BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/MG/2021-22/11306-11309]

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

In respect of

1. **YES Bank Limited (AAACY2068D)**
2. **Mr Vivek Kanwar (AAIPK8816G)**
3. **Mr Ashish Nasa (ACOPN0037E)**
4. **Mr Jasjit Singh Banga (ANQPB3075R)**

In the matter of AT1 Bonds of Yes Bank Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received multiple complaints from the investors of Basel III compliant Additional Tier 1 Bonds (hereinafter referred to as '**AT-1 bonds/AT1 Bonds**') issued by YES Bank Limited (hereinafter referred to as '**YBL/Company/Noticee 1'**) in respect of selling of these AT1 Bonds. Some of the complaints received by SEBI are highlighted as under;

Name of Complainant	Date of Complaint	Amount of investment (Rs)	Allegation by complainant
Shri Hari Prakash	18/11/2020	5,00,000/-	AT1 bonds were palmed off to innocent and gullible retail senior citizens under the guise of Super FDs. Invested in Nippon India Equity Hybrid Fund
Shri Kartik Sharma	21/10/2020	9,69,563/-	Incorrect details mentioned in the mandatory document for AT1 Application form
Shri N Ranamoorthy	05/07/2020	10,57,747/-	Yes bank was engaged in manipulative or fraudulent or deceitful or unfair trade practices
Qualichem industries Pvt Ltd	09/03/2020	80,00,000/-	It was informed that these bonds are safer then FD and equity shares of Yes Bank
Shri Rushabh D Rach	09/03/2020	51,60,000/-	Sold At-1 bonds by Yes First Wealth Management
Shri Himanshu D Rach	09/03/2020	50,00,000/-	Sold At-1 bonds by Yes First Wealth Management
Ms Rupali H Rach	09/03/2020	50,00,000/-	Sold At-1 bonds by Yes First Wealth Management
Shri Prithvi Dhaka	12/03/2020		Yes Bank Relationship manager lured to break FD and invest in AT1 bonds
Shri N Hari Praksh	15/03/2020	40,00,000/-	Was told that the investment is safe as it is issued by a very large bank with very strong credit rating
Shri Rabindranath Mukherjee	23/04/2020	50,00,000/-	RMs and the Managers concerned of Yes Bank branch, Russel Street, Kolkata sold the bonds explaining that it is normal FD with 5 year lock in period. The FD amount was renewed to purchase this bonds.
Smt. Kana Mukherjee	23/04/2020	30,00,000/-	

2. Subsequently, SEBI conducted an investigation in the matter to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') and SEBI Act, 1992 (hereinafter referred to as '**SEBI Act'**), in respect of selling of these AT-1 bonds of YBL to retail investors by the Noticees during the period from December 01, 2016 to February 29, 2020 (herein after referred to as '**Investigation Period'**). Subsequent to the

investigation, SEBI issued an adjudication show cause notice to the following entities: YBL **('Noticee 1')**, Mr. Rana Kapoor ('**Noticee 2'**), Mr. Vivek Kanwar **('Noticee 3')** who was the head of Private Wealth Management Team (hereinafter referred to as '**PWM Team**'), Mr. Ashish Nasa ('**Noticee 4**') and Mr. Jasjit Singh Banga ('**Noticee 5**').

3. The Investigation report of SEBI observed that Noticee 2 was the Managing Director of YBL and Noticees 3 to 5 were part of the PWM Team during the investigation period. SEBI observed that the Noticees had facilitated selling of AT-1 Bonds of YBL from Institutional Investors to Individual Investors. It was alleged that during the process of selling of the AT-1 Bonds, Individual Investors were not informed about all the risks involved in subscription of AT-1 Bonds. Therefore, it was alleged that the AT-1 Bonds were fraudulently sold to the individual investors and in this regard, Noticees 1 to 5 have alleged to have violated the provisions of Sections 12A(b) and 12A(c) of the SEBI Act and Regulations 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of the PFUTP Regulations. Therefore, SEBI initiated the instant adjudication proceedings against Noticees 1 to 5 under the provisions of Section 15HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide order dated October 26, 2020, appointed Shri B. J. Dilip as Adjudicating Officer (herein after referred to as '**AO**') under Section 19 read with Section 15I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**AO Rules**') to inquire into and adjudge under the provisions of Section 15HA of SEBI Act the violations alleged to have been committed by Noticees 1 to 5. Thereafter, pursuant to

transfer of Shri B. J. Dilip, the undersigned was appointed as AO by SEBI vide order dated December 31, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show-Cause Notice (hereinafter referred to as '**SCN**') dated October 28, 2020, was issued to Noticees 1 to 5 under Rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against them and penalty, if any, not be imposed upon them under the relevant provisions of SEBI Act for the violations alleged to have been committed by them. Noticees 1 to 5 were given 15 days' time to make their submissions in respect of the allegations made in the SCN.

6. The violations alleged to have been committed by Noticees 1 to 5 as per the SCN, are summarized hereunder:

a. *YBL and three senior officials of PWM Team viz. Noticee 3, Noticee 4 and Noticee 5 were involved in designing the 'step by step procedure' and other materials (like 'Sale/verbal pitch', FAQs etc.) to down sell the AT1 bonds to individual investors. In this regard, Investigation noted the following from the 'verbal/sales pitch' and 'step by step procedure' shared by PWM team with the RMs:*

   (i) AT1 bonds were compared with fixed deposit on rate differential only, but omitted the risk differentials which led the investors to look only at the higher interest rate on the AT1 bonds without realising that these bonds have inherent risk associated with it.

   (ii) YBL cited interest of institutional investors in the product to down sell the same to individual investors which were unsuitable/ comparatively risky for them. The same also led the investors to believe that since such big institutions are buying the product, the same shall also be suitable for them without realising that risk taking capacity of institutional investors and individual investors are quite different.

   (iii) Also, as per the first step of the 'step by step procedure', RMs were supposed to share the term sheet with the clients but the senior officials of the PWM team did not have a system in place to ensure that the term sheet was being shared with

the clients and as mentioned above there are certain cases where the term sheet was never shared with the individual investors.

(iv) *Also, in this 'step by step procedure' there was no provision for the RMs to take any confirmation from the investors w.r.t their understanding of the features and risks associated with the bond which lead the RMs to sell the AT1 bonds recklessly.*

b. *Investigation observed that aforesaid transactions (down-sell of AT1 Bonds) were not negotiated between buyers and sellers individually. The same was facilitated by Yes Bank for around 1300 individual investors most of which were existing customers of Yes Bank.*

c. *In view of the foregoing, investigation observed that:*

(i) *YBL represented the product as 'Super FD' and 'as safe as FD'*

(ii) *Term Sheet was not shared with many investors*

(iii) *No confirmation taken from the investors w.r.t their understanding of the features and risks associated with the bond.*

(iv) *Risk Profiling of individual clients not done especially investors more than 70/80/90 years old.*

(v) *In the 'verbal pitch' shared by PWM team with the RMs, the AT1 bonds were compared with Fixed deposit on rate differential only, but omitted the risk differentials.*

(vi) *YBL cited interest of institutional investors in the product to down sell the same to individual investors which were unsuitable/ comparatively risky for them*

(vii) *Lot size of the bond was reduced to facilitate down sale to individual investors*

(viii) *Push from the MD & CEO of YBL to down sell the AT1 bonds which led the PWM team to recklessly sell the bonds to individual investors.*

d. *It is further alleged that the senior officials of PWM Team viz. Noticee 3, Noticee 4 and Noticee 5 on behalf of YBL were involved in the misrepresentation, manipulation and mis-selling the AT1 bonds of YBL to the individual investors. It is further alleged that Noticee 2 was also responsible for the said actions of the aforesaid senior officials of the PWM Team as he was overseeing the entire activities, taking regular updates from the team and giving them further instructions to expedite/ increase the sales.*

e. It is also alleged that YBL had misrepresented the AT1 bonds by comparing them with a fixed deposit without disclosing the inherent risks associated with the bonds and thereby manipulated the investors into buying such risky bonds. The said action on the part of YBL was a

(i) knowing misrepresentation of the truth or concealment of material fact in order that another person to act to his detriment;

(ii) an active concealment of a fact having knowledge or belief of the fact; and

(iii) a representation made in a reckless and careless manner,

falling under the definition of 'fraud' under 2(1)(c)(1), 2(1)(c)(3) and 2(1)(c)(5) of PFUTP Regulations.

f. In view of the foregoing, it is alleged that YBL, Noticee 2, Noticee 3, Noticee 4 and Noticee 5 have violated the provisions of Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations, 2003 read with Explanation (1) to Regulation 4(2) of PFUTP Regulations, 2003 and Section 12A(b) & 12A(c) of the SEBI Act, 1992.

7. The SCN was sent through SPAD and digitally signed email dated October 28, 2021 to the Noticees 1 to 5 and was duly served upon them.

8. It was observed that Noticee 2 has not made any submissions in respect of the SCN. Vide notice dated January 27, 2021, an opportunity of hearing was granted to Noticee 2 on February 11, 2021. The aforesaid letter returned undelivered with the reason "Left". It was gathered/observed from media reports that Noticee 2 is imprisoned in Taloja Jail, Navi Mumbai. Therefore, in the interest of natural justice, vide hearing Notice dated February 26, 2021, Noticee 2 was granted another opportunity of hearing on March 26, 2021 and was also advised to file his submissions in respect of the SCN, if any, on or before March 19, 2021. The aforesaid hearing Notice dated February 26, 2021, was served upon the Noticee 2 in Taloja Jail, Navi Mumbai. The Authorised Representative to Noticee 2, vide letter dated March 19, 2021 informed that Noticee 2 is imprisoned in the Taloja Jail, Navi Mumbai. The Authorised Representative to Noticee 2, in its letter, further submitted that due to pandemic caused by Covid-19, there were restrictions on

meeting with Noticee 2 and such meetings were allowed for only 10 minutes twice a week. Further, there was no physical interaction between lawyers/ advocates and prisoners during these meetings and the same were telephonic conversations in the premises. The Authorised Representative to Noticee 2 also stated that Noticee 2 doesn't have access to the various relevant records/ documents as well as his computer, which has data pertaining to the matter. In view of the same, the Authorised Representative to Noticee 2 requested the undersigned to schedule the hearing after Noticee 2 is released from the prison. The Authorised Representative to Noticee 2 also requested for inspection of documents relied upon by SEBI. The request for inspection of documents by Noticee 2 was acceded to and vide email dated March 23, 2021, Noticee 2 was granted an opportunity of inspection of documents on March 25, 2021. The said the inspection of documents relied upon by SEBI was conducted on March 25, 2021. On account of the Authorised Representative's request for additional time due to various constraints and difficulties being faced by Noticee 2, in accordance with the principles of natural justice, Noticee 2 was granted additional time to file its reply to the SCN i.e. latest by April 16, 2021.

9. Considering the peculiar factual situation regarding Noticee 2, including taking into account the fact that he is presently in jail, Adjudication Proceedings in respect of Noticee 2 will be conducted separately so that he has reasonable opportunity to contest the allegations levelled against him in the SCN and is able to make a proper representation of the case. Though in the SCN issued by SEBI, Shri Rana Kapoor is arrayed as Noticee 2, considering the fact that this adjudication order does not deal with the violations alleged to have been committed by him, the Noticees are rearranged in the following manner: YBL is being referred to as '**Noticee 1'**, Mr. Vivek Kanwar is being referred to as '**Noticee 2**', Mr. Ashish Nasa is being referred to as '**Noticee 3**' and Mr. Jasjit Singh Banga is being referred to

as '**Noticee 4**'. (Noticees 1 to 4 are hereinafter being collectively referred to as '**Noticees**')

10. The SCNs were sent to the Noticees through Speed Post Acknowledgement due (herein after referred to as 'SPAD') as well as digitally signed email dated October 28, 2020 and were duly delivered to the Noticees. Noticees 1 and 2, vide letter dated November 10, 2020, made preliminary submissions in respect of the SCN and requested to keep the proceedings in abeyance. Further, Noticees 3 and 4 vide their separate letters dated November 10, 2020, made submissions and also requested to keep the proceedings in abeyance.

11. Considering the above request of the Noticees to keep the proceedings in abeyance, relevant department of SEBI was requested to confirm whether there was any stay or bar or any other restriction in the instant adjudication proceedings in the matter. I find that, no stay order in the respect of the instant proceedings have been brought to the notice of the undersigned by the Noticees in their contentions. Further, the Department of SEBI vide its email dated January 20, 2021 confirmed that there was no communication from any courts to keep the instant adjudication proceedings in abeyance. In view of the same and in the interest of Natural Justice, the Noticees were granted opportunities of personal hearing on February 11, 2021, vide hearing notice dated January 27, 2021.

12. Noticees 1 and 2 submitted another letter dated February 09, 2021, wherein they reiterated submissions made by their earlier letters and again requested to keep the proceedings in abeyance. Vide letter dated February 10, 2021, Noticee 1 requested for inspection of documents relied upon by SEBI in the matter and also requested to adjourn the scheduled hearing to a date after the inspection.

13. Vide email dated February 25, 2021, Noticee 1 was granted an opportunity of inspection of documents on March 02, 2021. Inspection of documents relied upon

by SEBI was conducted by the Noticee 1 on March 02, 2021. Noticees 2 to 4 were granted opportunities of personal hearing on March 26, 2021, vide hearing notice dated February 26, 2021. Vide aforesaid hearing notice, Noticees 2 to 4 were also advised to file their replies to the SCN, if any, on or before date of hearing. Noticee 2, vide letter dated March 16, 2021, requested for a copy of investigation report and also requested to keep the matter in abeyance till the outcome of various court proceedings in the matter.

14. Thereafter, Noticees 3 and 4, vide separate letters dated March 23, 2021, made submissions and requested for inspection of documents. The aforesaid requests of Noticees 3 and 4 were acceded to and they were granted opportunities of inspection of documents relied upon by SEBI on March 25, 2021, vide emails dated March 23, 2021. Inspection of documents relied upon by SEBI, in respect of Noticees 3 and 4, was conducted on March 25, 2021.

15. Hearing proceedings were conducted in respect of Noticees 2 to 4 on March 26, 2021. During the course of hearing, the Authorized Representative to Noticees 2 to 4, requested for extension of time for making submissions and also sought for adjournment of hearing. Considering the aforesaid requests, Noticees 2 to 4 were advised to file their submissions in respect of the SCN latest by March 30, 2021 and they were also granted a final opportunity of hearing on March 31, 2021. Noticee 2 to 4, vide their respective letters dated March 30, 2021, filed replies in respect to the SCN. Hearing proceedings in respect of Noticee 2 to 4 were conducted on March 31, 2021. The Authorised Representative of Noticee 2 to 4 attended the hearing and reiterated the contents of the earlier submissions made.

16. Vide hearing Notice dated March 22, 2021, Noticee 1 was granted an opportunity of hearing on April 01, 2021. Vide aforesaid hearing notice, Noticee 1 was also advised to file its reply by March 31, 2021. Hearing proceedings in respect of

Noticee 1 was conducted on the scheduled date, i.e., on April 01, 2021, The AR to Noticee 1, during the hearing, made its submission, *interalia*, reiterating the contents of its letter dated March 31, 2021 and also requested for time to file additional submissions. The request of the AR was acceded to and Noticee 1 was granted time to file additional submissions in the matter by April 03, 2021. Noticee 1, vide letter dated April 03, 2021, made additional written submissions in the matter.

17. The main contentions made by Noticees 1 and 2, made vide the aforesaid submissions/ replies are summarized as under:
    1) *They denied all the accusations made in the SCN.*
    2) *That as a result of the notification of the Scheme, there has been a significant change in the control and shareholding of Noticee 1 since March, 2020.*
    3) *That they cannot now be held liable for the alleged misconduct, if any of the erstwhile Promoter Director /MD and CEO and Directors.*
    4) *That no penalty at all ought to be levied on Noticee 1, inter alia, since the said capital infusion by the State Bank of India and other banks was for saving the bank and its customers and investors and not for payment of penalties.*
    5) *Since the issue of the sale of AT1 Bonds to Retail Investors and the write down thereof is now under the consideration of the Hon'ble High Courts, it is submitted that it would be appropriate and in the interests of justice that the present proceedings may be kept in abeyance until the Hon'ble Supreme Court and the Hon'ble High Courts pass appropriate orders in the respective proceedings.*
    6) *That the facilitation of AT1 Bonds in the secondary market was done at the instance of the erstwhile promoter and the then MD & CEO Mr. Rana Kapoor, who is no longer associated with Noticee 1.*
    7) *That they deny each and every allegations of complainants.*

8) *That each and every complainant be summoned and Noticee 1 be permitted to cross examine them.*

9) *They denied that the AT1 Bonds are risky and should not have been sold to the Individual Investors. Noticee 1 denied also that there was any mis-selling of the AT1 Bonds by Noticee 1 and the Investors were not provided with the Information Memorandum and/or Term sheet.*

10) *Noticee 1 submitted that IM and Term Sheet are available on BSE Website and therefore available in the Public Domain.*

11) *That the individual investors who had chosen to invest in the said Bonds were all savvy investors and HNI clients, who were familiar with the markets and the investment instruments, as well as the internet and the easy access to the websites of the stock exchanges.*

12) *That Noticee 1 merely facilitated the retail investors who were interested in investing in the said AT1 Bonds to source the same from the institutional investors, who were holding the same. It was the institutional investors which sold the same to the retail investors on the trading system of the BSE.*

13) *Therefore, the exchange of Term Sheets for the transaction ought to have been between the selling Institutional Investor and the Retail Buyer, and Noticee 1 had no responsibility to provide the Retail Buyer with a Term Sheet.*

14) *That all RMs were instructed in writing to follow a step by step process in making representations to the potential buyers, which included express disclosure of the Term sheet, risk factors etc.*

15) *That if any investors had shifted their investments from FD's to the AT1 Bonds, it was a matter of their own choice and their considered decision.*

16) *It is false and denied that the AT1 Bonds were offered as super fixed deposit product.*

17) *That the AT1 Bonds are risky only when the bank falls into insurmountable financial difficulties which render it unviable. Therefore, it cannot be alleged that the AT1 Bonds are inherently risky. All investment instruments carry*

some or the other risk. Even bank FD's and deposits are jeopardized if and when a bank collapses, and even the insurance cover for the same is not unlimited. Therefore, even the rating given by the rating agencies to the AT1 Bonds was AA, which means low risk and high safety, and SEBI has not found any fault with the same. Further, the fact that the AT1 Bonds offer a higher return than FD's is ex facie evidence of the fact that there has to be some higher risk.

18) *That all the initial subscribers to the AT1 Bonds were institutional investors and the bulk of the secondary market sales of the AT1 Bonds of Noticee 1 was to non- retail / non individual clients, including such institutional investors who have expert knowledge and large resources deployed to assess any investment and the potential risks. None of them also foresaw any great risk in investing in the AT1 Bonds of Noticee 1.*

19) *That they were not provided with a copy of Investigation Report.*

20) *That Noticee 1 does not admit SEBI's interpretation of the statements of employee of Noticee 1.*

21) *That the risk factors were communicated to the clients orally and/ or vide written documents such as the term sheet, which reproduced the risk factors from the Information Memorandum, which as aforesaid, was itself in the public domain;*

22) *That the investors were never told that the AT1 Bonds are safer than FDs or Super FDs.*

23) *That the retail investors are HNI clients and they were informed about the credit risk and loss absorbency features of the AT1 Bonds. The AT1 Bonds were also pitched to the retail investors.*

24) *The AT1 Bonds had a high rating, and it was genuinely believed that the same were a good product for the customers. The AT1 Bonds were rated as "AA" which stands for high degree of safety and very low credit risk.*

Therefore, there was nothing wrong in pitching the same to individual investors;

25) *Government bonds and FDs are in fact the standard benchmarks for rate comparison of bonds, and customers were in fact informed of the risk features of the AT1 Bonds;*

26) *That marquee institutional investors including mutual funds, had invested more than Rs. 3000 crores in the bonds.*

27) *That the reduction in ticket size was to ensure wider participation.*

28) *The Term Sheets were shared with the Customers by RMs.*

29) *That the interpretation of "granular distribution" and recorded in the statement of Mr. P. Rakesh is denied. In fact, "granular distribution" would mean adopting a detailed method of distribution.*

30) *That few of the complainants themselves approached Noticee 1 seeking facilitation.*

31) *That Mr. Rana Kapoor pushed the secondary market sale of AT1 Bonds and instructed PWM team and DCM Team to sell down the AT1 Bonds.*

32) *Retail investors of AT1 Bonds were aware of terms of issue of the Bonds and risks associated with them.*

33) *There was no prohibition on selling AT1 Bonds to the individual investors.*

34) *That at the time of down selling there was nothing on record to indicate that AT1 Bonds were at risk of being written down.*

35) *That that the step-by-step procedure, term sheet and other material prepared by the PWM team to instruct the Relationship Managers on the procedure to be followed and representations to be made to the potential buyers, clearly prove that there was no mis-selling and in fact there was a clear disclosure of the risk factors and terms of the said bonds.*

36) *That only a small fraction of the retail clients closed their FDs to invest their money into the AT1 Bonds and that too, of their own free will and choice. No*

bank official suggested to any investor to break any FDs and invest the money in the AT1 Bonds.

37) *That even if there was any lapse by any RM in this regard, Noticee 1 as an institution cannot be held to be guilty of fraud on the basis of the same.*

38) *That the submissions in the emails of Noticee 1 and its officials, during the investigation, as annexed to the SCN are reiterated. The 'step by step process', term sheet etc. all belie the allegations in the SCN and prove that Yes Bank always took requisite steps to ensure that all clients were duly informed of the risk factors of the said bonds. The term 'granular' appears to have been misinterpreted as aforesaid.*

39) *That they merely facilitated the purchase/ sale of AT1 Bonds by their High Net worth Customers/ Institutional Investors and did not collect any fee from buyers or sellers. This proves that they had no motive or incentive to mis-sell the bonds or make any misrepresentations or concealment as incorrectly alleged in the SCN.*

40) *The step-by-step procedure and other material prepared by the PWM team, including the said Term Sheet, prove beyond doubt that the Relationship Managers were instructed to ensure full disclosure of the features of the AT1 Bonds including the risk factors.*

41) *There is no provision of any law, rule, regulation or circular which obligated our client to have a system to ensure that the said Term Sheet was shared with the clients.*

42) *The allegation that the RM's at this belated stage, years after the sales, could not produce proof that the term sheet was in fact shared with "all" the clients, is ex facie untenable and conveniently overlooks the evidence on record that they had maintained in their statements on oath that they had informed the clients of the risk factors orally & / or through the term sheet.*

43) *That around 25 such alleged complaints making such allegations that the term sheet was not shared with them have been disclosed as attachments to*

the SCN. However, the AT1 bonds were purchased by 1300 individual investors. Therefore, around 1,275 clients have no such complaints, yet the same has been ignored.

44) *That even if in a few instances the concerned RM deviated from the expressly documented disclosure requirements, then the entire institution cannot be penalized for such a rare lapse of 1 or 2 individuals.*

45) *That some of the RMs have left Noticee 1 and therefore the requisite emails sent by them years back cannot be now retrieved only proves that it is untenable to now assume that they must not have sent the said emails and term sheet to their respective customers.*

46) *That at the time of down selling there was no regulatory compulsion to assess the risk profile of the prospective purchasers.*

47) *That after the ratings were downgraded below AA in May 2019, Noticee 1 insisted upon an upfront acknowledgement of understanding of risks by the prospective buyer. Curiously, the same have not been taken into account in the SCN.*

48) *The said SCN does not set out the reasons why SEBI alleges that risk profiling was mandatorily required for clients aged more than "70 / 80 / 90 years". It cannot be alleged that YBL's High Networth Clients who were above 70 years of age were not discerning investors or that they were immature or did not understand the risks associated with AT1 Bonds.*

49) *That mere absence of having a system of also getting a confirmation from clients that the risk associated with the Bonds was explained to them, cannot lead to any adverse inference that the relevant information was not provided by YBL's Relationship Managers to the clients.*

50) *That SEBI Permitted retail investors to buy AT1 bonds on BSE at the relevant time without any restrictions or conditions.*

51) *Noticee 1 submitted that its officials had designed and devised a carefully structured step-by-step procedure to facilitate the purchase of the 2013, 2016*

*and 2017 AT1 Bonds; these included a detailed ICCL Registration cum Bond Application form which was used by the clients to register themselves with Indian Clearing Corporation Limited (Herein after referred to as "**ICCL**") and which contained an acknowledgement by the client of the risks of investment and a term sheet reproducing the terms of issue of the AT1 Bonds from the Information Memorandum; the said application form also contained the signature of the purchasing client. Therefore, the allegation that the Noticee and its officials had misrepresented the nature of the AT1 Bonds and the risk associated with them and that they did not take confirmation from clients regarding their understanding of the risk is erroneous, false, baseless and unsustainable.*

52) *That the complaints unsubstantiated are not only erroneous and false, they are also made with the sole intention of recouping losses suffered in the course of a legitimate investment*

18. Some additional submissions made by Noticee 2 vide its aforesaid letters / replies are summarized hereunder:

i. *That the SCN has failed to bring out anything on record to show his involvement in the allegations made therein.*

ii. *That he was working as an employee in Yes Bank as Senior President since January 24, 2014. He was entrusted with job relating to Head-Wealth Management & Global Indian Banking. He was never holding a Key Managerial Personnel ("KMP") position in YBL. He had a Superior to whom he reported and who were the decision makers.*

iii. *His role in facilitating the secondary market sale of YBL AT1 Bonds was performed by him and his team in his official capacity.*

iv. *That he was never holding a Key Managerial Person position in YBL and his reporting officer was decision maker.*

v. *The whole directions and decision of facilitating sell down of AT1 Bonds to retail investors came from Mr. Rana Kapoor who was the then MD and CEO and in charge of all activities of YBL including decision making.*

vi. *That he never had any oversight about the stress/potential stress/ NPA build-up.*

vii. *That he was not a decision maker in any of the alleged scheme for sale of ATI Bonds to retail investors.*

viii. *That his role as part of the sales team and his team was expected to increase the deposit base of the bank, increase the Current Accounts and Saving Account ("CASA") i.e.; increase the liability franchise of YBL and to cross sell various products viz.; insurance, mutual funds etc. to YBL customers.*

ix. *That he had no malafide intent on my part wherein he would have colluded with Mr. Rana Kapoor to get any wrongful gains. By no stretch of imagination, he could have then anticipated the financial collapse of YBL during his tenure in Yes Bank especially with all the statutory audits and ratings in place.*

x. *That the mentioned step-by-step process in SCN was an operational process for facilitating the deal and was already in place prior to write-down of AT1 Bonds. The step by step process was shared as per the standard practice for facilitating sale of AT1 Bonds for a series issued in 2013- AT1 bond (Coupon 10.50%). In fact, the same procedure was adopted for sale of AT1 Bonds issued in 2013 which was not subjected to write down.*

xi. *That he denies the allegations of having "designed" any step by step process to facilitate the sale of write-down of ATI Bonds to the individual investors. I state that the step by step process was already in place for facilitating sate of 10.50% series AT1 Bonds which were launched in December, 2013.*

xii. *That the term sheets were duly shared with the customers through mail or in Physical meetings by RMs. Not only the "Term Sheet" was shared either physically, WhatsApp or e-mail but all associate risk factors were also explained. Further, not sharing a term sheet specifically in an email/ physical — this act in isolation should not be construed as the point of mis-selling.*

xiii. That the RBI circular mandates to take sign off on Loss absorbency clause only if a bank sells these bonds in primary market to a Resident individual. It does not extend to the secondary market.

xiv. That extending a primary market disclosure requirement onto the secondary market transaction and holding me and/or any other officials of YBL responsible for such process and that too with retrospective effect — in the name of fiduciary responsibility — is not justified and without any legal/regulatory basis.

xv. That even as on date, AT1 Bonds of other banks are freely traded in secondary market merely on telephonic calls and without any purported sign off of the risk factors.

19. The main contentions made by Noticee 3 and 4 vide their aforesaid submissions/ replies are summarized hereunder:

i. They submitted that they disagree with the accusations made against them in the SCN.

ii. *That since the matter is sub-judice before the various court(s), the instant proceedings be kept on abeyance till the court(s) decide the matter on merits including the allegation regarding mis-selling etc.*

iii. That Noticee 3 exited from YBL in the month of March, 2018 and hence was not associated with the bank when AT1 Bonds sold.

iv. That the complaints of mis-selling are triggered post the write-off announcement of the instrument and pertains only for the AT1 Bonds series which were written off. Thus, these complaints are afterthought.

v. That since the matter is sub-judice before the various court(s), the instant proceedings please be kept on abeyance till the court(s) decide the matter on merits including the allegation regarding mis-selling etc.

vi. *That the write down of the AT1 Bonds was in compliance with the RBI Norms, happened in March, 2020 which was after Noticee 4 left the organization in August, 2018*

vii. *That Noticee 4 didn't receive any monetary benefit and incentives with respect to the sale of AT1 Bonds*

viii. *Noticee 4 submitted that he was not provided copies of all the necessary and relied upon documents*

ix. *That the matter is sub-judice and instant proceedings should be kept in abeyance.*

x. *They denied allegations of mis-selling.*

xi. *That their tenure with the YBL was very short and at that time there was no complaint of mis-selling by the bond holders.*

xii. *They denied all the allegations made against them. Further, they had not committed any act in violations any securities law.*

xiii. *That the SCN has failed to bring out anything on record to show their involvement in the allegations made therein.*

xiv. *Noticee 3 submitted that he was working as an employee of the YBL during the period February, 2011 to March, 2018, as Program Manager as part of PWM Team. Noticee 4 submitted that he was working as an employee in Yes Bank as Program Manager — Yes Prosperity (Senior Manager) from May, 2016 to August, 2018.*

xv. *That they were given additional responsibility to help in facilitating sale of AT1 bonds during their employment tenure.*

xvi. *Noticee 3 submitted that he was involved with the facilitation of AT1 bonds was less than one third of the total time period for facilitation of these bonds by YBL. Noticee 4 submitted that he was involved with the facilitation of AT1 bonds was less than half of the total time period for facilitation of these bonds by YBL in secondary market.*

xvii. They submitted that they were never holding a Key Managerial Person position in YBL and there were eight levels and thirteen levels of seniors who were at various decision making levels respectively.

xviii. The whole directions and decision of facilitating sell down of AT1 Bonds to retail investors came from Mr. Rana Kapoor who was the then MD and CEO and in charge of all activities of YBL including decision making.

xix. They never had any oversight about the stress/potential stress/ NPA build-up.

xx. They were not a decision maker in any of the alleged scheme for sale of AT1 Bonds to retail investors.

xxi. That the financials of the Bank then were extremely strong (Rated "AA/AA+") for the entire time of their involvement.

xxii. That their role as part of the sales team and their team was expected to increase the deposit base of the bank, increase the Current Accounts and Saving Account ("CASA") i.e.; increase the liability franchise of YBL and to cross sell various products viz.; insurance, mutual funds etc. to YBL customers.

xxiii. That as the Credit Rating of the exact instrument under focus is itself AA/AA+, they rightly believed in all externally evaluated data including Credit Ratings (regulated by multiple regulators), Audited Financial Statements and published information.

xxiv. They had no malafide intent on his part wherein they would have colluded with Mr. Rana Kapoor to get any wrongful gains. By no stretch of imagination, they could have then anticipated the financial collapse of YBL during their tenure in the YBL especially with all the statutory audits and ratings in place.

xxv. The trading of the AT1 bonds in the secondary market to retail investors was never barred by SEBI.

xxvi. The allegations of mis-selling of AT1 Bonds by selected investors are more as an afterthought as they had invested being aware of all the risks associated with the ATI Bonds.

xxvii. *The number of retail investors in the AT1 Bonds have invested at an average of more than Rs. 70 lakhs per investor which by all means would fall in the domain of HNI investors who are well informed and would take informed decisions.*

xxviii. *That during their tenure PWM had never reduced the lot size for facilitation of bond from Rs. 50 Lacs to IRS. 10 Lacs.*

xxix. *Noticee 3 left the Bank with effect from March, 2018 and noticee 4 left the bank with effect from August 14, 2018. Accordingly, Section 4(2)(s) of PFUTP Regulations for the alleged mis-selling of securities or services related to securities market came into effect only in February 2019 i.e. after 11 months of their leaving the Bank.*

xxx. *Noticee 4 mentioned that most of the complainants have enjoyed the fruits of the higher coupon rates for more than 2 occasions. A person/ investor privy to a transaction is estopped from questioning it later. This is against the Principles of Estoppel.*

xxxi. *That the mentioned step-by-step process in SCN was an operational process for facilitating the deal and was already in place prior to write-down of AT1 Bonds. The step by step process was shared as per the standard practice for facilitating sale of AT1 Bonds for a series issued in 2013- AT1 bond (Coupon 10.50%). In fact, the same procedure was adopted for sale of AT1 Bonds issued in 2013 which was not subjected to write down.*

xxxii. *That the continuation of the said "Step by Step" process for such a long time after their exit, this itself shows irrelevance of their level in the overall scheme of things.*

xxxiii. *That the PWM Team was only obeying the instructions of Mr. Rana Kapoor and had no independent decision making authority.*

xxxiv. *That in case Noticee 4 and his team had sold the mutual fund units of Franklin Templeton Schemes which were closed down, whether they can be held liable/ accountable for mis-selling.*

xxxv. That they denied the allegations of having "designed" any step by step process to facilitate the sale of write-down of AT1 Bonds to the individual investors and that the step by step process was already in place for facilitating sate of 10.50% series AT1 Bonds which were launched in December, 2013.

xxxvi. The customers who bought the AT1 Bonds from PWM team with a coupon rate of 10.50% series (2013 issues which is still valid and persisting) had followed the same methodology and has not made a single complaint of mis-selling. In fact, some investors who were holding bonds under multiple series 10.50% (subsisting bonds) and 9.0% & 9.5% (written down bonds) — have selectively raised mis-selling complaints only for the bonds written down. This clearly indicates the afterthought of selective individuals who are attempting to recoup their losses.

xxxvii. That the term sheets were duly shared with the customers through mail or in Physical meetings by RMs. Not only the "Term Sheet" was shared either physically, WhatsApp or e-mail but all associate risk factors were also explained.

xxxviii. That "Term sheet" of a listed debenture is a publicly available document and it has been mentioned specifically as a first reference point in all the literature used by the Bank.

xxxix. That sharing a term sheet specifically in an email/ physical this act in isolation should not be construed as the point of mis-selling.

xl. The requirement of risk profiling of the investors in secondary market was not a statutory/legal requirement then and perhaps even now.

xli. The thrust on the age group of investors 70/80/90 for conducting risk profiling is misplaced because any investor at any age would take an informed decision with respect to any investments and with full awareness of all the risks associated therewith.

xlii. *That the words "Super FD" and "as safe as FD" were never used by them or anyone in the team.*

xliii. *That there was no special incentive offered to RMS of YBL. The incentive paid to the RMS of YBL was similar to that for sale of any other investment products.*

xliv. *That the Noticee 3 and 4 should be allowed to cross examine such complainants to gauge the veracity of the allegations.*

xlv. *That in absence of the investigation report, they were at a disadvantage as they were not privy to the contents of the Investigation Report which was not shared by SEBI despite multiple request/remainders, which is in breach of principles of natural justice.*

xlvi. *That the RBI circular mandates to take sign off on Loss absorbency clause only if a bank sells these bonds in primary market to a Resident individual. It does not extend to the secondary market.*

xlvii. *That extending a primary market disclosure requirement onto the secondary market transaction and holding him and/or any other officials of YBL responsible for such process and that too with retrospective effect — in the name of fiduciary responsibility — is not justified and without any legal/regulatory basis.*

xlviii. *That even as on date, AT1 Bonds of other banks are freely traded in secondary market merely on telephonic calls and without any purported sign off of the risk factors. Even the ticket size of Rs. 1 crore and above for AT1 Bonds have been mandated by SEBI since October, 2020 only prospectively and not applicable for past issuances.*

xlix. *That it is presumptive to state that only the differential on interest rates were indicated to the customers and not the inherent risks. Even for sake of assumptions, it is stated that even FDs have risk factors in case of bank collapse /liquidation. The insurance protection even on FD is limited.*

l. *It is again presumptive to assume about risk taking appetite of investors being not considered since the investors investing so heavily in the AT1 Bonds were not only made aware of all the risk disclosures by the RMS but also could access alt the information documents of the AT1 Bonds which are widely available on public domain.*

li. *They denied that any reckless selling of AT1 bonds was done by any RMS or any officials of YBL including them. All the investors were duly informed of all the features of the AT1 Bonds and the risks associated with them.*

Consideration of Issues, Evidence and Findings

20. I have carefully perused the charges levelled in the SCN, the oral and written submissions made by the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticees have violated the provisions of Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Sections 12A(b) & 12A(c) of the SEBI Act?

(b) Do the violations, if any, attract monetary penalty under Section 15HA of SEBI Act.

(c) If so, what should be the quantum of monetary penalty?

21. Before moving forward, it is pertinent to refer to the relevant provisions of the PFUTP Regulations and SEBI Act, which are reproduced as under:

PFUTP Regulations, 2003:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

…

(c) Employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

….

(s*) mis-selling of securities or services relating to securities market;*

Explanation-For the purpose of this clause, "mis-selling" means sale of securities or services relating to securities market by any person, directly or indirectly, by—

(i) knowingly making a false or misleading statement, or

(ii) knowingly concealing or omitting material facts, or

(iii) knowingly concealing the associated risk, or

(iv) not taking reasonable care to ensure suitability of the securities or service to the buyer

Explanation–1 For the purposes of this sub-regulation, for the removal of doubts, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3,

notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category of persons in this sub-regulation.

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

…

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

……

Preliminary Objections:

22. Before going into the case on merits, I would like to first deal with the preliminary objections of the Noticees. I note that the Noticees have *inter alia* requested for copies of certain documents including the final Investigation Report. It is a matter of record that the Noticees were granted inspection of the documents relied upon by SEBI with respect to the instant proceedings. It is not in dispute that the SCN has been issued on the basis of the findings in the Investigation Report. In this regard, I also note that the relevant extracts of the Investigation Report have been narrated in detail in the SCN. Thus, the SCN itself is a self-contained document

containing all the allegations and charges against the Noticees. It is also seen that the documents relied upon in the instant proceedings with respect to the Noticees have already been provided to them. Hence, I find that the Noticees have been appraised of the charges against them and also been provided relevant extracts of documents relied upon in respect of the allegations against them. Hence no prejudice is caused to the Noticees as they are provided reasonable opportunities to present their case.

23. In this regard, the Hon'ble Securities Appellate Tribunal ('SAT'), in the Appeal no. 28 of 2020 decided on February 12, 2020 in Shruti Vora vs SEBI held that, *"…The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to he held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon…"*

24. In a subsequent Appeal no. 150 of 2020 in the matter of Anant R. Sathe vs SEBI, the Hon'ble SAT has held that '*the said principle elucidated in the Shruti Vora judgement was squarely applicable in the case also'*. In view of the same, I do not find any merit in request of the Noticees for the entire Investigation Report, as relevant details and extracts of the same have been provide to them along with the

SCN and no documents, other than those provided to the Noticees, have been relied upon in this adjudication proceedings.

25. I further note that the Noticees have sought the cross-examination of complainants on the grounds that the SCN and the investigation is based entirely on the complaints of third parties. The contents of the complaints have also been denied by the Noticees. In this regard, I note that while the impugned complaints have been the basis of initiation of investigation by SEBI, the charges in the SCN have been alleged on the basis of the detailed fact finding which investigation conducted. Cross examination is meant for assisting the Noticees to rebut the evidence against them while contesting the matter. However, since the complaints of the investors are not primarily relied upon in this proceedings, the question of cross examination does not arise and hence no prejudice is caused to the Noticees by not acceding to their request for cross examination.

Background:

26. Before moving forward, I find it pertinent to refer to the background of the matter which is part of submissions made by Noticee 1. YBL issued Additional Tier 1 Bonds in the nature of debentures of Rs. 10,00,000/- each on December 31, 2013, December 23, 2016 and October 18, 2017.

27. Vide a notification dated March 5, 2020, the Ministry of Finance, Government of India, acting on the recommendation of the Reserve Bank of India (RBI), imposed a moratorium on YBL and imposed restrictions on the banking activities to be carried out by it in terms of Section 45 of the Banking Regulation Act, 1949 ('BR Act') and appointed an Administrator, superseding the Board of Directors.

Thereafter, on March 13, 2020, the RBI notified the Yes Bank Ltd Restructuring Scheme 2020 and reconstituted the Board of Directors.

28. On March 14, 2020, the Administrator appointed by RBI noted that since Section 45 of the BR Act had been invoked by the RBI and the Scheme had been notified, Noticee 1 is deemed to be non-viable or approaching non-viability and accordingly, the triggers for a write-down of the AT1 Bonds had been triggered and that the AT1 bonds would have to be fully written down permanently before any reconstruction of the Bank is undertaken. In view of the above, the Administrator ordered that *"... the Perpetual Subordinated Basel III Compliant Additional Tier I Bonds issued by the Bank for an amount of Rs. 3000 crores on December 23, 2016 and the Perpetual Subordinated Basel III Compliant Additional Tier I Bonds issued by the Bank for an amount of Rs. 5415 crores on October 18, 2017 be fully written down and shall and extinguished with immediate effect.*"

29. I observe from the records that subsequent to writing down of these AT1 Bonds issued by Noticee 1, SEBI received multiple complaints from the investors of these bonds alleging misrepresentation by Noticees in selling these AT1 bonds. Thereafter, SEBI investigated the matter and the instant Adjudication proceedings were initiated in the matter.

30. Considering the factual matrix of the case, it is also worthwhile to give a brief narration on AT1 Bonds and its applicable circulars. The Reserve Bank of India ('**RBI**') issued the 'Guidelines on Implementation of Basel III Capital Regulations in India' vide circular DBOD.No.BP.BC.98/21.06.201/2011-12 dated May 02, 2012. In the APPENDIX 5 of aforesaid RBI Circular, Criteria for Inclusion of Perpetual Debt Instruments in Additional Tier 1 Capital were defined. Thereafter, the aforesaid guidelines along with subsequent amendments were incorporated in the Master Circular DBOD.No.BP.BC.6/21.06.201/2014-15 dated July 1, 2014, on 'Basel III

Capital Regulations' issued by RBI. Annexure 4 of the aforesaid circular defines Criteria for Inclusion of Perpetual Debt Instruments (herein after referred to as '**PDI**') in Additional Tier 1 Capital. Some of the distinguishing criteria of PDI mentioned in two aforesaid RBI Circulars are reproduced as under:

"The Perpetual Debt Instruments that may be issued as bonds or debentures by Indian banks should meet the following terms and conditions to qualify for inclusion in Additional Tier 1 Capital for capital adequacy purposes:

1. Terms of Issue of Instruments Denominated in Indian Rupees

….

1.4 Maturity Period

The PDIs shall be perpetual i.e. there is no maturity date and there are no step-ups or other incentives to redeem.
…..

1.6 Optionality
PDIs shall not have any 'put option'. However, banks may issue the instruments with a call option at a particular date subject to following conditions:
a. The call option on the instrument is permissible after the instrument has run for at least ten years;
b. To exercise a call option a bank must receive prior approval of RBI (Department of Banking Operations & Development);

c. A bank must not do anything which creates an expectation that the call will be exercised;
…..

The use of tax event and regulatory event calls may be permitted. …..

1.7 Repurchase / Buy-back / Redemption

(i) Principal of the instruments may be repaid (e.g. through repurchase or redemption) only with prior approval of RBI and banks should not assume or create market expectations that supervisory approval will be given....
……

1.10 Loss Absorption Features

PDIs may be classified as liabilities for accounting purposes (not for the purpose of insolvency as indicated in paragraph 1.9 above). In such cases, these instruments must have principal loss absorption through either (i) conversion to common shares at an objective pre-specified trigger point or (ii) a write-down mechanism which allocates losses to the instrument at a pre-specified trigger point. The write-down will have the following effects:
a) Reduce the claim of the instrument in liquidation;
b) Reduce the amount re-paid when a call is exercised; and
c) Partially or fully reduce coupon payments on the instrument.

1.8 Coupon Discretion

(a) The bank must have full discretion at all times to cancel distributions/payments

(b) Cancellation of discretionary payments must not be an event of default

(c) Banks must have full access to cancelled payments to meet obligations as they fall due ……

31. Subsequently, RBI reviewed the guidelines further with a view to facilitate raising of non-equity regulatory capital instruments by banks under Basel III framework. Accordingly, certain specific eligibility criteria of such instruments were amended which were circulated/made public vide RBI circular DBOD.No.BP.BC.38/21.06.201/2014-15 dated September 01, 2014 on 'Implementation of Basel III Capital Regulations in India – Amendments'. Such amendments which are deemed relevant for the instant proceedings are as under-

…..

6. Non-equity Regulatory Capital Instruments (Additional Tier 1 and Tier 2) - Issuance to Retail Investors

…..

6.2 *Further, as indicated in paragraph 4.2.4.1B(ii) of the Master Circular, banks are prohibited from issuing Additional Tier 1 capital instruments to the retail*

investors. It is advised that banks may now issue Additional Tier 1 capital instruments to the retail investors, subject to the approval of their Board.

However, with a view to enhancing investors' education and awareness of risk characteristic of Additional Tier 1 instruments, banks should also adhere to the investor protection requirements analogous to those contained in paragraph 1.17 - issuance of Tier 2 debt capital instruments to retail investors of the Annex 5 of the Master Circular. In particular, the loss absorbency features of the instrument should be clearly explained and the investor's sign-off for having understood these features and other terms and conditions of the instrument should be obtained.

Relevant Paragraphs of Annex 5 of the Master Circular
1.17 Debt Capital Instruments to Retail Investors

With a view to enhancing investor education relating to risk characteristics of regulatory capital requirements, banks issuing subordinated debt to retail investors should adhere to the following conditions:

(a) …..

(b) The requirement for specific sign-off as quoted below, from the investors for having understood the features and risks of the instrument may be incorporated in the common application form of the proposed debt issue.

"By making this application, I / We acknowledge that I/We have understood the terms and conditions of the Issue of [insert the name of the instruments being issued] of [Name of The Bank] as disclosed in the Draft Shelf Prospectus, Shelf Prospectus and Tranche Document ".

(c) All the publicity material, application form and other communication with the investor should clearly state in bold letters (with font size 14) how a subordinated bond is different from fixed deposit particularly that it is not covered by deposit insurance.

Relevant Paragraphs of Annex 16 of RBI Circular dated September 01, 2014

III. Treatment of AT1 Instruments in the event of Winding-Up, Amalgamation, Acquisition, Re-Constitution etc. of the Bank

2.15 *If the relevant authorities decide to reconstitute a bank or amalgamate a bank with any other bank under the Section 45 of BR Act, 1949, such a bank will be deemed as non-viable or approaching non-viability and both the pre-specified trigger and the trigger at the point of non-viability9 for conversion / write-down of AT1 instruments will be activated. Accordingly, the AT1 instruments will be fully converted / written-down permanently before amalgamation / reconstitution in accordance with these rules.*

32. From the above, I note that initially, AT1 bonds were allowed to be issued only to institutional investors. Thereafter, vide its circular dated September 01, 2014, RBI allowed Banks to issue AT1 Bonds to individual investors but also mandated issuers to appropriately disclose to the investors, the unique features along with the risks associated with the bonds. The issuer was necessarily required to take specific sign-off from the investors for having understood the features and risks of the instrument. Further, vide aforesaid circular, RBI also instructed that all the publicity material, application form and other communication with the investor should clearly state in bold letters (with font size 14) how a subordinated bond is different from fixed deposit, highlighting that it is not covered by deposit insurance. Thus, I find RBI clearly intended to prevent individual investors from investing in these AT-1 bonds without first understanding the instrument and its underlying risks.I note that the specific features of these bonds, viz., a call option by the issuer, early recall on account of tax or regulatory events, discretion to skip interest payments under certain conditions, principal write-down conditions or principal loss absorption, the clause relating to the Point of Non-Viability, etc. make these instruments inherently risky.

33. In this respect I note that the SEBI (Issue and listing of Non -convertible Preference Shares) Regulations, 2013 provide a regulatory framework for AT- 1 bonds that are proposed to be listed and issued by banks wherein their issuance is governed by RBI. The objective of these Regulations are to mandate necessary disclosures so that investors are aware of the same while taking investment

decisions with respect to these AT1 bonds. In addition to that the Regulations also provides requisite safeguards to the investors.

34. On October 06, 2020, SEBI, vide circular dated October 06, 2020, prescribed an additional framework for Issuance, listing and trading of Perpetual Non-Cumulative Preference Shares (PNCPS) and Innovative Perpetual Debt Instruments (IPDIs)/ Perpetual Debt Instruments (PDIs) (commonly referred to as Additional Tier 1 (AT 1) instruments) (hereinafter "AT-1 circular") to discourage participation by individual investors in these Basel III compliant instruments. Vide the said circular, *inter-alia,* the following was mandated:

    a. Issuance of AT 1 instruments i.e. PNCPS, IPDIs/PDIs shall be done mandatorily on the Electronic Book Provider (EBP) platform irrespective of the issue size;

    b. Only QIBs are allowed to participate in the issuance of AT 1 instruments.

    c. The minimum allotment and trading lot size of AT 1 instruments shall not be less than Rs.1 crore and

    d. Certain disclosures pertaining to conditions upon which call option will be exercised, risk factors including inherent features of AT 1 instruments, Point of Non-Viability (PONV) clause, etc. are to be disclosed by the issuer in Information /Private Placement Memorandum.

35. While issuance of AT1 bonds come under the purview of RBI, the above-mentioned framework for listing of such bonds prescribed by SEBI came into effect only from October 12, 2020. The said circular is applicable only for those AT-1instruments that were issued and listed/proposed to be listed on or after October 12, 2020 and are not applicable to the earlier issues of AT1 bonds prior to that date.

36. It is seen from the facts of the instant case that these AT-1 bonds were 'down sold' in order to make 'shelf space' for the Institutional Investors to subscribe to further capital which may be issued by the YBL. So it was in the interest of Noticee1 to make shelf space and make the Institutional investors to subscribe to further

capital and therefore Noticee 1 decided to facilitate the down selling of these AT-1 bonds. In its submissions, Noticee 1 has stated that down selling of the At-1 bonds was only facilitated by Noticee 1 in the secondary market and it was the institutional investors which sold the same to retail investors on the trading system of BSE. Noticee 1 has further stated in the submissions that Yes Securities Ltd. acted as stockbroker for clients who purchased the AT-1 bonds on the BSE and upon settlement, the dematerialized AT-1 bonds were credited to the retail buyers' beneficiary account with a Depository Participant. These AT-1 bonds were listed for trading on the Wholesale Debt Segments of NSE and BSE and available for purchase by all categories of investors including retail investors on the said segment of BSE and NSE.

37. I observe from the material placed on record that YBL identified the investors, who were primarily their existing customers, for selling the AT-1 bonds to them and then facilitated the sale/purchase of these AT-1 bonds from the Institutional investors, like IBHFL, DHFL to their existing customers / investors. It is an undisputed fact that out of 1346 individual investors who had invested in these AT-1 bonds through YBL, 1311 individual investors were the existing customers (hereinafter these existing customers who invested in AT1 bonds are also being referred to as '**customers**') of Noticee 1, i.e., more than 97% of the investors of these AT-1 bonds were the existing customers of Noticee 1. It is also a matter of record that out of 1311 customers, 277 customers had prematurely closed their Fixed Deposit accounts (**FD**) and invested the withdrawn amount in AT-1 bonds. It has been alleged in the SCN that these investors/ customers purchased the AT-1 bonds after breaking the FDs based upon their trust with a scheduled commercial bank, YBL.

38. I find from the available records that the PWM team and the Debt & Capital Market Team (herein after referred to as '**DCM team'**) were involved in selling the AT-1

bonds to the customers of YBL. I find that the PWM Team including Noticee 2 to 4 designed a scheme by detailing out a process to be followed under the nomenclature of 'Step by Step' process, for the sales pitch of the AT1 bonds to their customers. The aforesaid 'Step by Step' process included a documented 'Verbal Sales Pitch' to be used by their Relationship Managers (hereinafter referred to as '**RM**') at the time of approaching the prospective customers and a 'Term Sheet" to be shared with them. The RMs of YBL were then put on the job of marketing the AT-1 bonds to the existing customers.

39. Against this background, I now proceed to deal with issue on merits. The first issue for consideration is whether the Noticees have violated the provisions of Regulation 3(a), 3(c), 3(d), 4(1) and 4(2)(s) of PFUTP Regulations read with Explanation (1) to Regulation 4(2) of PFUTP Regulations and Section 12A(b) & 12A(c) of the SEBI Act?

40. It has been alleged in the SCN that the lot size of the AT-1 bonds was reduced to facilitate down sale to individual investors. In this respect, I note from the submissions made by Noticee 1 that that the 'Ticket size' was reduced from Rs 50 lakhs to Rs 10 lakhs to ensure wider participation.

41. A perusal of the 'Verbal Sales Pitch' document and the 'Step by Step' process shows that the PWM team, including Noticees 2 to 4, was advised to 'speak' to the clients, i.e., existing customers of YBL and highlight the attractive features of the AT-1 bonds. From a perusal of the 'Verbal Sales Pitch' document, I note that it only highlights the positive features of the AT-1 bonds but there is no mention of any of the risks associated with these bonds. Thus, on perusal of sales process I find that first the sales person used the 'Verbal Sales Pitch' to highlight the positive features like high interest rate, to the customers and only after the customers decided to invest in the AT1 Bonds the Term Sheet was shared with them.

42. In its submissions, Noticee 1 has stated they ‘merely facilitated’ the retail investors who were ‘interested’ in investing in the said AT-1 bonds to source the same from the holders. However, it is Noticee 1’s own admission that the sale of these bonds were pitched to their customers, rather than the customers seeking to purchase these bonds out of their own ’interest’. Therefore, I find that this negates and is contrary to the statement of Noticee 1 that the investors were ‘interested’ to purchase the AT-1 bonds. I also find that such aggressive marketing strategy adopted by the Noticees can by no means be called ‘mere facilitation’, especially taking into account the submissions of Noticee 1 that it wanted the Institutional Investors to subscribe to more capital and for the said purpose, it was decided to down sell the bonds to the customers of YBL.

43. From the foregoing, it is observed that the Noticee 2 to 4 designed a scheme to aggressively market an inherently risky instrument, i.e., AT-1 bonds to its own individual customers by highlighting the attractive features of the said bond while not disclosing the risks associated with the AT-1 bonds, at the time of pitching the bonds to them. This is not in line with the intent of the aforesaid RBI Circular dated September 01, 2014, which requires the issuers to carefully disclose the associated risks of these AT-1 bonds to individual investors. I further observe that the lot size of the AT-1 bonds was substantially reduced to ensure that these bonds could be sold to more retail customers.

44. It has been alleged in the SCN that as per the first step of the ‘Step by Step’ process, RMs were supposed to share the Term Sheet with the clients but the senior officials of the PWM team did not have a system in place to ensure that the Term Sheet was being shared with the clients and as mentioned above, there are certain cases where the Term Sheet was never shared with the individual investors. It has also been alleged that in this ‘Step by Step process’ there was no

provision for the RMs to take any confirmation from the investors with respect to their understanding of the features and risks associated with the bond and no such confirmation was taken from the investors which led the RMs to sell the AT1 bonds aggressively.

45. It has been stated by the Noticee 1 in its submissions that the 2016 Information Memorandum (hereinafter referred to as 'IM') relating to the AT-1 bonds which sets out the terms, conditions, disclaimers, risk factors relating to these AT-1 bonds, were filed with BSE and is available on the BSE website, i.e., on public domain. It is stated by the Noticees that the IM was publicly available and accessible to the world at large.

46. I note from submissions of Noticee 1 that the relevant details of the AT1 bonds and their risk factors have been reproduced in the Term Sheet which was part of the documentation in the 'Step by Step' process designed by the PWM team. Therefore, I note that the said Term Sheet was meant for communicating the features of the AT-1 bonds including the risks associated with the AT-1 bonds to the individual customers of the said bonds.

47. In the 'Step by Step' process designed by Noticee 2 to 4 and adopted by Noticee 1, I observe that the first step was for RMs to talk to the customers about the bonds and then share the attached email along with the Term Sheet with them. However, there is nothing on record to show that there was a system in place in YBL to ensure that the RMs were actually sharing the Term Sheet with all the customers. I also note that during the course of investigation in his deposition before SEBI on September 15, 2020, Noticee 4 admitted that 'Term Sheet were shared with RMs and in turn they were informed to share in with the clients. However, there was no instruction or process at YBL to ensure that the same was being shared or informed to the client.'

48. In their submissions, the Noticees have stated that the risk factors were communicated to the retail investors of the said AT-1 bonds either orally or through written documents such as the impugned Term Sheet. They have also submitted that all relevant details relating to the AT-1 bonds, including risks associated with the same, were informed to the customers, who were interested in purchasing the said bonds, through emails, Term Sheets and verbal communication.

49. Noticee 1 has in its submission further stated that even if there was any lapse by any RM in this regard, YBL as an institution cannot be held to be guilty of fraud on this basis and penalized for such a rare lapse. Noticee 1 has further submitted that the fact that YBL's management made all requisite efforts to ensure that the RMs made due disclosures is proved by documentary evidence. It was further submitted that there is no requirement in law, rules, regulations or circular, neither any identified in the SCN which required them to have a system to ensure that the Term Sheet was shared with their clients but this was done as a matter of good corporate practice and not as part of any regulatory/ legal requirement.

50. I note that while Noticee 1 has on one hand claimed that the Term Sheet was provided to all the customers, on the other hand, it has maintained that they had no responsibility to provide the customers with a copy of the said Term Sheet. The question that arises here is that if the Noticees had no responsibility to provide the Term Sheet to their customers, then for the same reason, why the Term Sheet was made part of the "Step by Step' process for the sales pitch. Noticee 1 has not provided any explanation towards this contrary stand and therefore, I do not find any merit in this averment.

51. The Noticees have further submitted that in terms of the aforesaid RBI circular, the requirement of a taking a confirmation of understanding of risk from individual

would arise only if the AT-1 bonds had been sold to them in the primary market and there was no such requirement for transactions in the secondary market. I note that in their submissions, Noticees have also cited lack of any regulatory requirement to obtain sign-off from investors before such selling the products in the secondary market.

52. I note that the Noticees have not furnished any documentary evidence to substantiate the fact that the Term Sheets were in fact provided to all the customers of YBL. The Noticees have also failed to place on record any concrete evidence to show that the risk factors were actually explained to the customers, either orally or by sharing the Term Sheet. I further observe that in the 'Step by Step' process designed and adopted by the Noticees, there was no provision for the RMs to take any confirmation from the customers with respect to their understanding of the features and risks associated with the AT-1 bonds.

53. From the internal review report placed on record, it is observed that in a sample of 30 and 79 transactions, RMs could produce evidence of only 5 and 6 emails, respectively, through which the Term Sheets along with other documents were sent to their customers. It is clear that the 'Step by Step' process adopted by Noticee 1 and designed by Noticee 2 to 4 failed to devise a process to ensure that all the relevant documents including the said Term Sheet were being shared or informed to all the customers.

54. Noticee 1, in its reply has contended that the statements of RMs on oath should be considered as evidence. However, I note that these statements, which are only of a few RMs, cannot be considered to be representative of an institutionalized system of internal control to ensure that the risk factors were actually explained to all the customers. The Noticees have not shown evidence to prove that such

internal control was put in place by YBL. On the contrary, Noticee 4 had admitted there was no such control in place in YBL.

55. Further from the submissions, it is also evident that the Noticees also communicated the features of the AT-1 bonds to the customers verbally. This has to be seen in the context of the failure on the part of the Noticees to provide proof regarding forwarding of Term Sheets and other written information to the customers who invested in these bonds. The omission to send the Term Sheets to all the customers does not appear to be mere coincidence, rather the plan appears to be to suppress the features of the AT-1 bonds including the risks associated with these bonds.

56. Noticee 1 has further submitted that the 'Step by Step' process, also included a detailed ICCL Registration cum Bond Application form ('Application Form') which was used by the clients to register themselves with Indian Clearing Corporation Limited (Herein after referred to as "ICCL"). This Application Form contained an acknowledgement by the client of the risks of investment and a term sheet reproducing the terms of issue of the AT1 Bonds from the Information Memorandum. The said application form also contained the signature of the purchasing client. In this regard, I observe from the records that one of the RMs, Shri Arun Oberoi, has in his statement on September 04, 2020 deposed before the SEBI that initially, the client was approached and once they agreed, an email was sent to either Noticee 4 or any other person assigned to block the bond deal. After that, Mr Oberoi shared the Application Form along with other documents with the investors and their signatures were obtained on the Application Form. From the description of the aforesaid sequence of events, it is clear that the Application Forms were signed at the stage of settlement of the transactions, after the customers had already been influenced to take the decision to purchase the AT-1 bonds and not before taking the decision. Thus, on perusal of sales process, I find

that first the sales person used the 'Verbal Sales Pitch' to highlight the positive features of AT1 bonds to the customers and after the customers had decided to invest in the AT1 Bonds, the Term Sheet was shared with them. This contention cannot therefore be considered to be evidence of having appraised the customers of the risk factors of the AT-1 bonds before their decision to invest in these bonds and thus is not acceptable.

57. I observe that the Noticees had a fiduciary responsibility, as most of the investors happened to be their own customers, to act in the best interest of their customers at the time of marketing of such AT-1 bonds. However, as established, YBL did not have any system in place to ensure that the PWM team including Noticees 2 to 4 and their RMs protected their customers' interest by ensuring that their customers were not only appraised of all the inherent risk features of the AT-1 bonds but that they also understood them thoroughly. As a trusted scheduled commercial bank, the Noticees were duty bound in their fiduciary role, to adopt all such necessary safeguards to protect the interests of their own customers before marketing these AT-1 bonds to them. Such a mechanism would also have been in line with the intended purpose of RBI's aforesaid circulars. However, the same was not done by the Noticees.

58. With respect to the submissions of Noticee 1 that Institutional Investors also had subscribed to these bonds, I find that such reason cannot be held to be the basis for marketing these AT-1 bonds to individual customers also. It is Noticee 1's own submission that the Institutional Investors have expert knowledge and can deploy large resources to assess potential risks of such investments and that they do an intense due diligence before investing in securities. In this regard, I find that the same cannot be the case of individual retail investors / customers.

59. I also note on account of its inherent risks, RBI had earlier prohibited issuers from offering these bonds to individual investors. Thereafter, while allowing individual investors to invest in these bonds, RBI put an emphasis on the issue of sensitizing individual investors to the inherent riskiness of these AT-1 bonds through specific guidelines to issuers of such bonds on how they should explain all the features of such securities including loss absorbency etc. to the individual investors. Incidentally, the writing-down of these AT-1 bonds of YBL which has been detrimental to the customers / investors who had invested in these bonds, is actually proof of the one of the many risk features inherent to these AT-1 bonds.

60. In view of the foregoing, I conclude that neither did YBL have a system in place to ensure that the Term Sheet was being shared with all the customers nor was there any provision for the PWM team/RMs to take any confirmation from the investors with respect to their understanding of the features and risks associated with the bond. I also conclude that said the Term Sheet was not shared with all the individual customers and the Noticees did not take necessary steps to appraise all the customers of the inherent risks of the AT-1 Bonds, as intended by RBI. Considering the stringent requirements mandated by RBI in case of investment in these AT-1 bonds by Retail Investors, it is only prudent that similar safeguards should have been followed by the Noticees also.

61. Therefore, in view of the foregoing, I conclude that the AT-1 bonds were sold to the customers of YBL by the Noticees without adopting adequate safeguards to protect their interests and without sufficient due diligence.

62. It has been alleged in the SCN that risk profiling of individual clients was not done especially for investors more than 70/80/90 years old. It is further alleged that the Noticee 1 cited interest shown by institutional investors in the product to down sell the same to individual investors which were unsuitable/ comparatively risky for

them. This also led the investors to believe that since such big institutions are buying the product, the same shall also be suitable for them without realizing that risk taking capacity of institutional investors and individual investors are quite different.

63. In this regard I observe from records that Noticee 2 and 3 have admitted that risk profiling of the customers at the time of down selling these AT-1 bonds was not done since it was not mandatory.

64. In its submission, Noticee 1 has further stated that individual investors had invested in AT-1 bonds of other banks and therefore, the investors were familiar with the features of the AT-1 bonds. The Noticees have further stated that each individual/retail investor on an average bought around Rs. 70 lacs worth of the said AT-1 bonds of YBL which proves that they were High Networth Investors and had ample resources and were obviously well educated, market savvy, tech savvy and could never have invested without first thoroughly understanding the nature and terms and conditions of the AT-1 bonds. Noticee 1 has also stated that these clients were often professionals who took informed decisions regarding their investments, including those of advanced age of more than 70/80/90 years, who could themselves be astute and discerning investors and who might have had independent investment advisors.

65. I note that these averments are mere presumptions and are not supported by any facts or evidence. Therefore, in absence of any documentary evidence, I am not inclined to accept this averment. The submission by Noticee 1 that the buyers exercised their own judgement after due diligence regarding the AT-1 bonds and that they made an informed decision and they would have referred to the IM, as available on BSE's website, is again presumptive and lacks any documentary evidence and therefore, is not acceptable. Such an argument should also be seen

in the context of the aggressive marketing of the AT-1 bonds by the Noticees to their existing customers without providing them the Term Sheets.

66. Noticee 1 also submits in its reply that the RMs were justified in citing the fact that institutional investors had also invested in the AT-1 bonds by stating that the risk associated with the At-1 bonds was the same for both Institutional and retail investors. In furtherance thereof, Noticee 1 has argued that similar sales were facilitated to Institutional Investors also but none of them have complained of any alleged fraud or mis-selling.

67. In this regard, I note that it is Noticee 1's own case that Institutional Investors have the resources and expert knowledge to do intense due diligence before such investments. Therefore, it is clear that individual investors cannot match such Institutional Investors in terms of their risk appetite or capability to correctly assess the underlying risks of such AT-1 bonds. Therefore, I do not find any merit in the above submissions.

68. Noticees have admitted that "at the relevant time, there was nothing to suggest that the bank would fail or that the bank would be constrained to write down the said bonds. Therefore, the AT-1 bonds were correctly considered as low risk securities and therefore even suitable to those with a low risk appetite. Therefore, there was no need at all to assess the risk profile of prospective purchasers of such bonds".

69. On account of the aforesaid submissions by Noticees, I observe that the Noticees have, on one hand, explained the lack of any such risk profiling at their end, citing lack of regulatory requirement to do so. On the other hand, they have admitted to not having any need to do risk profiling of their customers and therefore deliberately sold these risky AT-1 bonds to their customers, even those with a low risk appetite. Nevertheless, I note that it is not disputed that the Noticees did not do any risk

profiling of the customers, even those with low risk appetite or those of advanced age of more than 70/80/90 years.

70. In this regard, I observe that risk profiling for considering suitability of investors in terms of their risk appetite is an essential feature to be considered when selling these AT-1 bonds since these are inherently risky instruments. This combined with the requisite sign off from the customers, in accordance with the intent of RBI Circular dated September 01, 2014, for such sales to individual retail investors, are the necessary ingredients of a safeguard mechanism to ensure that only suitable individual customers, with adequate risk appetite, are identified for such investments and even these customers are explained all risk factors as to enable them to assess the risks of these AT-1 bonds, before investing.

71. Therefore, in view of the foregoing, I find that by not adopting the safeguard mechanism of such a risk profiling to assess the suitability of their customers, there was a clear *mala fide* intent on the part of the Noticees to sell these risky AT-1 bonds to their customers, including those with a low risk appetite and those of very advanced age, by citing institutional interest in these bonds.

72. It is alleged in the SCN that the AT-1 bonds were represented as 'Super FD' or 'as safe as FD' and that the AT1 bonds were compared with Fixed deposit on rate differential only, but omitted the risk differentials which led the investors to look only at the higher interest rate of these bonds without realizing these bonds have inherent risk associated with these bonds.

73. In their submissions, the Noticees have denied this allegation.

74. In this regard, I note from the 'Verbal Sales Pitch' document placed on record that the customers were '*introduced to a high rate of interest (9.06% p.a.), that too in an*

environment of falling interest rates'. I also note from the said 'Verbal Sales Pitch' document that the then prevailing fixed deposit interest rate is mentioned as 6.5% p.a. This clearly shows the intent of the Noticees to make an indirect reference to a higher return of the said AT-1 bonds than that of the FDs prevailing at that time. The same document further states that '*these AT-1 bonds are superior quality bonds with AA rating by ICRA & CARE'*. This shows that these bonds were, without stating in so many words, misrepresented to be superior to FDs of Noticee 1 and safer. I also find that Noticee 1 itself had admited that AT-1 bonds were highly rated, i.e., "AA" rated, which stands for high degree of safety and very low credit risk and therefore, there was nothing wrong in pitching the same to individual investors. In short, by Noticee 1's own admission, these AT-1 bonds were pitched to their customers as being safe. Therefore, the averment of Noticees, denying that the AT1 bonds were offered as super fixed deposit products with high safety features, is not tenable.

75. I also observe that Noticee 1 gives a contradictory statement that "*the fact that the AT-1 bonds offer a higher return than FDs is ex facie evidence of the fact that there has be some higher risk*". Therefore, Noticee 1's own admission that the AT-1 bonds carried higher risks than FDs, reinforces the requirement that the higher risks of such AT-1 bonds should have duly been highlighted to the individual customers which I note that the "Verbal Sales Pitch' document as well as the whole design of the 'Step by Step' process fails to have achieved.

76. It has also been alleged in the SCN that "Verbal Sales Pitch' only highlighted the interest rate differential but suppressed the risk differentials. I note from the 'Verbal Sales Pitch' document that there is no mention of the underlying risks in the AT1 bond, which RBI mandated should be highlighted and brought to the notice of the buyer. Therefore, I note that the aforesaid allegation stands established.

77. I also note certain other facts mentioned in the Verbal Sales Pitch' document which are at a variance with those in the impugned Term Sheet. I observe that the

following is stated in the 'Verbal Sales Pitch' document "*In all likelihood the YES Bank would exercise the call option at the end of the 5 years"*. However, I note from the said Term Sheet that to exercise call option even after a period of five years, YBL had to fulfil certain conditions including obtaining approval of RBI. In view of the same I find that aforesaid statement in the 'Verbal Sales Pitch' to be a misleading statement and a suppression of a material fact. The 'Verbal Sales Pitch' document further states that "*you would be able to enjoy this high interest rate, i.e., upto 9.06% p.a., for the next five years too*" whereas the Term Sheet clearly states that such coupon service would be subject to "*coupon discretion and /or loss absorbency*". The 'Verbal Sales Pitch' document also mentions that *"in all likelihood, Yes Bank would exercise the call option at the end of 5 years"*, whereas the Term Sheet spells out certain conditions subject to which such call options can be exercised by YBL. In my view, such discrepancies in the 'Verbal Sales Pitch' document and the Term Sheet show a gross misrepresentation of facts by the Noticees at the time of the sales pitch to the customers. Such suppression of important conditions/risk factors clearly shows a deliberate attempt by the Noticees to distort facts in order to make the AT-1 bonds look attractive and mislead their customers into buying them. This clearly shows that the inherent riskiness of the product was sought to be hidden from investors.

78. I further note from the Term Sheet that the credit ratings for the AT-1 bond issue has been given as 'AA/Stable' by Credit Analysis & Research Ltd ('CARE') & 'IND AA/Stable' by India Ratings & Research Pvt Ltd ('India Ratings'). I also observe from the records that no rating has been to these bonds provided by ICRA, as claimed in the 'Verbal Sales Pitch' document. Therefore, in addition to misrepresentation and distortion of facts, I find that the Noticees also provided blatantly incorrect information to their customers at the time of the sales pitch.

79. I, therefore, observe that the 'Verbal Sales Pitch' document was misleading and incorrect and was intended to deceive the investors into believing they were buying a security which would fetch them a much higher return than the FDs and that too, for a minimum of 5 years. Therefore, it is clear that the existing individual customers of the Noticee 1 were induced into purchasing the AT-1 bonds under such incorrect projections, designed to make these bonds look attractive.

80. I find that Noticee 1 has submitted that the AT-1 bonds were risky only if and when the bank falls into insurmountable financial difficulties which render it unviable and therefore, it cannot be alleged that the AT-1 bonds were inherently risky. Noticee 1 has further submitted that AT-1 bonds were highly rated, i.e., "AA" rated, which stands for high degree of safety and very low credit risk and therefore, there was nothing wrong in pitching the same to individual investors.

81. In this regard, from the perusal of the said Term Sheet, I observe that the credit ratings for the AT-1 bond issue has been given as 'AA/Stable' by CARE & 'IND AA/Stable' by India Ratings. I also note from the letter from CARE, as placed on record, that YBL has been advised to get the rating revalidated if the proposed issue of AT-1 bonds were not made within six months from the date of initial communication or in case of change in size or terms of communication. Both these 'AA' ratings assign a 'Stable" outlook to the AT-1 bond issue of Noticee 1 and not 'high degree of safety and very low credit risk', as submitted by Noticee 1 in its reply. Moreover, the advisory given by CARE in its communication to YBL shows that even that 'Stable' outlook rating was valid under certain conditions only. Therefore, I find that the contention of Noticee 1 that these AT-1 bonds were considered to carry high degree of safety and low risk and therefore could be pitched to individual customers with low risk appetite to be incorrect and untenable and is therefore not accepted.

82. Further, Noticees state that “at the relevant time, there was nothing to suggest that YBL would fail or would be constrained to write down the said bonds and therefore, these AT-1 bonds were correctly considered as low risk securities”. Noticee 1 in its submission further states that at the time when the AT-1 bonds were purchased by retail investors, there was nothing on record to indicate that the AT-1 bonds were at risk of being written down.

83. Such averments clearly belie RBI’s stance wherein the guidelines require fulfilment of stringent conditions while issuing these bonds to retail individual investors, because these At-1 bonds are considered inherently risky. I also observe that writing-down of these AT-1 by RBI is precisely one of the many risk factors inherently associated with these bonds which should been highlighted to the individual customers at the time of selling these AT-1 bonds to them but was not done by the Noticees.

84. The Noticees have further submitted that all investment instruments carry risks, even bank FDs and deposits are jeopardized if and when a bank collapses and even the insurance cover for the same is not unlimited. Noticee 1 further adds that while an AT-1 bond has the extreme rare risk of write-down in case bank being declared nonviable, the said rarity of the event also makes it comparable to FDs and therefore, the so called ‘inherent risk’ associated with the bonds was not dissimilar to the ‘inherent risk’ associated with FDs. In this respect, I note from Noticees’s own submission that in case YBL were to fail, FDs, to the extent of Rs 5 lacs per depositor, is safe and secured by virtue of the insurance protection under the Deposit Insurance and Credit Guarantee Corporation (prior to April 1, 2020, the amount was Rs 1 lakhs). It is observed that the minimum insurance protection that FDs have is absent in the case of AT-1 bonds. Therefore, this submission of Noticee 1 that the AT-1 bonds were comparable to FDs as far as their risk factors are concerned, is not tenable and cannot be accepted.

85. Noticee 1 has further contended that all the initial subscribers to the AT1 Bonds were institutional investors. The bulk of the secondary market sales of the AT1 Bonds were to non- retail / non- individual clients, including such institutional investors who have expert knowledge and large resources deployed to assess any investment and the potential risks and who did not foresee any risk in investing in these AT1 bonds. In this respect, I note that it is not the case of Noticee 1 that AT1 bonds should not have issued at all to anyone. The issue, relevant for the instant proceedings is that at the time of pitching these bonds to their customers, the Noticees should have explained risk associated with these bonds. Thus, I find the contention of the Noticee to be not relevant for the instant proceedings.

86. In view of the foregoing, I find that the allegation against the Noticees that they represented the AT-1 bonds as 'Super FD' or 'as safe as FD' AT-1 bonds and that they compared the AT1 bonds with Fixed deposit on rate differentials only, but omitted the risk differentials which led the investors to look only at the higher interest rate of these bonds without realizing these bonds have inherent risk associated with these bonds, stands established.

87. Noticees 2 to 4 have contended that they were not decision makers or key management personals. They also submitted that the whole directions and decision of facilitating sell down of AT1 bonds to retail investors came from Mr. Rana Kapoor who was the then MD and CEO and in charge of all activities of YBL including decision making. In light of the fact that Adjudication proceedings against Mr. Rana Kapoor are being separately conducted, I do not find it appropriate to deal with this contention of the Noticees 2 to 4 in this order. However, as regards their role in selling of the AT1 bonds to the customers of YBL, I proceed to deal with their additional contentions on merits.

88. Noticees 2 to 4 have denied the allegations of having "designed" any ‘Step by Step’ process to facilitate the sale of ATI Bonds to the customers. In this regard, I note that Noticees 2, 3 and 4 have separately, in their statements recorded before the Investigating Authority under section 11C of SEBI Act on September 16, 2020, September 14, 2020 and September 15, 2020 respectively admitted that they had designed the “Step by Step” process to sell these AT1 bonds. I also note that this fact has also been corroborated by Noticee 1 in its submissions dated March 31, 2021. Thus I find that Noticees 2 to 4 were the key persons involved in the process of selling of these AT-1 bonds to the existing customers of YBL and their role cannot be undermined. Thus, I do not accept the contentions put forth by Noticees 2 to 4 that they were not involved in the “Step by Step” process for sale of these AT1 bonds to the customers of YBL.

89. Noticees 3 and 4 have contended that they had resigned from YBL in the year 2018 and they were involved with the facilitation of AT1 bonds for a very limited time. In this regards, I note that Noticees 3 and 4 were employed with YBL since the year 2011 and 2016, respectively. I also note that the impugned AT1 Bonds were issued by Noticee 1 in December, 2016 and October, 2017 and at the time of down selling to the customers / investors, Noticees 3 and 4 were employed with Noticee 1 and they were also involved in the aforesaid process of down selling AT1 Bonds to the customers. Therefore the above contention of Noticees 3 and 4 are not acceptable.

90. Further, two of the RMs of Noticee 1 viz Shri Narendranath T G and Shri Arun Oberoi in their statements recorded before the Investigating Authority u/s 11C of SEBI Act on September 09, 2020 and September 04. 2020 respectively have stated that they were introduced to the AT1 Bonds by the PWM Team which consisted of Noticees 2 to 4. It is a matter of record that Noticee 4 sent an email dated 19/06/2017 to multiple employees of YBL including Noticees 2 and 3 explaining

"Step by Step" process to them. Further, there is nothing brought on record to show that subsequent to Noticees 3 and 4 leaving the employment of YBL in the year 2018 any new sales process was introduced for AT1 Bonds. Thus, I find that the contention of Noticees 3 and 4 is not supported by any documentary evidence and hence not acceptable.

91. Therefore, in conclusion, I find that the Noticees deliberately misrepresented the AT-1 bonds as being more attractive than the FDs of YBL, by suppressing the inherent risks of these bonds and distorting facts to mislead their customers and manipulated them into investing in these risky bonds. Through the aforesaid scheme and deliberate acts of misrepresentation and manipulation by the Noticees, some of the customers were even influenced to switch their investments in FDs of YBL to these risky AT-1 bonds.

92. It is clear that to further their own cause, the Noticees devised a scheme to purposely suppress the risk factors of the AT-1 bonds and to highlight the attractive features and also distorted and misrepresented the material facts, so that their customers could be influenced to invest in these risky bonds, some of who also shifted their investments from FDs to these bonds. It is clear that the Noticees had an intention to defraud the customers while making the sales pitch to their customers which is why they did not institute any of the aforesaid safeguards. It cannot be a matter of coincidence that such a large number of customers, i.e. 1311, were influenced and induced to invest in these risky bonds.

93. The fact that 1311 individual investors of AT1 bonds, who were existing customers of YBL, chose to buy through Noticee 1 shows that these customers trusted Noticee 1 with their money prior to investing in AT1 bonds. It was the duty and responsibility of the Noticees to not only provide them all information including the Term Sheet but also appraise them of all the risks associated with it, which the Noticees did not do.

94. In a case involving fraud and manipulation the Hon'ble Supreme Court of India in the matter of SEBI v Kishore Ajmera (order dated February 23, 2016), observed that:

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion there from. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion …."

95. In the instant case, the facts and circumstances of the case clearly indicate that in order to make the institutional investors subscribe to more capital of YBL the Noticees devised the plan to down sell the AT1 bonds, held by the institutional investors, to individual investors including their customers. In order to do that, the Noticees highlighted the AT1 bonds as earning high interest vis-à-vis the FDs. The omission on the part of the Noticees to forward relevant documentary information to the investors / customers indicates suppression of material facts so as to create a misleading appearance of the AT1 bonds in order to lure the investors / customers to invest in them. The misrepresentation perpetrated by Noticees 1 to 4 influenced the investors/ customers of YBL and they were lured into purchasing the bonds. Some of the customers also closed the FDs and used the money to buy the AT1 bonds. All these actions amount to fraud perpetrated by the Noticees on the investors /

customers. The subsequent developments such as the financially unviable state of YBL leading to the writing down of the AT1 bonds also clearly indicate that Noticees 1 to 4 were clearly aware of the risky nature of AT1 bonds. Despite that, they aggressively engaged in the activity to down sell these bonds to the investors / customers. It is pertinent to mention that some of the customers altered their position on the basis such fraudulent representation made by Noticees 1 to 4.

96. As highlighted by the Hon'ble Supreme Court in Kishore Ajmera matter, all the attending proximate facts and circumstances surrounding the case clearly unravel the devious plan framed by the Noticees to lure the investors / customers to invest in the AT1 bonds.

97. In the matter of Brook Laboratories Ltd in Appeal No 246/2015 the Hon'ble SAT had the occasion to deal with the failure to disclose material information and making false and misleading statements in the prospectus. Hobn'ble SAT vide order dated March 21, 2018 held that failure to disclose material information and making false and misleading statements constitutes serious violations of PFUTP Regulations and SEBI (ICDR) Regulations, 2009.

98. In view of the foregoing, I conclude that the allegation that Noticees 1 to 4 violated Regulations 3(a), 3(c), 3(d) and 4(1) of PFUTP Regulations and Sections 12A(b) & 12A(c) of the SEBI Act and Noticees 1 and 2 also violated Regulation 4(2)(s) of PFUTP Regulations, read with Explanation (1) to Regulation 4(2) of PFUTP Regulations stands established. Further, Noticees 3 and 4 have submitted that the amendment to Section 4(2)(s) of PFUTP Regulations came into effect only in February 2019 after they had left the employment of YBL. Though the term mis-selling came into being subsequent to their leaving their employment, the fact that they were involved in making fraudulent and misrepresentation to the investors /

customers have to be taken into account. Therefore, the aforesaid charges against Noticees 3 and 4 stand established.

99. The next issue for consideration is as to what would be the monetary penalty that can be imposed under section 15HA of the SEBI Act on Noticees 1 to 4 for the aforesaid violations of PFUTP Regulations and SEBI Act.

100. In this context, I refer to the ruling of the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"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.…."*.

101. The text of Section 15HA of the SEBI Act, is as below:

SEBI Act

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

102. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 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.

Explanation.— For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

103. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain earned by the Noticees 1 to 4. However, I note from the SCN that 1346 Individual Investors had invested approximately Rs. 679/- Crores in the AT1 bonds, out of which 1311 individual investors were existing customers of Noticee 1, who invested approximately Rs. 663/- Crores in these AT1 Bonds. Further, I note that 277 customers had existing Fixed Deposits with Noticee 1 and they prematurely closed their existing Fixed Deposits and reinvested an amount to the extent of Rs. 80 Crores in these AT1 bonds which were subsequently written down.

104. The sale of AT1 bond started in 2016 and continued till 2019. It is YBL's own case that YBL wanted to free up 'shelf space' for institutional investors to subscribe to further capital of YBL. Therefore, the Noticees devised the devious scheme to dump the AT1 bonds on their hapless customers. Considering the manner in which the sale continued even in 2019 shows that the Noticees were aware of the financial state of YBL. I note that the institutional investors from whom these AT1

bonds were sold to individual customers are not a party to these proceedings. However, this does not dilute the culpability on the part of Noticees as it was their intention to dump the AT1 bonds on their customers in order to further their cause and enrich themselves. The subsequent development which have taken place i.e. restructuring of YBL and writing down of these AT1 bonds show that the financial status of YBL had become unviable and this was known to the Noticees.

105. As regards YBL i.e. Noticee 1, I note that it being a company, acted through its employees including Noticees 2 to 4 to perpetrate such fraudulent acts on its hapless and unsuspecting customers, some of whom were influenced to even alter their investment positions from FDs to these risky AT1 bonds. It is understood that more of such complaints are being received in SEBI even after initiation of these proceedings. Therefore, on account of such misrepresentation and fraud perpetrated on its own customers which lured them and induced them to buy these risky AT1 bonds and also induced some of them to alter their position from FDs to these AT1 bonds, such acts have to be viewed seriously. Therefore, I consider a penalty of Rs. 25 Crores (Rupees Twenty-five Crores only) on Noticee 1 in terms of Section 15HA of SEBI Act is justified as it is commensurate with the violations and will also have a deterrent effect.

106. As regards Noticee 2, I note that he was head of PWM team and considering the level of his involvement in designing and perpetrating such fraud on the customers / investors, I hereby impose a penalty of Rs. 1 Crore (Rupees one Crore only) on him in terms of Section 15HA of the SEBI Act. The penalty is commensurate with the violations committed by him.

107. As regards, Noticees 3 and 4, it has been concluded in the forgoing that they were part of the aforesaid fraudulent scheme for selling these AT1 bonds. However, it is noted from the submissions of Noticees 3 and 4 that they left the employment of

YBL in the year 2018. Therefore, the charges of misrepresentation and fraud leading to violation of the aforesaid Regulations of PFUTP Regulations and Sections of SEBI Act against them was only till the year 2018. Therefore I am inclined to impose a lesser penalty and impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) each on Noticee 3 and 4 in terms of the provisions of Section 15HA of SEBI Act.

ORDER

108. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the following penalties on the Noticees under the provisions of –

Penalty under Section 15HA of SEBI Act

Noticee No.	Name of the Noticee	Penalty
1	YES Bank Limited	Rs. 25 crores (Rupees Twenty Five Crores only)
2	Mr. Vivek Kanwar	Rs. 1 crore (Rupees One crore only)
3	Mr. Ashish Nasa	Rs. 50 lakhs (Rupees Fifty Lakhs only)
4	Mr. Jasjit Singh Banga	Rs. 50 lakhs (Rupees Fifty Lakhs only)

I am of the view that the said penalties are commensurate with the commissions / omissions leading to the violations by Noticees 1 to 4.

109. The Noticees 1 to 4 shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

110. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

111. In the event of failure on the part of the Noticees to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated against them under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

112. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. YES Bank Limited, Mr. Vivek Kanwar, Mr. Ashish Nasa, Mr. Jasjit Singh Banga, and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: April 12, 2021 **ADJUDICATING OFFICER**