and distinguish in connection with his business as a member –

- i. Moneys received from or on account of each of his clients and,
- ii. the moneys received and the moneys paid on Member's own account

B] Obligation to pay money into "clients accounts". Every member broker who holds or receives money on account of a client shall forthwith pay such money to current or deposit account at bank to be kept in the name of the member in the title of which the word "clients" shall appear (hereinafter referred to as "clients account"). Member broker may keep one consolidated clients account for all the clients or accounts in the name of each client, as he thinks fit: Provided that when a Member broker receives a cheque or draft representing in part money belonging to the client and in part money due to the Member, he shall pay the whole of such cheque or draft into the clients account and effect subsequent transfer as laid down below in para D (ii). C] What moneys to be paid into "clients account". No money shall be paid into clients account other than –

- i. money held or received on account of clients;

- ii. such money belonging to the Member as may be necessary for the purpose of opening or maintaining the account;
- iii. money for replacement of any sum which may by mistake or accident have been drawn from the account in contravention of para D given below;
- iv. a cheque or draft received by the Member representing in part money belonging to the client and in part money due to the Member.

D] What moneys to be withdrawn from "clients account". No money shall be drawn from clients account other than –

- i. money properly required for payment to or on behalf of clients or for or towards payment of a debt due to the Member from clients or money drawn on client's authority, or money in respect of which there is a liability of clients to the Member, provided that money so drawn shall not in any case exceed the total of the money so held for the time being for such each client
- ii. such money belonging to the Member as may have been paid into the client account under para 1 C [ii] or 1 C [iv] given above;
- iii. money which may by mistake or accident have been paid into such account in contravention of para C above.

E] Right to lien, set-off etc., not affected. Nothing in this para 1 shall deprive a Member broker of any recourse or right, whether by way of lien, set-off, counter-claim charge or otherwise against moneys standing to the credit of clients account.

Clause 2 of Annexure of SEBI Circular

SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

2. Reporting of Bank and Demat accounts maintained by Stock Broker:

2.1. The stock brokers shall inform the Stock Exchanges of existing and new bank account(s) in the following format:

Name and address of Bank	Name of the Branch	Account Number	IFSC Code	Name of Account	Purpose of Account (Own/Client/Settlement)	Date of Opening

2.2. The stock brokers shall inform the Stock Exchanges of existing and new demat account(s) in the following format:

Name of DP	Account Number/ Client ID	DP ID	Name of Account Holder	PAN	Sub-type/ tag of Demat Account (Proprietary/ Client/ Pool/ Collateral)	Date of Opening

2.3. Stock Exchanges and/or Depositories, as the case may be, shall ensure the following: 2.3.1. All existing demat accounts maintained by stock brokers are

assigned the appropriate nomenclature as mentioned above, within three months from the date of this circular.

2.3.2. All existing bank accounts maintained by stock brokers which do not have the above mentioned nomenclature, shall be assigned appropriate nomenclature, within six months from the date of this circular.

2.3.3. Details of all existing bank and demat accounts shall be communicated to Stock Exchanges by the stock brokers in the format specified above within one month from the date of this circular.

2.3.4. All new bank and demat accounts opened by the stock brokers shall be named as per the above given nomenclature and the details shall be communicated to the Stock Exchanges within one week of the opening of the account.

2.3.5. In case of closure of any of the reported bank and demat accounts, the same shall be communicated to the Stock Exchanges within one week of its closure.

2.3.6. Depositories shall ensure that once the nomenclature for a particular demat account has been assigned by the stock broker, then the same shall not be modified. 2.3.7. Any non-compliance/non-reporting in this regard by the stock broker shall attract penal action as per the provisions of Stock Exchanges.

2.3.8. Based on the list of stock brokers (including PANs) provided by the respective stock exchanges, Depositories shall also provide stock broker-wise details of all the demat accounts opened by a stock broker to the concerned Stock Exchanges to facilitate reconciliation with the data submitted by the stock broker.

2.4. In line with the prevalent regulatory requirement, it is reiterated that;

2.4.1. Stock Broker shall not use client funds and securities for proprietary purposes including settlement of proprietary obligations.

2.4.2. Transfer of funds between "Name of Stock Broker - Client Account" and "Name of Stock Broker - Settlement Account" and client's own bank accounts is permitted. Transfer of funds from "Name of Stock Broker - Client Account" to "Name of Stock Broker - Proprietary Account" is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.

2.4.3. Transfer of securities between "Name of the Stock Broker - Client Account" and individual client's BO account, "Name of the Stock Broker – Pool Account" and "Name of the Stock Broker – Collateral Account" is permitted. Transfer of securities between "Name of the Stock Broker - Client Account" to "Name of the Stock Broker - Proprietary Account" is permitted only for legitimate purposes such as, implementation of any Government/Regulatory directions or orders, in case of erroneous transfers pertaining to client's Page 8 of 29 securities, for meeting legitimate dues of the stock broker, etc. For such transfer of securities, stock broker shall maintain a stock transfer register clearly indicating the day-wise details of securities transferred.

2.4.4. The Stock Exchanges shall monitor compliance with the above requirements, during inspections and the same shall be reviewed by the internal auditor of the broker during the half yearly internal audits.

2.5. As per existing norms, a stock broker is entitled to have a lien on client's securities to the extent of the client's indebtedness to the stock broker and the stock broker may pledge those securities. This pledge can occur only with the explicit authorization of the client and the stock broker needs to maintain records of such authorisation. Pledge of such securities is permitted, only if, the same is done through Depository system in compliance with Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996. To strengthen the existing mechanism, the stock brokers shall ensure the following:

2.5.1. Securities of only those clients can be pledged who have a debit balance in their ledger.

2.5.2. Funds raised against such pledged securities for a client shall not exceed the debit balance in the ledger of that particular client.

2.5.3. Funds raised against such pledged securities shall be credited only to the bank account named as "Name of the Stock Broker - Client Account".

2.5.4. The securities to be pledged shall be pledged from BO account tagged as "Name of the Stock Broker - Client Account".

2.5.5. Stock Brokers shall send a statement reflecting the pledge and funding to the clients as and when their securities are pledged/unpledged as given below:

A	B	C	D					E	F	G	H
Date	Client Code	Ledger debit at the end of trade day*	Collateral of client available with Broker					Pledged Quantity	Pledged Value	Borrowing	Details of Pledgee
			ISIN/ Security Name	Previous day's closing price	Total Quantity	Total Value (Total Quantity * Previous day closing price)	Total Value (Adjusted for applicable haircut)				

*Ledger debit would be after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients

2.6. Stock brokers shall not grant further exposure to the clients when debit balances arise out of client's failure to pay the required amount and such debit balances continues beyond the fifth trading day, as reckoned from date of pay-in.

2.7. The above requirements mentioned under paras 2.4 to 2.6 shall be applicable within three months from the date of this circular.

Clause 3 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

3. Monitoring of Clients' Funds lying with the Stock Broker by the Stock Exchanges

3.1. Stock Exchanges shall put in place a mechanism for monitoring clients' funds lying with the stock broker to generate alerts on any misuse of clients' funds by stock brokers, as per the guidelines stipulated in para 3.2 & 3.3 below.

3.2. Stock brokers shall submit the following data as on last trading day of every week to the Stock Exchanges on or before the next trading day:

A- Aggregate of fund balances available in all Client Bank Accounts, including the Settlement Account, maintained by the stock broker across stock exchanges

B- Aggregate value of collateral deposited with clearing corporations and/or clearing member (in cases where the trades are settled through clearing member) in form of Cash and Cash Equivalents (Fixed deposit (FD), Bank guarantee (BG), etc.) (across Stock Exchanges). Only funded portion of the BG, i. e. the amount deposited by stock broker with the bank to obtain the BG, shall be considered as part of B.

C- Aggregate value of Credit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared cheques deposited by clients and uncleared cheques issued to clients and the margin obligations)

D- Aggregate value of Debit Balances of all clients as obtained from trial balance across Stock Exchanges (after adjusting for open bills of clients, uncleared Page cheques deposited by clients, uncleared cheques issued to clients and the margin obligations)

E- Aggregate value of proprietary non-cash collaterals i.e. securities which have been deposited with the clearing corporations and/or clearing member (across Stock Exchanges)

F- Aggregate value of Non-funded part of the BG across Stock Exchanges

P - Aggregate value of Proprietary Margin Obligation across Stock Exchanges MC

- Aggregate value of Margin utilized for positions of Credit Balance Clients across Stock Exchanges

MF- Aggregate value of Unutilized collateral lying with the clearing corporations and/or clearing member across Stock Exchanges

3.3. Based on the aforesaid information submitted by the stock broker, Stock Exchanges shall put in place a mechanism for monitoring of clients' funds lying with the stock brokers on the principles enumerated below:

3.3.1. Funds of credit balance clients used for settlement obligation of debit clients or for own purpose:

Principle:

The total available funds i.e. cash and cash equivalents with the stock broker and with the clearing corporation/clearing member (A + B) should always be equal to or greater than Clients' funds as per ledger balance (C)

Stock Exchanges shall calculate the difference i.e. G as follows-

$$G=(A+B)-C$$

If difference G is negative, then the total available fund is less than the ledger credit balance of clients. The value of G may indicate utilization of clients' funds for other purposes i.e. funds of credit balance clients are being utilized either for settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of G acts as an alert to the Stock Exchanges.

Thereafter, the absolute value of G shall be compared with debit balance of all clients as per client ledger D as follows:

If the absolute value of (G) is lesser than |D|, then the stock broker has possibly utilised funds of credit balance clients towards settlement obligations of debit balance clients to the extent of value of G.

If the absolute value of (G) is greater than |D|, then the stock broker has possibly utilised a part of funds of credit balance clients towards settlement obligations of debit balance clients and remaining part for his own purposes. In such cases the amount of client funds used for own purpose is calculated as follows:

$$H = |G| - |D|$$

3.3.2. Funds of clients used for Margin obligation of proprietary trading: Stock Exchanges shall thereafter, verify whether the proprietary margin obligations (across Stock Exchanges) is less than the own funds and securities lying with the Stock Exchanges as collateral deposit, as follows:

Principle:

The sum of Proprietary funds and securities i.e. (G + E + F) lying with the clearing corporation/clearing member should be greater than or equal to Proprietary margin obligations (P)

If value of G is positive (i.e. A+B > C), then proprietary funds are lying with the clearing corporation/clearing member and/or client bank accounts along with the clients funds to the extent of positive value of G.

The sum of the proprietary funds (positive value of G), the value of proprietary securities (E) and the non-funded portion of bank guarantee (F) available in the Stock Exchanges is compared with the Proprietary margin obligations (P).

If $P > (G+E+F)$, then Stock Exchange shall calculate the difference I, which is the amount of proprietary margin obligation funded from clients assets.

$$I = P - (G+E+F)$$

If G is negative, then, value of G is considered as 0, as there is no proprietary funds lying with the stock exchange.

The value of I indicates the extent of funds and securities of clients which is possibly utilised towards proprietary margin obligations. This value of I acts as an alert to the Stock Exchanges on the possible mis-utilisation of clients' assets towards proprietary margin obligations.

3.3.3. Funds of credit balance clients used for Margin obligations of debit balance clients and proprietary trading:

Stock Exchanges shall thereafter, verify whether the clients funds lying with the clearing corporation/clearing member are utilised towards margin obligations of debit balance clients and proprietary margin obligations.

Principle:

The clients' funds lying with the clearing corporation/clearing member should be less than or equal to sum of credit clients' margin obligations (MC) and free collateral deposits available with the clearing corporation/clearing member (MF)

If value of G is negative (i.e. A+B < C), then fund lying with the clearing corporation/clearing member (B) is entirely clients' fund. In such cases, B is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J is calculated as under:

$$J = B - (MC + MF)$$

If value of G is positive (i.e. $A+B > C$), then fund lying with the clearing corporation/clearing member (B) may contain proprietary and clients' fund. Hence, the value of clients funds lying with the clearing corporation/ clearing member i.e. (C-A) shall be considered in the place of B.

In such cases, (C-A) is compared with Margin obligations of credit balance clients and the free deposits available with the clearing corporation/clearing member. The value of J, which is clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations, is calculated as under:

$$J=(C-A)-(MC+MF)$$

The value of J, if positive, indicates the extent of clients' funds utilised towards margin obligations of debit balance clients and proprietary margin obligations. This value of J acts as an alert to the Stock Exchanges on the possible misutilisation of clients' funds towards margin obligations of debit balance clients and proprietary margin obligations.

3.4. Based on the alerts generated, Stock Exchange shall, inter-alia, seek clarifications, carry out inspections and initiate appropriate actions to protect the clients' funds from being misused. Stock Exchanges shall also maintain records of such clarifications sought and details of such inspections. The aforesaid calculations are illustrated in tabular format in Table 1, 2 & 3 given at the end of the annexure.

3.5. Stock Exchanges shall put in place the aforesaid monitoring mechanism within three months from the date of this circular and carry out the monitoring of clients' funds for all stock brokers, except for those who are carrying out only proprietary trading and/or only trading for institutional clients. 3.6. Stock Brokers shall ensure due compliance in submitting the information to the Exchanges within the stipulated time.

Clause 8.1 of Annexure of SEBI Circular SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/95 dated September 26, 2016

8. Running Account Settlement

8.1. In partial modification of circular on running account settlement, the stock broker shall ensure that;

8.1.1. There must be a gap of maximum 90/30 days (as per the choice of client viz. Quarterly/Monthly) between two running account settlements.

8.1.2. For the purpose of settlement of funds, the mode of transfer of funds shall be by way of electronic funds transfer viz., through National Electronic Funds Transfer (NEFT), Real Time Gross Settlement (RTGS), etc.

8.1.3. The required bank details for initiating electronic fund transfers shall be obtained from new clients and shall be updated for existing clients. Only in cases where electronic payment instructions have failed or have been rejected by the bank, then the stock broker may issue a physical payment instrument.

8.1.4. Statement of accounts containing an extract from client ledger for funds & securities along with a statement explaining the retention of funds/securities shall be sent within five days from the date when the account is considered to be settled.

Clause 12(e) of Annexure A of SEBI Circular dated December 03, 2009 Running Account Authorization

12. Unless otherwise specifically agreed to by a Client, the settlement of funds/securities shall be done within 24 hours of the payout. However, a client may specifically authorize the stock broker to maintain a running account subject to the following conditions:

e. The actual settlement of funds and securities shall be done by the broker, at least once in a calendar quarter or month, depending on the preference of the client. While settling the account, the broker shall send to the client a 'statement of accounts' containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The statement shall also explain the retention of funds/securities and the details of the pledge, if any.

Further, the details of the aforesaid SEBI Circulars dated November 18, 1993, December 03, 2009 and September 26, 2016 are available at the website of SEBI. Details of the aforesaid NSE Circulars are available on the website of NSE.

10. Now I deal with the issues on merit in the matter:

Issue No. I: Whether the Noticee has violated the following provisions of SCRA/ Regulations/ Circulars:

- (i) Section 23D of SCRA r/w Clause 1 of Annexure of SEBI Circular dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular dated September 26, 2016
- (ii) Clause 3.2 of Annexure of SEBI Circular dated September 26, 2016
- (iii) Clause 2 of Annexure of SEBI Circular dated September 26, 2016
- (iv) SEBI Circular dated December 3, 2009 and Clause 8.1 of Annexure of SEBI Circular dated September 26, 2016
- (v) Clause A(5) of Schedule II r/w Regulation 9(f) of Stock Brokers Regulations r/w NSE Circular dated August 29, 2002, NSE Circular dated September 25, 2002 and NSE Circular dated February 13, 2013
- (vi) Clause 2.4.2 of Annexure of SEBI Circular dated September 26, 2016 and
- (vii) Clause 12(e) of Annexure A of SEBI Circular dated December 3, 2009

11. It is alleged in the SCN that Noticee had misused credit client's funds to meet the obligations of debit balance clients and/or for its own purposes in 39 sample instances i.e. all the sample instances selected by the inspection team. The amount

of misutilisation ranged from Rs. 7.3 crore to Rs. 28.9 crore. It was also observed that in 31 instances as reported to the exchange, funds of credit balance clients were misutilised to meet the obligations of debit balance clients and/or for its own purposes which ranged from Rs. 1.1 crore to Rs. 14.9 crore. From the available record, it is noted that for the said 39 dates, Noticee had utilised the funds belonging to its creditor clients to meet the obligations of debit balance clients and/or for its own purposes. In other words, the obligation of debtor clients were met with the funds of the creditor clients and therefore, the Noticee had misutilised the funds of the credit balance clients which amounts to intermingling of funds contrary to the provisions of the SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.

12. The Noticee in its reply admitted that there was a shortfall to fulfil their obligations as required under the mandated format for enhanced supervision, however none of their credit balance clients have raised any complaint till date for non-receipt of funds payout. The Noticee has further submitted that calculation fails to take into account the hold shares in Client Unpaid Securities Account and they had enough stock to cover the shortage of cash collaterals. It has also been submitted that if the non-funded portion of the Bank Guarantee ("BG") was taken into account then there would not be any shortfall. In this regard, it would be relevant to refer to the provisions of SEBI Circular dated November 18, 1993 and SEBI Circular dated September 26, 2016.

13. It is to be noted that, the said 1993 Circular lays down comprehensive guidelines for stock brokers in dealing with funds and securities of clients which specifies several exclusive requirements. The aforesaid observation clearly falls under Clause D of the 1993 Circular. In terms of 1993 Circular, the stock broker is mandated not only to keep separate accounts for clients' and own dealings but also not to withdraw money from clients' account except in the situations permitted thereunder. The 1993 Circular does not permit using excess funds of one client to meet liability of another client. In order to determine whether the Noticee has utilized clients' funds for purposes other than those permitted as stipulated in 1993 circular, the principle

specified in the 2016 Circular has been applied such that the total available funds i.e. day end balance in all clients bank accounts (A), cash and cash equivalents with the stock broker and with the exchange / clearing corporation/ clearing member (B), should always be equal to or greater than clients' funds as per ledger balance (C) and if $[(A+B) - C = G]$ is negative, then it indicates that the credit balance clients' funds have been misused by the stock broker for its own purposes or for settlement obligations of debit balance clients.

14. From the above, the idea of calculating "G" is to see whether the funds of credit balance clients are available with the broker or not, to the extent of their credit balances. If there is any shortfall in the availability of credit balance clients' funds, which is reflected by the negative "G", would mean that funds of the credit balance clients have been utilized either for the settlement obligations of debit balance clients or for the stock brokers' own purposes. The negative value of "G" acts as an alert to the system. Therefore, the contention of the Noticee that the calculation of G fails to take into account the shares in client unpaid securities account and BG is not acceptable to me. In the instant matter, I note that the value of "G" is negative for all 39 sample dates, which is indicative of the fact that funds of the credit balance clients were not fully available for them for the sample dates and have either been utilized for debit balance clients and/ or for brokers' own purpose for the sample dates, which is not permitted in terms of SEBI Circular dated November 18, 1993. I note that the amount of mis-utilisation ranged from Rs. 7.3 crore to Rs. 28.9 crore.

15. The Noticee has also submitted that the enhanced supervision circular came into effect only on 1st July 2017 and the implementation of the circular was at a very nascent stage. I note that initially clause 3 of the SEBI Circular dated September 26, 2016 was to be implemented within three months from the date of the circular. Thereafter, considering representations from exchanges as well as market participants, implementation of the said clause of the enhanced supervision circular was made effective from July 01, 2017. However, I note that the sample dates, in which "G" has been found to be negative are majorly of the year 2018. Therefore, contention of the Noticee that the implementation of the SEBI Circular dated

September 26, 2016 was at nascent stage, cannot be accepted. Being the value of “G” is negative for all the sample dates, I am of the view that the Noticee has failed to segregate clients’ funds inter-se and/ or between clients’ funds and its own funds and has also mis-utilised funds of the clients. Therefore, Noticee is in violation of the provisions of section 23D of the SCRA r/w Clause 1 of Annexure of SEBI Circular dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular dated September 26, 2016.

16. With respect to the alleged violation of incorrect reporting on aggregate value of collateral deposited with clearing corporations and/or clearing member under enhanced supervision to the stock exchanges, Noticee while accepting the lapse has stated that they had subsequently improvised the process (maker-checker system) to ensure that such errors would not recur in future and reporting is done based on actual calculations. Further, the Noticee has also submitted that they had informed all figures for enhanced supervision reporting to the Exchanges correctly. I note that the said incorrect reporting was admitted by the Noticee and the same was rectified after the inspection team found the discrepancies. Therefore, Noticee is in violation of provisions of Clause 3.2 of Annexure of SEBI Circular dated September 26, 2016.

17. In respect of the alleged violation of non-reporting of bank account details of 5 bank accounts under enhanced supervision to the stock exchanges, following has been noted:

- a. **Bank-195 Bank of India OD account number 00862511000058-** The Noticee has informed about the bank account to the stock exchange pursuant to the observation during the inspection.
- b. **Bank-99 Bank of India OD account number 00862511000057-** The bank account statement submitted by the Noticee is showing account as active.
- c. **Bank-187 State Bank of India Term Loan account number 305034691865-** The evidence submitted by the Noticee in respect of the closure of the said bank account is not convincing.

- d. **Bank-199 Axis Bank NPS Account No. 91702002142497-** The Noticee has submitted that this bank account does not pertain to its stock broking activities. The said account was opened pursuant to their registration with Pension Fund Regulatory Development Authority (PFRDA) as a point of presence for National Pension scheme (NPS) and pursuant to PFRDA regulations. As per clause 2.1.1 introduced by the SEBI Circular no. CIR/HO/MIRSD/MIRSD2/CIR/P/2017/64 dated June 22, 2017 to the SEBI Circular dated September 26, 2016 *“Stock Broker which is also Bank, may be required to report to the Stock Exchanges only those bank accounts that are used for their stock broking activities”*. Accordingly, exception to not to report bank accounts of the activities other than that of the stock broking activities is given to the Stock Brokers which are also Bank.
- e. **Bank-191 Yes Bank Account No. 007880200000802 Escrow account-** The Noticee has submitted that the said bank account was also not pertaining to the stock broking activities of the company and pertained to the Merchant banking activities of the company. Exception to not to report bank accounts of the activities other than that of the stock broking activities is given to the Stock Brokers which are also Bank.
18. In view of the above, I am of the view that by not reporting the aforesaid bank accounts to the stock exchange under Enhanced Supervision, Noticee is in violation of provisions of Clause 2 of Annexure of SEBI Circular dated September 26, 2016.
19. It has been alleged that the Noticee had not made quarterly settlements in 3 instances out of the sample of 75 instances of active clients for the March 2018 quarter. As against the allegation, the Noticee has submitted that quarterly settlement of 3 active client accounts namely Jayesh T. Desai HUF (client code 308555), Ranjana K. Jhaveri (client code 39908) and Thakorbhai Nanubhai Desai HUF (client code 885163) have been settled on 15 May 2018, 31 May 2018 and 14 May 2018 respectively. I note that as per the provisions of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 3, 2009, the Noticee was required to do the actual settlement of funds and securities at least once in a calendar quarter or month, depending on the preference of the client. Considering the allegation that

the settlement has not been done for the said clients for the March 2018 quarter and the submission by the Noticee that the settlement has been done in the month of May 2018 for the said clients, I note that the Noticee has not settled the accounts of the said 3 active clients during the March 2018 quarter.

20. Further, as against the allegation that the Noticee has not done quarterly settlement for inactive clients during inspection period spanning 5 quarters, the Noticee has submitted that as per its internal running account settlement policy, it retains an amount of Rs. 1000/- towards depository tariff and other statutory charges. Further they have stated that out of 893 clients, which were not settled for five quarters during inspection period, only 46 clients had credit balance of Rs. 1,000/- and above and the said 46 clients are miniscule in nature. Noticee submitted that, though the count of inactive clients is around 3,000 for each quarter, the amount unsettled during the particular period for each inactive client is below Rs. 1,000/- which is as per their internal policy and for recovery of their depository tariff and other charges from the client. From the said submissions of the Noticee, it is noted that the inactive client's accounts having the amount less than Rs. 1,000 are not settled during the inspection period and also the client accounts of the aforesaid 46 clients were settled in the subsequent quarters. In this regard, it is relevant to quote the provisions of clause 12(d) of the Annexure A to the SEBI Circular dated December 03, 2009 which states what amount to be retained and what amount not to be retained while settling of the client accounts: *"For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges."* In view of the above, submissions of the Noticee cannot be acceptable to me. Further, it is noted that the amount of non-settlement was in the range of Rs. 7.3 lakh (March 2018 quarter for 1223 clients) to Rs. 51.4 lakh (June 2017 quarter for 3320 clients). It is further noted from the available records that the maximum amount not settled for inactive client was Rs. 50944 for June 2017 quarter, Rs. 45000 for September 2017 quarter, Rs. 49315 for December 2017 quarter, Rs. 49315 for March 2018 quarter and Rs. 296460 for June 2018 quarter. Therefore, by

not settling the accounts of the aforesaid clients, Noticee is in violation of the provisions of SEBI Circular dated December 3, 2009 and Clause 8.1 of Annexure of SEBI Circular dated September 26, 2016.

21. With regard to the allegation that terminal having id 400001024004 was being operated by person other than the approved user as per Exchange records, the Noticee has not made it clear in its submission that whether Mr. Manoj Bhiku Jadhav was approved user or not during the time of inspection. Further, w.r.t. the two terminals having ids 400001023002 and 400001012002, not found at its location during the inspection, the Noticee has submitted that these terminals were not regularly logged in and they generally used the greek software from that location. However, Noticee has not submitted any evidence as to the presence of the said terminals at its location during the inspection. Therefore, I am of the view that Noticee is in violation of the provisions of Clause A(5) of Schedule II r/w Regulation 9(f) of Stock Brokers Regulations r/w NSE Circular dated August 29, 2002, NSE Circular dated September 25, 2002 and NSE Circular dated February 13, 2013.

22. The allegation with regard to the daily reconciliation statement, I note that the Noticee has accepted its lapse and submitted that it was not maintaining reconciliation statement indicating the details of funds transferred between clients and own bank accounts on a daily basis. Reference may be drawn to the clause 2.4.2 of Annexure of SEBI Circular dated September 26, 2016, which states:

“Transfer of funds between “Name of Stock Broker -Client Account” and “Name of Stock Broker -Settlement Account” and client's own bank accounts is permitted. Transfer of funds from “Name of Stock Broker -Client Account” to “Name of Stock Broker -Proprietary Account” is permitted only for legitimate purposes, such as, recovery of brokerage, statutory dues, funds shortfall of debit balance clients which has been met by the stock broker, etc. For such transfer of funds, stock broker shall maintain daily reconciliation statement clearly indicating the amount of funds transferred.....” In the context of segregation of clients' funds and stock brokers' own funds, importance of daily maintenance of reconciliation statement cannot be undermined. Maintenance of reconciliation statement would help stock

brokers to control flow of funds in between its own account and client accounts. Although the Noticee has submitted that they have started preparing reconciliation statement and had done transfer of funds between client bank accounts and own bank accounts only for legitimate purposes allowed as per the clause 2.4.2 of Annexure to SEBI Circular dated September 26, 2016, the non-maintenance of reconciliation statement by the Noticee during the IP would hold the Noticee liable for violation of provisions of clause 2.4.2 of Annexure to SEBI Circular dated September 26, 2016 to that extent.

23. With regard to the allegation of incorrect retention statement, it is noted that in 2 out of 10 sample instances, there was mismatch in funds/securities with that captured in retention statement. I note that the clause 12(e) of Annexure A to SEBI circular dated December 3, 2009 requires Stock Brokers to settle the funds and securities of the clients and also send statement of accounts to the clients containing an extract from the client ledger for funds and an extract from the register of securities displaying all receipts/deliveries of funds/securities. The Noticee has contested that the alleged violation is of mismatch in retention statement and not that the retention statements have not been sent. As the requirement of the aforesaid Clause 12(e) is to send the statement of accounts, therefore the Noticee has pleaded not guilty of violation of the provisions of the aforesaid clause as the retention statements have been sent. I note that the aforesaid clause requires Stock Brokers to settle the funds and securities of the clients and send statement of accounts to the clients. It has been an established principle that law should be followed in its letter and spirit. Sending incorrect statement is as good as not sending the statement. In view of the same, the contention of the Noticee that it is not guilty of the violation as the retention statements were sent as per the requirement of the clause 12(e) cannot be accepted. Therefore, the Noticee is in violation of provisions of clause 12(e) of the Annexure A to SEBI circular dated December 3, 2009.

24. In view of the above, I am the view that Noticee violated the provisions of section 23D of SCRA r/w Clause 1 of Annexure of SEBI Circular dated November 18, 1993 and Clause 3 of Annexure of SEBI Circular dated September 26, 2016, Clause 3.2

of Annexure of SEBI Circular dated September 26, 2016, Clause 2 of Annexure of SEBI Circular dated September 26, 2016, SEBI Circular dated December 3, 2009 and Clause 8.1 of Annexure of SEBI Circular dated September 26, 2016, Clause A(5) of Schedule II r/w Regulation 9(f) of Stock Brokers Regulations r/w NSE Circular dated August 29, 2002, NSE Circular dated September 25, 2002 and NSE Circular dated February 13, 2013, Clause 2.4.2 of Annexure of SEBI Circular dated September 26, 2016 and Clause 12(e) of Annexure A of SEBI Circular dated December 3, 2009.

Issue No. II: If yes, whether the failure, on the part of the Noticee would attract monetary penalty under section 23D of the SCRA and section 15HB of the SEBI Act?

25. It has been established in the foregoing paragraphs that the Noticee has violated the aforesaid provisions of SCRA, Broker Regulation and various SEBI Circulars. The object of inspection of the books of accounts and records of any intermediary is to monitor and identify any non-compliances with respect process, procedure and systems prescribed through various provisions of the SEBI Act, Rules and Regulations made thereunder and Circulars issued from time to time and thereafter take necessary corrective steps for orderly, fair and transparent conduct of market participants. Therefore, the aforesaid violations committed by the Noticee attracts monetary penalty under section 23D of SCRA and section 15HB of the SEBI Act.

26. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not."*

27. In view of the above, the Noticee is liable for monetary penalty under section 23D of SCRA and section 15HB of the SEBI Act which read as follows:

SCRA

Penalty for failure to segregate securities or moneys of client or clients.

23D: *If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

SEBI Act

15HB. Penalty for contravention where no separate penalty has been provided:

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

Issue No. III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA and Section 15J of the SEBI Act?

28. While determining the quantum of penalty under section 23D of SCRA and section 15HB of the SEBI Act, factors stipulated in section 23J of SCRA and section 15J of the SEBI Act have to be given due regard:

Factors to be taken into account by adjudicating officer

23J. *While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

Factors to be taken into account by the adjudicating officer

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*

(c) the repetitive nature of the default.

29. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors /clients on account of default by the Noticee. As regards the repetitive nature of the default, I do not find that the Inspection having brought on record any regulatory action taken by SEBI in past against the Noticee for violations/under charging provisions, same as observed in the instant inspection. I observe that there are no investor complaints on record arising out of failure on the part of the Noticee. However, I cannot ignore the fact that the Noticee was under a statutory obligation to abide by the provisions of the SCRA, SEBI Act, Rules and Regulations and Circulars/directions issued thereunder, which it failed to do during the inspection period.

ORDER

30. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of SCRA and Section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 23-I of the SCRA and Section 15-I of the SEBI Act r/w Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 27,00,000/- (Rupees Twenty Seven Lakh only) on the Noticee under section 23D of the SCRA and section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

31. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on

the payment link : **ENFORCEMENT** → **Orders** → **Orders of AO** → **PAY NOW**

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

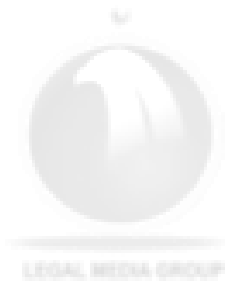
33. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules.

Date: January 19, 2021

Place: Mumbai

Prasanta Mahapatra

Adjudicating Officer



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