**WTM/GM/EFD-1/DRA-II/03/2021–22**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER REGULATION 27(5) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.**

**IN RESPECT OF –**

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| **NOTICEE** | **ABHIPRA CAPITAL LIMITED**<br>**MEMBER, BSE & NSE**<br>**SEBI REGISTRATION NOS. - INB230815035, INF230815035, INE230815035, INB010815034, INF010815034, INE010815034, INE260815035, INB200815034, INB050815035** |

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**BACKGROUND –**

1. Abhipra Capital Limited (hereinafter referred to as '**Noticee**') is registered with Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') as a stock broker for various segments of the Bombay Stock Exchange (**BSE)** and the National Stock Exchange (**NSE**), including cash, equity derivatives and currency derivative segments.

2. SEBI conducted an inspection of the Noticee during January 29 - 31, 2014 and February 5 - 7 & 10, 2014. The findings of inspection are summarized as follows:

**Creation of multiple client codes for the same client:**

(a) The Noticee was allotting different client codes to the clients trading in cash segment and derivative segment. It was observed that there were 36,662 client code details in cash segment with the status as either active or inactive as on January 27, 2014. Closed client details were not found in the final list of clients. As per the Noticee, there was no provision in the software for closing the trading accounts and hence the status of such accounts was shown as "inactive". Inspection revealed several instances where two or more codes had been created by the Noticee for its clients, which existed simultaneously. A comparison of the list of client codes provided by the Noticee with the client codes provided by NSE for cash segment showed that the list provided by the Noticee had additional 9469 codes which were alleged to be duplicate.

(b) Further, there were several instances where the client codes had been created / allotted by the Noticee for different clients on the basis of same PAN. Also, the Noticee had created number of client codes without the bank account number or demat account number. Further, there were 16 codes allotted to Abhipra Consultants Pvt. Ltd., entity associated with the Noticee, over a period from 30.10.2002 to 28.04.2011.

(c) Hence, the Noticee was alleged to have violated SEBI circular no. SMDRP/Policy/CIR-39/2001 dated 18-July-2001 and Clauses A(1), A(2) &

A(5) of Code of Conduct prescribed for the Stock Brokers under Regulation 9 ("**Code of Conduct**" in short) of the SEBI (Stock Brokers and Sub-brokers Regulations), 1992 ("**Brokers Regulations**" in short).

**Dealing in cash**

(d) On examining available bank statements of the Noticee, it was observed that there were number of cash deposits ranging from Rs. 50 to Rs.8,00,000/- in various bank accounts. During the period from 01.04.2013 to 27.01.2014, the total cash deposited in the Noticee's business as well as client accounts was Rs.1,90,87,846. Hence, it was alleged that the Noticee was dealing in cash and had violated the provisions of SEBI circular no. SMD-1/23341 November 18, 1993 and SEBI/MRD/SE/Cir-33/2003/27/08 dated 27-August-2003 read with the provisions of Clause A(5) of Code of Conduct.

**Creation of email-ids of clients and use of common email-ids for different clients**

(e) It appeared that Noticee had created Email-IDs for its clients who had opted to receive Electronic Contract Notes (ECN). It was also observed that some clients had common Email-IDs even though such clients did not appear related to each other, which was indicative of un-registered sub-broking activity. Hence, the Noticee was alleged to have violated SEBI circular no. MIRSD/SE/Cir-19/2009 dated 03-December, 2009 and provisions of the Clause A(2) of Code of Conduct.

**Pledging of securities without knowledge of clients**

(f) It was observed that the Noticee used one demat account (no. 10721828) for pledging of securities of clients as well as Noticee's own securities with ICICI Bank for raising Loan against Securities (LAS). The bank account was not meant for client purposes and its outstanding as on 27/01/2014 was Rs.2,13,02,687.84. Securities of inactive clients were also found pledged to raise the LAS. The Noticee had submitted that if any client did not trade for more than 6 months, then such client account is treated as 'inactive'. Thus, it was observed that the Noticee had pledged the securities of such clients who were not trading and were inactive, without their knowledge.

(g) There were number of active and inactive clients having credit balance or zero balance whose securities were pledged by the ACL. Further, there were number of active and inactive clients having negative balances whose securities were pledged and the value raised against the pledged securities exceeded the negative balance. It was observed that the Noticee was not giving any credit to the clients's financial ledger for the LAS raised against their securities. By failing to do so, the Noticee was not showing true and fair picture of the financial position of the clients and was projecting that the money used for funding the clients was from own funds. The Noticee has used clients' fund / securities for its own purposes. In view of the above, it was alleged that the Noticee failed to maintain the segregation of

clients' funds and securities and thereby violated the provisions of SEBI circular no. SMD/SED/CIR/93/23321 dated 18 November, 1993 and circular no. MRD/DoP/SE/Cir-11/2008 dated 17 April, 2008 read with provisions of clauses A(1), A(2), A(3), A(4) & A(5) of Code of Conduct.

**Delayed payment charges**

(h) It was also observed that ACL was charging Delayed Payment Charges (DPC) to the clients. As per its DPC policy, all the clients who were not making payments on timely basis were levied penalty as delayed payment charges at the end of the day. The Noticee submitted that the said policy is not communicated to the clients as part of KYC but it is uploaded on its website. The uploaded policy on the website showed a total of 4 hits as on the date of inspection (10/02/2014), which indicated that the policy was uploaded recently just before the inspection. Thus, the Noticee had allegedly concealed its policy on the "Delayed Payment Charges" from its clients and was charging hefty penalty as delayed payment charges from the clients without the knowledge of the clients. Further, the policy of charging the DPC was not uniform across the clients and the period for which such DPC was to be levied had also not been defined in the policy. The DPC policy of the Noticee was ensuring minimum return of 18.25% to the Noticee in every slab. The Noticee was charging higher charges on those clients having lesser debit balances, thereby encouraging higher debits. The Noticee is alleged to have violated provisions of the SEBI

circular no. MIRSD/ SE/Cir-19/2009 dated 03 December, 2009 which require a broker have a DPC Policy as part of mandated "*Policies and Procedures*" document of KYC.

**Not settling security deposit of clients**

(i) It was observed from the books of accounts that the Noticee had received security deposits from its clients over a period of time between 2002 to 2013. It was alleged that although the nomenclature used by the Noticee was 'Security Deposit', the money belonged to the clients and hence it was required to be settled as per the provisions of per the provisions of the SEBI circular no. MIRSD/ SE /Cir-19/2009 dated 03 December, 2009. However, the said Security Deposits of active clients amounting to Rs.8,85,876/- and inactive clients amounting to Rs.26,02,832/- were not settled by the Noticee since their creation, in violation of the provisions of SEBI circular no. MIRSD/ SE/Cir-19/2009 dated 03 December, 2009 relating to the settlement of Client's funds & Securities read with the provisions of Clause A(1), A(2), A(3) and A(5) of Code of Conduct.

**Dealing with group entity Abhipra Commodity Consultants Pvt. Ltd. ('ACCPL')**

(j) Abhipra Commodity Consultants Pvt. Ltd. ('ACCPL'), a commodity broker then registered with FMC, is an associated company of the Noticee which was doing its own share trading and was acting as a client of the Noticee, having demat aaccount no. 10000037.

(k) It was observed from the details of pledged securities provided by the Noticee that number of securities of ACCPL had also been pledged. The Noticee submitted that the pledged securities of ACCPL had been taken from the demat account no. 10575165 (F&O margin account) to the demat account no. 10721828 (created for the purpose of pledging the securities). It was noted that 6860 shares of Cummins India Ltd. belonging to ACCPL, were pledged by ACL as on 27/01/2014 with ICICI Bank. However, the inspection observed that the said shares belonging to ACCPL had not been taken from the demat account no. 10575165 (F&O margin account), as claimed by the Noticee. Several instances of similar nature were also observed. Thus, the information provided by the Noticee was incorrect.

(l) Further, the scrutiny of the demat account of ACCPL showed that there were several instances of movement of shares between the demat accounts of other clients of Noticee (broking and DP clients) and that of ACCPL. Further, number of times, these shares had also been transferred to / received from the demat account no. 10721828, created for the purpose of pledging the securities.

(m) In view of the above, the Noticee was alleged to have provided false information, thereby violating Regulation 21 of the Brokers Regulations read with the provisions of Clause A(5) of Code of Conduct.

**Not updating running account authorisation form (RAA)**

(n) During examination of the Running Account Authorization (RAA) forms attached with KYC of random sample of 25 clients, it was observed that in respect of client codes LR211, AD1053, H1269, CN133, JPD18, KN006 and TU351, the RAA was in old format. Further, in respect of some clients, the forms were incompletely filled. It was further observed that in respect of certain clients, the quarterly settlement of funds had not been done for some of the quarters examined. Further, from the list of inactive clients provided by the Noticee, it was observed that there were 2772 inactive clients, out of which 554 clients had credit balances totaling Rs. 14,90,769.52. The Noticee failed to settle the accounts of these clients. Hence, the Noticee was alleged to have violated provisions of SEBI circulars no. MIRSD/SE/Cir-19/2009 dated 3rd December, 2009 and SEBI/MIRSD/Cir/01/2011dated May 13, 2011.

**Procedure for dividend distribution**

(o) It was observed that frequent transfers were made from the Dividend account (i.e. where dividends paid on the shares of the clients lying with the broker are credited) to one of its business accounts which were allegedly questionable in nature. The Noticee did not provide any explanation for the same nor did it provide the dividend-wise breakup of amounts transferred to business account. Hence, the Noticee was alleged

to have violated provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993.

3. In view of the above, SEBI initiated proceedings against the Noticee under Regulation 24 of SEBI (Intermediaries) Regulations, 2008 ("**Intermediaries Regulations**" in short) for the alleged violations of provisions of various SEBI circulars and the Brokers regulations. The DA issued a show cause notice (SCN) dated June 15, 2018 to the Noticee under Regulation 25(1) of the Intermediaries Regulations and upon a consideration of the facts before him and the reply of the Noticee, found the Noticee guilty of certain violations as alleged above while also concluding that certain other alleged violations were not established. Accordingly, the DA, vide her report dated April 15, 2020 (DA Report), submitted under Regulation 27 of the Intermediaries Regulations, recommended that the Noticee be barred from taking any new clients for a period of 6 months or till it confirmed compliance with the provisions of SEBI Circulars violated by it, whichever was later. The DA further recommended that the Noticee may be warned to be careful in future and to ensure compliance with applicable SEBI circulars and regulations.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING –**

4. Thereafter, a show cause notice dated July 02, 2020 ("post-enquiry SCN") was issued to the Noticee, enclosing therewith a copy of the DA Report, calling upon the Noticee to show cause as to why action as recommended by the DA or any

other action including passing of any other direction, as deemed appropriate by the Competent Authority should not be taken against it in terms of Regulation 28 of the Intermediaries Regulations.

5. In response to the post-enquiry SCN, the Noticee filed its reply dated October 12, 2020. Thereafter, an opportunity of personal hearing was provided to the Noticee on January 07, 2021 which was attended by the Authorised representative of the Noticee through video conferencing. During the personal hearing, the authorized representative of the Noticee reiterated the submissions earlier made vide letter dated October 12, 2020. Subsequently, the Noticee submitted further written submissions vide letter dated February 09, 2021.

6. The Noticee vide letter dated October 12, 2020 and February 09, 2021 has submitted *inter alia* the following:

(a) The Noticee disputes and denies all that is stated in the post-enquiry SCN.

(b) During the period of investigation i.e. 2003 to 2014, the Noticee apart from providing stock broking services, also provided various other services including but not limited to the following:

- Acting as a Point of Presence (PoP) and aggregator with PFRDA for the National Pension Scheme (NPS)
- Providing BC operation services to Bank of India and Aryavart bank
- SEBI registered Depository Participant with NSDL and CDSL

- SEBI registered Registrar & Share Transfer Agent (RTA)
- Aadhar -UIDAI Enrolment Agency

(c) During the period of the inspection conducted by SEBI, the Noticee had provided all necessary assistance and moreover, had duly provided all explanations in relation to the charges levelled, through its reply dated July 22, 2014 and subsequent reply dated August 18, 2018.

(d) The period of inspection which was carried out by SEBI pertained to the period 2003 to 2014. However, the Noticee has been registered as a stock broker and a member of both BSE, NSE, since the year 1995. The difference in the data set collected from the exchanges (i.e. 2003 onwards) and as provided by the Noticee (i.e. 1995 onwards) has led to a series of mismatch owing to the time lag and much prolonged period of investigation (almost 8 years), which has also been highlighted by the DA Report. The inspection carried out by SEBI in relation to the Noticee was for period from 2003 till 2014, but to provide suitable defenses and in support of the submissions, the Noticee had to produce documents, records etc. for past more than 19 years since its inception in 1995. Further, due to the large period of time involved in the matter, there have been observations in the DA Report, wherein some laws/circulars or rules have been applied in a retrospective manner or their reference have been drawn from retrospect.

(e) In addition to aforesaid, a considerable amount of time has elapsed since the inspection on January 29 - 31, 2014 and February 5-7, and 10, 2014,

observation letter issued and reply submitted by Noticee on July 21, 2014 and the present SCN dated July 02, 2020. There is therefore a gross and inordinate delay of more than 6 years in issuance of the present SCN. With lapse of time, lots of employees/consultants have changed, and it is difficult for the Noticee to go back in time again and again and recall and reproduce documents and information to substantiate its contentions.

(f) The Hon'ble SAT has in several cases held that such long delays in issuing a show cause notice are fatal to the proceedings and has set aside SEBI's orders on that short ground alone without even going into the merits of the case.

(g) The DA report does not take into consideration the fact that the period of investigation for the Noticee consisted of a period of 11 years, which oversaw major regulatory & structural changes in the law relating to the operations of a stock broker. Therefore, the case of the Noticee and its action during the period from 2003 to 2014 cannot be holistically viewed in light of the position of the law in the year 2014, but instead has to be viewed in light of the law as existing at the relevant time, considering the gradual changes in the law that took place in the span of 11 years.

(h) The fact that the Noticee provides multiple functions apart from that of a broker has not been taken into account. As required under the Brokers Regulations and the applicable circulars, the Noticee has been maintaining separate client accounts. However, it is not required to maintain multiple

bank accounts for its separate services. However, the Noticee duly maintains separate records for its various businesses in compliance with the requirement of the Code of Conduct.

(i) The Noticee is alleged to have violated provision of SEBI Circular no. SMD-1/23341 dated November 18, 1993 and the follow-up circular no. SEBI/MRD/SE/Cir-33/2003/27/08 (hereinafter collectively referred to as "SEB1 Cash Circular"), which provide that Member-brokers should not accept cash for purchases of securities and/or give cash against sale of securities. The Noticee submits that as a Member-Broker, it has never accepted any cash for the purchase of securities not has given cash to its clients' against any sale of securities. In fact, there is no such allegation in the DA Report that Noticee had accepted cash from any of its constituents/client or paid cash to any of its constituents / client for purchase or sale of securities and therefore the said allegation is completely untenable. The only allegation against Noticee is that there have been some cash deposits in the Noticees' Bank Accounts. It is submitted that *per se* there is no restriction for any person to deposit cash in its bank account. Further, the source of the cash is fully accounted for and was explained to the investigation team in great detail. The said cash transactions are towards other businesses of the Noticee like NPS, BC operations, depository services, RTA etc. and have nothing to do with the broking activity. The cash deposits pertained to said operations as the

Noticee used to collect cash against receipts for these services. That cash was duly accounted for and deposited in the business bank account of the Noticee. Further, certain cash deposits as reflected in the business accounts of the Noticee were with respect to rents received, sale of scrap, renting of table space in branch office etc., which again had no bearing or correlation with the activity of being a trading member. The same was also explained in the Noticee's previous replies. Hence, the Noticee is not in violation of the aforementioned Circulars nor has violated any of the provisions of Clause A(5) of Code of Conduct prescribed for the Stock Brokers.

(j) As per SEBI rules and regulation, each trading member is required to maintain separate bank account for transactions with its constituents. Noticee is maintaining such account with the nomenclature client account and other accounts have nomenclature as business account. The same ensures physical segregation of the client funds and securities. In the client bank accounts only clients' remittances and payments are reflected. The Noticee is not trading in its proprietary trading account and therefore it was easily verifiable by SEBI by checking the cash ledger and the bank ledger to check that no part of the said cash was used for buying securities.

(k) As can be seen from the respective bank account details, very small amounts were collected from clients and deposits were also of very miniscule amount. That cash was also only on account of depository participant services charges collected from the beneficial account owners

and not in the nature of amounts collected from a broking client for purchase of securities. These client bank accounts were basically credited at certain branches of Demat services, where there is no other bank account available, since opening a separate bank accounts at each branch for the purpose of depositing the cash received from the demat accounts holders was not viable. For the purpose of verification, the Noticee has submitted details of 2 branches, Bhikaji Cama Place and Rewari Branch, showing how the cash was received from the demat account holders and they were given the credit. As can be seen from the ledger of the respective clients, these sums so credited were not for purchase of securities.

(l) When compared with the total collection on account of the security transactions including demat larges of the Noticee, the total cash alleged to have been collected is miniscule, constituting only Rs 1,15,046/-which is 0.0107% percentage of the total collections of Rs. 107,33,80,512 during financial year 2013-14. Therefore, these cash deposits are neither a case of money laundering nor of dabba trading. Further, there are 11 bank accounts of the Noticee, wherein the DA Report has found cash deposits. However, out of the 10 accounts, 5 accounts are business accounts (own accounts) of the Noticee and the remaining 5 are client accounts. It may be noted that in respect of the total amount of cash deposits of INR 1,90,87,846, around INR 1,89,72,800 are in the business accounts of the Noticee, which are in relation to the various other charges collected by the

Noticee, the details of which are being provided to SEBI. The Noticee is not required under the law to segregate the earnings/deposits in its Business Accounts. Also, the requirement under SEBl Cash Circular is only to not accept cash deposits for purchase of securities or give cash against sale of securities.

(m) As regards the cash deposit in Clients Accounts, out of the total cash deposits in the accounts of the Noticee, only a miniscule amount of INR 1,15,046 was deposited in the Client Accounts which was in relation to the demat service charges. The same are as follows:

| Sl. | Bank | Branch | Amount |
|---|---|---|---|
| 1 | HDFC Bank | Bhikaji Cama Place | 65,900 |
| 2 | HDFC Bank | Rewari | 26,216 |
| 3 | HDFC Bank | Gurgaon | 14,500 |
| 4 | HDFC Bank | Dwarka | 3,800 |
| 5 | ICICI Bank | Connaught Place | 4,630 |

(n) Further, the finding has overlooked the provisions of SEBI Circular dated 27.8.2003 where it is provided that in exceptional circumstances, broker can accept cash. Therefore, there is no blanket ban / prohibition on acceptance of cash by brokers. Moreover, the amount collected were of the size INR 80 to INR 5000, which is too miniscule and clearly reflects that the same was not intended for trading in cash. Further, the Inspection Report and the DA report did not allege that the Noticee allowed trading in cash. Rather, the allegations are only limited to acceptance of cash in account.

***Allegations in respect of pledging of client securities:***

(o) The Noticee has always taken due permission from its clients to pledge their securities and raise Loan Against Securities (LAS) in accordance with the requirements of the SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 (hereinafter collectively referred to as "SEBI LAS Circulars"). The Noticee has an express authority from the respective clients to pledge their securities in case of shortfall of the margin. The incidence of pledge mentioned in the report were in the course of trading by the clients. There was no incidence of pledging securities of inactive clients. The pledge had taken place when the clients were active and when they became inactive, the pledge continued. In case of pledge of securities, the cost of borrowing is taken in Noticee's books and is not passed on to the clients. Therefore, there is no incentive for the Noticee to continue with the pledge when the client is inactive. The money so generated by the pledge has not been used by the Noticee for any trading in its proprietary account.The Noticee has now reconciled all these issues and cancelled the pledges, wherever necessary and returned the securities to the beneficial owners.

(p) The allegation is that active and inactive clients' shares were pledged even though they had credit / zero balance or in excess of debit balance. However, a critical error is that the pledging of the securities and funds raised was during six to seven years whereas all the a/c balances and

whether the client was active or inactive were assessed during inspection only as on the Date of inspection day i.e. 27.1.2014. Therefore, the DA Report obviously got an erroneous impression of the facts of the case. The Noticee only pledged for clients with debit balances and later due to subsequent trades, securities values kept changing. The WTM at the stage of hearing directed the Noticee to supply proof in the form of some top clients and the details as to the pledge created and the debit balance on the said date. The same is being provided to SEBI.

(q) The inspection report stated that shares of inactive clients were lying in pledge account. The Noticee submits that such clients were regularly contacted for refund of shares, but they expressed their intention to trade again when the market revived. However, as a corrective measure, the Noticee has refunded such shares to the clients and the details of the same have been provided to SEBI.

(r) There are clients who actively trade with Noticee and retained their shares with the Noticee against the margin obligation. The credit balances of such clients keep fluctuating based on their trading. Hence on the date of reporting, such client's shares were lying in the pledge account. However, based on the report, the Noticee has taken the corrective measure and refunded such shares to the investors.

(s) The report pointed out certain clients who are maintaining negative balance, but the balance is less than the amount retained through pledging.

It is submitted that the shares were retained only on account of the non-payment by the client. The value of the shares keeps changing because of market movements. However, based on the report, the Noticee has taken the corrective action and excess shares were refunded to the clients and accounts have been settled.

(t) As far as accounting treatment of the money received through pledge, the Noticee submits that it followed the appropriate accounting principles and industry standards. Most importantly, there is no client complaint with regard to his/her account reconciliations.

(u) The securities pledged with the Bank are not from the demat accounts of the clients. These securities were received by the Noticee as a part of delivery of securities or part of margin payment. If the securities are received as a part of delivery of securities, then these would go to pool account. If payment is received from the client, then these deliveries go to their respective demat accounts, otherwise same are transferred to client beneficiary account maintained by the Noticee. In case of default or delay by the client of pay-in, these securities may be pledged with banks to raise LAS for the exchange pay-in. Only when the clients make the payment, the shares are transferred to the clients' demat accounts. Until payment by the client, neither the shares nor the money belongs to the client and therefore there is no question of co-mingling. Therefore, the finances received from the pledge are not reflected in the client's accounts as per standard of

accounting procedure of the industry. Thus, the Noticee submits that there is no fraud played by it and that there is proper and due segregation of funds maintained by it. From the financials of the Noticee, it can be seen that it has not benefited out of these accounts.

(v) There were times when the shares were even pledged by clients towards margin requirements. In any event, no client has ever accused / alleged or complained of any misuse of client securities. The Noticee has, pursuant to the observations of SEBI, during the inspection period, in order to avoid unnecessary controversy, ensured that all shares were transferred to the clients' demat in 2014 itself.

(w) The issues are procedural in nature and have all been resolved. The Noticee is currently adopting the policy and procedure specified by SEBI for margin pledge creation. No complaint was made by any of the clients alleging any misutilisation of securities. All these allegations are extremely old and pertains mainly to the transitional period. Even the DA Report terms the same as a procedural violation. Further, the alleged violations have already been rectified and no longer hold any relevance in view of the new mechanism proposed by the SEBI. It is therefore submitted that the said allegations ought not to result in issuance of any directions against the Noticee.

(x) The original charge against the Noticee was that it had pledged client securities without any authorization and the said charge has been

successfully defended by the Noticee as no adverse observations in relation to the same have been made in the DA Report. Further, the allegation of non-segregation of funds is completely misplaced as it has already been explained by the Noticee that the pledge for LAS was done only when the client failed to make pay-ins or defaulted, and the same was done in accordance with the SEBI LAS Circulars. Further, the Circulars specify that the client accounts should be kept separate for fully-paid securities and the same was followed diligently by the Noticee. However, as already explained, the securities in the client beneficiary account were those which were not fully paid for by the client.

(y) In respect of not settling the LAS, the Noticee submits that the SEBI Circular dated April 17, 2008 - Collateral Deposited with brokers by clients, does not specify any period of settling of the LAS. The requirements of the circular i.e. in relation to maintenance of proper records of client collateral and taking steps to prevent misuse of client collateral have been all duly followed by the Noticee and it is once again emphasized that no complaints have been received from the clients in relation to such collaterals.

(z) Further, it may be noted that the collaterals in the client beneficiary account consist of securities of mainly two types: (a) Past active clients who want to continue trading later, and (b) Current active clients. It is in relation to the first category, where there are certain discrepancies in the

records in relation to negative valuation, as alleged in the DA Report. But, as already explained, the shares were retained only on account of the non-payment of the client. The market value of the shares keeps changing and the negative amount was a result of such market movements. The list of such instances are being provided to SEBI.

(aa) Further, certain clients who were active at some point of time during the period of investigation, later on became inactive. The Noticee has duly returned all the pledge securities and there are no complaints by any client. The Noticees had merely followed the extant practice to secure itself in case of unpaid securities of clients. The Noticee has no proprietary trading. Therefore, the Noticee has exercised requisite due-care and diligence and has not violated the SEBI LAS Circulars and Clauses of Code of Conduct, as alleged.

***Allegations in respect of disclosure of Delayed Payment Charges (DPC) policy to the clients***

(bb) The initial charge against the Noticee was that it was wrongly charging delayed payment charges as per the Inspection report dated April 25, 2014. However, the DA Report has dropped the said charges on the basis of the Noticee duly explaining its DPC policy being in accordance of the SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 ("SEBI Client Dealing Circular"). However, the DA Report has raised altogether a new allegation which was not there in Inspection report, which is

allegation of violation of SEBI Client Dealing Circular. The DA Report now alleges the Noticee of not disclosing the DPC policy along with the KYC documents and violating the SEBI Client Dealing Circular. However, the same is against the principles of natural justice that all together a new observation/allegation is being made in the DA Report. Further, the said allegation is vague in nature. The policy was well known to all constituents and no investor has complained of any unfair treatment.

(cc) The DA Report holds that policy was on the website but not part of KYC documents and hence the same is in violation of circular. However, the DA failed to appreciate that the said circular at Clause 8 (d) does not state it must be part of the KYC. The only requirement of the circular is to have a policy document and which the Noticee had. In any case, subsequent to coming into effect of the Circular dated December 03, 2009, the said policy was incorporated in the KYC.

(dd) The Noticee duly complied with the Client Registration Procedure as provided in the said Circular. Further, as required under the said circular, the Noticee duly provided a book with all the necessary policies including the DPC policy. The copy of the client opening process documents containing the requisite documents is already part of the records with SEBI and once again being provided to SEBI. In addition to providing the hard copy of the policy along with the client opening documents, the Noticee has duly provided all its policies in its website for the benefit of the clients.

The observation in the DA Report regarding the DPC policy which is part of the KYC document not being signed is extraneous as the SEBI Client Dealing Circular has made no such mandate and only requires the same to be shared with the client, which the Noticee has duly abided by. The said circular at clauses 4, 12(b), 13(a) and 19 specifies what has to be signed. Clause 8(d) relates to DPC policy and does not require signature. No client has ever raised any complaints with regard to the same and the policy was adopted uniformly for all clients. Thus, there is no violation of the provisions of the SEB1 Client Dealing Circular, as alleged.

***Allegations in respect of settling security deposits of clients***

(ee) The Noticee is a depository participant along with being a stock broker. The Noticee had already submitted that the security deposits were created with respect to demat account charges. The DA report accepts that there were two varieties of deposits. There are certain small client deposits in the range of Rs. 5,000 to Rs. 25,000 and the same were against schemes pertaining to offer of lower brokerage / DP Charges waiver / Free software etc. There were only 7 clients' deposits of Rs. 1 to 5 Lakhs which were for other businesses of the Noticee and therefore not relevant to charge at present.

(ff) The security deposits were collected from clients under various schemes. The floating of such schemes is industry practice. The clients receive value added services such as rebate in the brokerage charges, rebate in the demat

account transaction charges, rebate in the demat account annual maintenance charges, free software access for online trading facility, value addition report like valuation of holdings, frequent holding statement etc. In consideration of such value-added services, the security deposits received from the clients are kept separately from client accounts and for this reason the security deposits are not treated as part of client's accounts and therefore need not be settled. The clients who give such deposits are aware of the conditions with which such deposits are accepted and are continued till services are availed as per scheme. Therefore, there are no complaints from the clients with regard to misuse of the funds. The DA Report fails to take into consideration the above submissions made by the Noticee.

(gg) DA accepts the submissions that the deposits were for such other services / facilities and therefore were not required to be settled as part of running account settlement but holds that deposits should have been returned when clients closed accounts. However, the DA appears to have misunderstood / mixed up between inactive clients and where accounts are "closed" by the clients. There are none / hardly any clients who gave instructions to close their accounts or where the Noticee forcibly closed their accounts. Even DA report accepts that after objection was raised during inspection, the Noticee chased down these inactive clients and returned these small deposits to them. However, since these deposits were

to cover DP charges / AMC, reduction and / or waiver against deposits, some clients did not want refund since the DP services were continuing. Yet, the Noticee returned deposits to them because of SEBI's observations in the inspection. In any case, the total value of such security deposit was only Rs.34 .61 Lacs which is miniscule part of the total clients' funds lying with the Noticee, which has already been returned to clients. The details of the same have already been provided to SEBI.

(hh) The DA Report does not establish any charge of violation of the provisions of the SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and circular no. MRD/DoP/SE/Cir-11/2008 dated April 17, 2008 and only puts an onerous burden of not taking due care & diligence on the Noticee. If no charges of the violations of the aforementioned circulars are established, then the Noticee cannot be held liable for not taking due-care and diligence.

(ii) The DA report alleges that the Noticee did not have proper segregation of client funds meant for other services and should have accounted under different heads. However, it is not alleged that this amounts to any violation since there is no circular which requires it. In any event, in the accounts, the ledgers clearly identified which deposit were for what purpose. It is only in the balance sheet that all deposits were shown together under the heading of "Security Deposits". However, each and

every individual entry was identifiable and traceable. Therefore, these deposits were actually segregated and accounted for.

(jj) The DA report correctly holds that there was no violation of the 3.12.2009 circular and it only alleges lack of due care and diligence. However, Noticee submits that it had shown due care and diligence.

***Allegations in respect of not settling funds & securities in respect of Running Account Authorization (RAA)***

(kk) The initial Inspection Report dated April 25, 2014 had two charges in relation the RAA, i.e. the non-updating of the RAA by the Noticee and non-settlement of funds and securities by the Noticee. The inspection report points out that the running account authorisation obtained was in old format. In this regard, the Noticee submits that the RAA pointed out in the report were pertaining to the old accounts which were opened prior to 2011. The Noticee had more than 1 Lac clients. Out of these, for only 7 clients the allegation is that RAA was in old format. All these clients were old clients prior to new format and were inactive and therefore the Noticee could not find / trace them easily. One client from the same had not chosen monthly or quarterly settlement and therefore the same was client's oversight and therefore calls for no action against the Noticee. Therefore, finding of violation / issue is too insignificant and is at best a genuine operational error. Further, for all the new and active accounts, the Noticee had obtained the RAA in the new format only.

(ll) The DA Report holds that for some quarters, quarterly settlement was missed out in 10 accounts. This appears to have been an inadvertent oversight in some rare cases, a long time period and over 1 lac clients.

(mm) The DA report alleges that out of 2772 inactive clients, credit balances of 554 clients were not settled. The Noticee submits that out of the 554 clients, there were 363 accounts which had more than Rs.100/- credit. There were only 23 clients who had more than Rs. 10000/- as credit in their accounts. Of the same, Mr. V D Aggarwal, Chairman of the Noticee, had to his credit in his personal client account an amount of Rs. 3,00,000/- as credit which was around 20% of the total outstanding shown in the report. The Noticee further submits that out of above 363 accounts, 245 accounts were either settled or had become active again and were trading on the basis of their credit balances. All these accounts had demat accounts with the Noticee. Small balances were retained in these accounts with a view to ensure the recovery of AMC charges of the Demat accounts, which is an industry practice. The clients were aware of the amount outstanding in their accounts and there were no complaints in this regard.

(nn) During the course of the hearing, the WTM had sought clarification concerning the credit balances lying with the Noticee for the inactive accounts and the efforts made to get the funds transferred to the clients. In this connection it is stated that there are total 34 clients whose accounts were settled after the date of inspection. There were total 23 clients on the

date of inspection having credit balance above Rs. 10,000/-. Out of those, 16 accounts were reactivated and they re-started trading and after reactivation, the accounts were settled. Further, in respect of 4 clients, the data was very old and telephone number and mobile number of the clients were also not reachable. The Noticee's executive visited residence of the said clients and their dues were paid through fresh cheques. As regards 2 other clients, they were inactive but were maintaining their demat accounts with the Noticee since it is also a depository participant. In their demat accounts, the Noticee had to recover for DP services and amount payable to it was transferred in their demat account after due intimation.

(oo) All new and existing active client accounts have been updated to the New RAA format as per the SEBI Client Deposit Circular. During the period of investigation, certain inactive client accounts also existed, for which the RAA could not have been updated because the details submitted by the Noticee contained client accounts which had been created during 1995 to 2014 i.e. a period of 19 years, whereas the requirement of the new RAA form was introduced only in December, 2009. Out of the total 554 inactive accounts, most of them were created and have been inactive sometime prior to the requirement of RAA updation was introduced in the year 2009.

(pp) In relation to the settlement of charges, the Noticee submits that the settling of funds was dependent upon the authorisation and preference of

the client at the relevant time. As already pointed out, most of these inactive client accounts have been in existence much prior to the introduction of the SEM Client Deposit Circular in December, 2009. The Noticee duly tried contacting all such inactive accounts in relation to updation of the RAA forms, renewal of authorisation and for obtaining instructions in relation to settling of the funds. However, the Noticee received no response from these clients. In absence of any clear instruction, the Noticee acted in the interest of the clients and continued to maintain the status quo on the RAA, despite the same being financially unviable for the Noticee.

(qq) Based on the observations of SEBI post the inspection, the Noticee settled all the accounts of the inactive clients, with or without their consent, thereby ensuring the appropriate standard of due-diligence. The Noticee also undertakes to do so in the future. Thus, no fault can be found on the Noticee for maintaining the status quo in relation to the inactive clients as there was no express direction from these clients, and the Noticee could not have acted on its own without having any sort of direction from these clients. The Noticee acted diligently and was not in violation of the provisions of the SEBI Client Deposit Circular, as alleged. Further, no client has ever lodged any complaint and the alleged violation is purely technical and venial in nature, as recorded in the Enquiry Report and ought to be dropped.

***Legal Submissions:***

(rr) The Noticee submits that due-diligence and due care cannot have an onerous burden. In this regard, the Noticee relies upon various judgment of the courts.

(ss) The Noticee submits that in respect of the charges of dealing in cash, delayed payment charges, pledging of client securities, disclosure of DPC policy and settling of client deposits, the DA Report does not establish any direct violation of the applicable circulars by the Noticee. Further, the DA Report proceeds to hold the Noticee guilty of these charges based on presumption and the onerous burden of not exercising due care, without establishing the necessary violations as laid down in the applicable SEBI Circulars.

(tt) The Noticee submits that the position of law as in 2014 is being retrospectively applied to the case of the Noticee for the period of 2003-2014, when both the legal precedents and the technological infrastructure were undergoing rapid changes. Further, the delay in issuance of SCN for a period pertaining to 2003, would effectively mean punishing the Noticee for a violation done 6-17 years earlier. The undue delay would not only have ramifications on the Noticee but more than 1,00,000+ clients of the Noticee. Therefore, the charges be dropped against the Noticee.

(uu) The directions of complying with the various circulars as mentioned in the DA Report are already complied with by the Noticee. Thus, the

directions under Section - 11B for restraining the Noticee from accepting new clients till the violations of the circulars are complied with has become infructuous. The Noticee submits that as on date, there are no violations on part of the Noticee in relation to the allegations in the SCN.

(vv) It is the foremost principle of law that the penalty should always be in accordance with the offence committed. In the case of the Noticee, the violations (if any) are meagre and do not warrant any direction to not take new clients for 6 months. Further, the imposition of penalty, even though meagre, will leave an indelible mark and leave a blot on the spotless image of the Noticee.

(ww) There were originally 9 allegations in the SCN issued by the DA. Out of the same, 4 were dropped and now only 5 remain. Out of the remaining 5, majority of them have greatly been watered down by the DA compared to the original allegations. In any event, all these allegations pertain to the past and have all been rectified and there is no issue of noncompliance observed ever-since the completion of the Inspection.

**CONSIDERATION AND FINDINGS –**

7. I have examined the charges against the Noticee, the DA Report, the replies of the Noticee and other material on record. Having done so, I now proceed to adjudicate the charges one by one.

***(i) Allotment of Multiple Client Codes to individual Clients:***

8. The Noticee is alleged to have allotted multiple client codes to its clients which existed simultaneously. As per the SCN issued by the DA, in the cash segment, the list of client codes of the Noticee provided by NSE had 9469 extra client codes than the client list provided by the Noticee during inspection, which indicated that the Noticee had allotted multiple client codes to clients. Similarly, there were instances of multiple client codes in the derivative segment. The SCN had provided a list of 1089 and 99 such client codes from the cash and derivate segment which were duplicate. The SCN had also listed other charges, such as allotment of different client codes on the basis of same PAN number, having client details without PAN number and allotment of 16 client codes to one entity, ACCPL. In this regard, I note that SEBI vide circular no. SMDRP/Policy/CIR-39/2001 dated 18-July-2001 had provided that:

"*…… it will be mandatory for all brokers to use unique client codes for all clients. For this purpose, brokers shall collect and maintain in their back office the Permanent Account Number (PAN) allotted by Income Tax Department for all their clients…..*"

9. I note that the Noticee has not made any submission in respect of the above charges since the DA Report has given a finding that the charges against the Noticee are not established. I note that the DA has listed the following grounds for its findings:

(a) Of the 1089 duplicate accounts in cash segment, in 221 accounts, the accounts were not multiple but had common PAN due to individual and joint acount, HUF, karta etc and that the PAN may be common in such accounts. Further, 619 accounts were inactive from 1995-2008. Of the remaining 249 accounts, 220 accounts were inactive. For remaining 29 active accounts, Noticee had submitted that trading had happened only in one account and the others are not active.

(b) Similarly, in derivatives segment, 77 duplicate codes were inactive. As regards 18 codes, the clients were using only one code for trading, and the other codes were inactive. In one case, a separate code was given for proprietorship firm. In another case, trading in duplicate code was stopped as soon as it was realised that client had opened another account.

(c) Based on the reply by the Noticee, there was no evidence of trading happening in multiple accounts or use of multiple client codes for trading by the same client.

(d) As regards the mismatch between the list of clients provided by the NSE and that provided by the Noticee, the DA noted that the Noticee had provided the information pertaining to period 1995-2014 for 36,662, while SEBI had obtained the information from NSE pertaining to period 2003-2014 and hence there was a difference of 9469 client codes. As the

period for the 2 sets of data was different by a period of 8 years, the figures cannot be compared to conclude use of duplicate client codes.

(e) As regards having client details without demat account number and PAN, the DA accepted the Noticee's contention that the clients who continued to remain active traders post 01.01.2007 were mandatorily required to provide PAN details and that no client code was ever created without the bank account / demat account details. However, the bank account details were missing for the clients who stopped trading and the account became inactive. As a precautionary measure, the bank account / demat account details were deleted from the back office software / client master, however the details continued to exist in KYC form. Moreover, trading was not possible in any account without a proper demat account being mapped to them.

10. I note that the DA has not dealt with the Noticee's submissions regarding allotment of 16 client codes to ACCPL. In this regard, I note that the Noticee vide letter dated August 18, 2018 had submitted to the DA that the same were uploaded on NSE servers by the Noticee's ex-employee without the knowledge and consent of the Noticee. The Noticee has already filed a criminal complaint against the said ex-employee which is sub-judice. The Noticee has further submitted that there has been no simultaneous trading in these codes ever. Considering that the Noticee has admitted that the said

duplicate codes were allotted due to fault of an employee, I am inclined to give benefit of doubt to the Noticee in this regard.

11. As regards other instances of creation of multiple client codes, as referred to in the SCN issued by the DA, I am inclined to concur with the DA's findings that multiple client codes may have been generated due to common PAN in joint accounts, HUF and Karta Accounts etc. Further, I am also willing to accept the explanations provided regarding missing PAN, DP and Bank account details in some accounts. However, as regards various other cases of multiple client codes, I note that the Noticee in its reply dated August 18, 2018 to the DA has itself admitted that a lot of inactive client codes allotted prior to 2008 could not be mapped when such inactive clients approached the Noticee to open fresh accounts and were allotted fresh codes after 2008. The Noticee has submitted that it was unable to trace such inactive codes allotted prior to 2008 due to lack of technology as the software for UCC mapping was not available. In this regard, I note that the requirement of having UCC was introduced way back in the year 2001 by SEBI Circular dated July 18, 2001, whereas the Noticee, as per its own admission, had not implemented the same till March 31, 2008. Considering the same, I conclude that the allegation of violation of the provisions of SEBI Circular dated July 18, 2001 by the Noticee stand established.

***(ii) <u>Creation of email-ids of clients and use of common email-ids for different clients</u>***

12. From the list of client details provided by the Noticee, it was noted that there were number of clients who were having email-ids with domain "…….@abhipra.com" and had opted to receive Electronic Contract Notes (ECN). The same indicated that Noticee had created Email-IDs for its clients Further, it was also observed that some clients had common Email-IDs even though such clients did not appear related to each other, which was indicative of un-registered sub-broking activity. Hence, the Noticee was alleged to have violated SEBI circular no. MIRSD/SE/Cir-19/2009 dated 03-December, 2009 and provisions of the Clause A(2) of Code of Conduct. The said Circular provides that "*The email-id shall not be created by the broker. The client desirous of receiving ECN shall create/provide his own email id to the stock broker.*"

13. I note that the Noticee has not responded to the above charges since the DA Report has concluded that the said charge is not established. I note that the DA has cited the following grounds for her findings:

(a) There is no legal restriction on related clients providing the same email-id. The Noticee has a policy of issuing electronic contract notes only to the clients who have opted for the same. As regards the clients with different addresses having common Email ID, the Noticee had submitted that these

clients had family relations and hence provided common Email ID for different client accounts of different members of the same family.

(b) No client complaint has been received by it in this regard.

(c) There is no legal restriction on persons sharing a common email-id.

(d) Out of the 50 clients having email IDs with domain name **"…….@abhipra.com",** 27 Email IDs belonged to the employees, directors, promoters and shareholders of the Company, which appeared acceptable since they belonged to the company. The remaining 23 email IDs belonged to the clients who had opened the account before year 2009, prior to issuance of SEBI circular no. MIRSD/SE/Cir-19/2009 dated 03-December, 2009.

14. I have considered the observations of the DA and I concur with her findings as regards the abovementioned charges. Hence, I drop the abovementioned charges.

***(iii) <u>Dealing in cash</u>***

15. The Noticee is alleged to have accepted cash in its business accounts and clients' accounts. As per the SCN, it was observed that there were number of cash deposits ranging from Rs.50 to Rs.8,00,000 in the bank accounts of the Noticee. During the period from 01.04.2013 to 27.01.2014, the total cash deposited in the Noticee's business as well as client accounts was

Rs.1,90,87,846, which included Rs.1,89,72,800 deposited in business accounts and Rs.1,15,046 deposited in the clients' accounts.

16. The Noticee has contended that the cash deposited in the business accounts pertained to various other incomes and charges collected by the Noticee for activities other than broking, such as empanelment with UIDAI, PFRDA & NPS services, rental income etc. It has also contended that the total cash deposited in the clients' accounts during April 01, 2013 to January 27, 2014 was only Rs.1,15,046, which was collected as depository participant charges and the same was not used for the trades of the clients.

17. In respect of the above charges, the DA observed that the bank accounts were in the name of the Noticee and the same had not been designated for different services like DP services, NPS, etc., which the Noticee had claimed as its other businesses. Further, no details of rental income received by the Noticee had been provided. Hence, the DA did not accept the contention of the Noticee that the funds were received only for other business purposes and not from clients. She further concluded that the lack of segregating various kinds of receipts for different activities showed lack of due skill, care and diligence in the conduct of Noticee's business.

18. I note that the SEBI circular no. SMD-1/23341 November 18, 1993 and SEBI/MRD/SE/Cir- 33/2003/27/08 dated 27-August-2003 prohibit

acceptance / giving of cash in respect of purchase / sale of securities by the clients. In this regard, I note that while cash deposits were made in the Noticee's business accounts, which the Noticee claims to have received from other sources, the records do not show instances of movement of funds from the Noticee's business accounts to the client accounts, which would have indicated use of such funds for trades of clients. Thus, I am inclined to accept the Noticee's contention and give benefit of doubt to the Noticee in this regard.

19. As regards the cash deposits in client accounts, I note that the total amount deposited in 5 such accounts during 11 months (approx..) is Rs. 1,15,046. There were 38 such transactions and their size ranged from Rs.50 to Rs.13800. The said amount appears to be a small amount, as compared to a total receipt of Rs.107,33,80,512 (as per Noticee's submissions) during FY 2013-14. Considering the same, I am inclined to give the benefit of doubt to the Noticee by accepting its contentions. Accordingly, I differ from the findings of the DA in this regard and drop the charges pertaining to acceptance of cash.

**(iv) <u>Pledging of securities without knowledge of clients</u>**

20. The Noticee had allegedly pledged the shares of active and inactive clients having credit balances or zero balances. Further, it had allegedly pledged the shares of active and inactive clients having negative balances and the value raised against the pledged securities exceeded the negative balance. The

pledging of securities of inactive clients was allegedly done without the knowledge of the clients. It was observed that the Noticee was not giving any credit to the clients' financial ledger for the Loans Against Securities (LAS) raised against their securities which indicated that the Noticee used clients' fund / securities for its own purposes. In view of the above, it was alleged that the Noticee failed to maintain the segregation of clients' funds and securities, thereby violating the provisions of SEBI circular nos. SMD/SED/CIR/93/23321 dated 18 November, 1993 and MRD/DoP/SE/Cir-11/2008 dated 17 April, 2008 (SEBI LAS Circulars) read with provisions of clauses A(1), A(2), A(3), A(4) & A(5) of Code of Conduct.

21. In respect of the above charges, I have considered the submissions of the Noticee, as detailed in para 6 (o) to 6 (aa). The gist of the submissions is that the Noticee has always taken permission from its clients, including inactive ones, to pledge their securities and raise LAS as required. There was no pledging of securities of inactive clients. Pledging was done when the client was active and it continued even after client becoming inactive. The Noticee had contacted such clients for refund of shares but the clients expressed their desire to trade in future. The allegations that the pledges were created even in cases of credit or zero balances and that the value realized from pledge exceeded the negative balances are not true since the pledging of the securities and raising of funds was done during 6-7 years whereas all the a/c balances

and whether the client was active or inactive were assessed as on the date of inspection i.e. 27.1.2014. The Noticee only pledged securities of clients with debit balances and later due to subsequent trades, the values of securities kept changing, which led to situations where the amount retained through pledge exceeded the negative balances. The SEBI LAS Circulars do not provide any period for settling the LAS. The Noticee has not used money generated by the pledge for its own purposes. The money received through pledge was not reflected in the clients' accounts which was in line with appropriate accounting principles and industry standards. Thus, there was no-comingling of clients' funds and securities. There were no client complaints. The Noticee has now reconciled all the issues, cancelled the pledges wherever necessary and returned securities to respective clients.

22. Having considered the submissions of the Noticee, I note that the SEBI LAS Circulars clearly provide for segregation of clients' funds and securities. The SEBI Circular No. MRD/DoP/SE/Cir-11/2008 dated 17 April, 2008 provides that *"Brokers should have adequate systems and procedures in place to ensure that client collateral is not used for any purposes other than meeting the respective client's margin requirements/pay-ins. Brokers should also maintain records to ensure proper audit trail of use of client collateral."* As per the above provisions, the client collateral cannot be used for any purposes other than meeting the respective client's margin requirements / pay-ins. I note that the Noticee has denied

using the money raised through the LAS for its own purposes. It has denied the inspection's finding that in some cases the value realized from pledge exceeded the negative balances. However, I note that pursuant to the personal hearing on January 07, 2021, the Noticee has submitted details of pledges created and debit balances in accounts of some of top clients on the date of creation of pledge. Such details were submitted as Annexure A to the letter dated February 09, 2021. From the same, I note that out of 40 instances cited therein, there are 5 instances where the total value received against pledging of shares of the clients exceeded the total debit balance in respective client's account as on the date of pledge. For instance, in case of Client (Code CS534), on July 04, 2013, the total balance in the account was -2,07,720.65 whereas the total value received against pledging of shares was Rs.3,07,195.00. There are four other instances of similar nature which pertain to Client Codes CS534 (September 26, 2011 and May 23, 2013), RA666 (January 23, 2014) and U04 (July 15, 2014). Thus, there is a clear case of the Noticee raising funds through LAS beyond what it was entitled to under the abovementioned circulars. The raising of extra funds clearly indicates that the clients' funds were used for other purposes. Further, I note that the Annexures 13 and 14 of the SCN dated June 15, 2018 issued by the DA show several instances where the securities of inactive or active clients were pledged even when they had credit / zero balance. Similarly, Annexures 15 and 16 of the said SCN show instances where the value raised against pledged securities exceeded the negative balances of

active and inactive clients. I note that except providing generalized submission, the Noticee has not offered any concrete explanation about these specific instances. The Noticee vide Annexure A-3 and A-4 of its reply dated October 12, 2020 has merely shown some instances where the pledged shares were either returned to the Clients' Demat Accounts or were retained upon authorization, as on June 10, 2014, which is subsequent to the date of inspection. In my view, even assuming that the other submissions of the Noticee as summarized above are correct, the instances quoted above are sufficient to establish the violation of the provisions of SEBI LAS Circulars by the Noticee. Thus, I concur with the abovementioned finding of the DA and conclude that the charges of violation of SEBI circular nos. SMD/SED/CIR/93/23321 dated 18 November, 1993 and MRD/DoP/SE/Cir-11/2008 dated 17 April, 2008 against the Noticee stand established.

***(v) <u>Wrongly charging delayed payment charges (DPC)</u>***

23. The Noticee is alleged to have violated the provisions of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 which requires a stock broker to have a DPC policy as part of mandated '*policies and procedures*' documents. The Noticee allegedly had concealed its DPC policy from clients and was charging hefty penalty without their knowledge. Further, the period for which such DPC was to be levied had also not been defined in the Policy.

Further, the Noticee's DPC policy was allegedly charging hefty penalty ensuring minimum return of 18.25% to the broker in every slab and the clients with lesser debits were paying higher charges.

24. In respect of the above, I note that while the SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 provides for having a DPC Policy, it does not contain any provision regarding the amount of penalty / delayed payment charges which a broker can levy on the clients. In such case, the allegations pertaining to charge of hefty penalty by the Noticee does not appear to merit consideration.

25. As regards the other charge that the Noticee had not disclosed its DPC policy to its clients and had not specified the period of DPC, I note that Annexure A to the SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 states the following:

*"**Annexure -A***

***Requirements relating to dealings between a Client and Stock Broker Client Registration Procedure***

1. *The stock broker shall register a client by entering into an agreement with him. For this purpose, the stock broker shall make available a folder /book containing all the documents required for registration of a client. The folder/book shall have an index page listing all the documents contained in it and indicating briefly significance of each document. Once signed, a copy of the same shall be made available to the client.*

2. *The folder/book shall have two parts:*
   *(a) Mandatory and (b) Non-mandatory.*

   ***Mandatory Documents***

3. *The mandatory documents are:*
   a. *Member Client Agreement (MCA)/Tripartite Agreement in case sub-broker is associated,*
   b. *Know Your Client (KYC) Form*
   c. *Risk Disclosure Document (RDD)*

   *These shall be executed in the format as prescribed by SEBI.*

4. *… … …*
5. *… … …*
6. *…….*
7. *……*

8. *There shall be a mandatory document dealing with policies and procedures for each of the following under appropriate headings:*
   a. *refusal of orders for penny stocks,*
   b. *setting up client's exposure limits,*
   c. *applicable brokerage rate,*
   d. *imposition of penalty/delayed payment charges by either party, specifying the rate and the period (This must not result in funding by the broker in contravention of the applicable laws),*
   e. *… …*

   *… ……..*"

26. From the above, I note that a copy of the DPC policy had to be provided to the clients as part of mandatory documents at the time of registration. However, I note from the records that during the inspection, the Noticee had submitted that the said policy was not communicated to the clients as part of KYC but it was uploaded on its website. Further, the inspection had observed that the uploaded policy on the website showed a total of 4 hits as on the date of inspection (10/02/2014), which indicated that the policy was uploaded recently just before the inspection. In this regard, I note that though the Noticee has claimed that it had provided copy of its DPC policy to its clients, it has failed to substantiate the said claim with adequate evidence. I note that

the Noticee while making the said claim before the DA had submitted a copy of its DPC policy (Annexure 26 of the Noticee's reply dated August 18, 2018). However, it is noted that the same was merely a print-out of its DPC Policy displayed on its website, which was neither signed by the client nor appeared to be part of any folder / book required to be provided to the client at the time of registration, as required under the abovementioned circular. Further, the total number of 4 hits on such page on its website as on the date of inspection, as mentioned above, when viewed with other corroborative facts, clearly render the Noticee's claim as suspect. It is only at a late stage of the proceedings that the Noticee vide letter dated October 12, 2020 (Annexure A5) has submitted a copy of its Client Registration Form enclosing its DPC Ploicy signed by a client. However, the same is not dated and appears to have been executed subsequently. Considering all these factors in totality, I conclude that the charges of violation of the abovementioned Circular by the Noticee stand established.

***(vi) <u>Not settling security deposits of clients</u>***

27. The Noticee had received a number of security deposits from clients during 2002 to 2013. As per the provisions of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009, the clients' money has to be periodically settled by the broker. However, the Noticee had allegedly not settled these deposits since the time these were created. There were a number of active and

inactive clients whose security deposits, totaling Rs.34,61,709, were lying with the Noticee unsettled.

28. In the above respect, the Noticee has submitted that it is a depository participant along with being a stock broker and that most of the security deposits were collected from clients under various schemes pertaining to rebate in brokerage charges, demat account transaction charges, demat account annual maintenance charges, free software access for online trading, value addition report, frequent holding statement etc. The floating of such schemes is industry practice and the clients who give such deposits are aware of the conditions with which such deposits are accepted and are continued till services are availed as per scheme. There are no investor complaints. However, after the observation during inspection, the security deposits have been returned to the clients. Certain other security deposits pertained to the clients of Abhipra Management Services (P) Ltd., an associate entity of the Noticee, which have also been settled. Further certain deposits pertained to the clients who had availed the services of the Noticee and had deposited the security amount. These clients wished to continue to avail such services, hence their accounts have not been settled. Further, some deposits pertained to certain clients who are associated with the Noticee in relation to the other services provided by the Noticee, like NPS and business correspondent, hence a credit balance is maintained in their account.

29. I have considered the abovementioned submissions of the Noticee. I note from Annexure 17 of the SCN issued by the DA that most of these securities deposits are having denominations of Rs.5000, Rs.10000, Rs.25000 etc. I further note that the Noticee vide its reply dated October 12, 2020 has submitted copies of various forms pertaining to 'Application for Cost Free Demat Account Scheme', 'Application for Cost Free Plus Demat A/C Scheme,' 'Application for Traders Demat A/C Scheme' and 'Application for Concessional Brokerage Scheme'. All these schemes require interest free deposits of Rs.7,500, Rs.10,000, Rs.25,000 and Rs.50,000 from the clients for availing various DP and broking services at certain rates. From the same, it appears that abovementioned security deposits had been taken from clients for purposes like concessional brokerage, demat charges etc. Thus, I concur with the observation of the DA that these deposits taken for concessional rates purposes need not be settled periodically, as required under the abovementioned SEBI circular dated December 03, 2009. The Noticee has also submitted that there are certain deposits which pertain to clients of Abhipra Management Services (P) Ltd., as associate company of the Noticee, whose deposits have been settled. Further, there are certain clients who are associated with the Noticee in relation to other services like NPS and Business Correspondent, and hence a credit balance is maintained in their account. I note that the DA has observed that the Noticee did not have proper segregation of funds in respect of clients who availed other services and that

it should have accounted for these funds under the appropriate heads. I further note that while the DA has not found the Noticee guilty of violation of abovementioned Circular dated December 03, 2009, she has concluded that the Noticee by failing to act with due care and diligence in returning deposits of inactive / closed accounts and in properly accounting for funds meant for other services, has violated the provisions of Clause A(1) and A(2) of the Code of Conduct. However, I note that since the DA has absolved the Noticee of the main charge of settlement of funds, the peripheral charges of violation of Code of Conduct need not be pressed. Considering the same and also the submissions of the Noticee, I am inclined to drop the said charges of non-settlement of security deposits against the Noticee.

***(vii) <u>Dealing with group entity Abhipra Commodity Consultants Pvt. Ltd. (ACCPL)</u>***

30. The Noticee is alleged to have provided incorrect, wrong and misleading information with regard to several transactions involving transfer of shares between the demat account of Noticee and ACCPL, an associate company of the Noticee, thereby violating the provisions of Regulation 21 of the Brokers Regulations, which provide for the obligations of a stock broker on inspection by SEBI. The Noticee is also alleged to have violated Clause (5) of the Code of Conduct. However, I note that the DA Report has observed that the said charges, details of which have already been provided above in this order, have

been levelled as a result due to some perceived discrepancy in the information provided by the Noticee to the inspection team. DA has accepted the explanation provided by the Noticee in this regard and has observed that factual information regarding account transaction statement was available. The DA has further observed that in respect of 6860 shares of Cummins India Limited pledged in the name of ACCPL, which were allegedly transferred from account not belonging to ACCPL, were in fact held in the account of ACCPL. Accordingly, the DA has dropped the said charges. In this regard, I note that the Demat Account statement of ACCPL (ID 10000037) provided by the Noticee as part of Annexure 32 of its reply to the DA shows that 6860 shares of Cummins India Limited were transferred in tranches to the pledge account of the Noticee during 28.08.2012 to 19.12.2012. Considering the same, I am inclined to concur with the findings of the DA. Accordingly, I do not wish to proceed with the said charges.

***(viii) <u>Not updating Running Account Authorization (RAA) form and not settling the funds and securities in accordance with SEBI guidelines</u>***

31. The Noticee is alleged to have obtained RAA forms from 7 clients in the old format. In respect of one client, even though the RAA form was signed by the client, no option had been selected as to whether he wanted settlement to be done monthly or quarterly. With respect to another client code, it was not clear from the RAA form whether he wanted settlement to happen quarterly/

monthly. Further, it was observed that in respect of 10 active clients, quarterly settlement had not been done for some quarters examined. Further out of 2772 inactive clients, 554 clients had credit balances totaling Rs.14.90 Lakh which had not been settled. In view of the above, the Noticee is alleged to have violated the provisions of SEBI circulars no. MIRSD/ SE /Cir-19/2009 dated 3rd December, 2009 and SEBI/ MIRSD/Cir/ 01/ 2011 dated May 13, 2011.

32. The Noticee in respect of the above charges, had submitted its explanations which are summarized above in para 6 (kk) to 6 (qq).

33. In respect of having old RAA form for 7 clients, the Noticee has submitted that these clients were old clients taken prior to the introduction of new RAA format in December 2009. These clients were inactive and therefore the Noticee could not find / trace them easily. Further, as regards one client who had not chosen monthly or quarterly settlement, the same was client's oversight and therefore calls for no action against the Noticee. These irregularities were too insignificant and at best were genuine operational errors. The Noticee has further submitted that all new and existing active client accounts have been updated to the New RAA format as per the SEBI Circular. Considering the submissions of the Noticee that the instances pertained to old clients who were not easily reachable and also that the Noticee has updated the RAA forms for all existing clients, I am inclined to drop the said charge pertaining to old RAA forms against the Noticee.

34. As regards non-settlement of accounts of 10 active clients for some quarters, the Noticee has submitted that the same appears to be an inadvertent oversight in rare cases over a long time since the Noticee has over 1 lakh clients. However, I note that the said 10 cases of non-settlement of account of active clients were observed out of sample cases selected by the inspection team and the possibility of many more such cases could not be ruled out. Thus, the explanation offered by the Noticee in this regard is not satisfactory.

35. As regards the non-settlement of accounts of 554 inactive clients, the Noticee has submitted that only 336 accounts had more than Rs.100 as credit and only 23 clients had more than Rs.10000 as credit in their accounts. The Noticee has further submitted that out of above 363 clients, 245 clients were either settled or had become active again and were trading on the basis of their credit balances. All these accounts had demat accounts with the Noticee. The balances were kept unsettled with a view to ensure the recovery of AMC charges of the Demat accounts, which is an industry practice. The clients were aware of the amount outstanding in their accounts and there were no complaints in this regard. As regards the 23 inactive accounts having credit of more than Rs.10000 as on the date of inspection, the Noticee has submitted that out of the same, 16 accounts were reactivated and they started trading. Further, dues were paid to 4 clients by personal visit to their homes since they were unreachable. In respect of 2 inactive clients, due amounts were

transferred to their demat account under intimation to the clients, since the Noticee had to recover for DP services.

36. The Noticee has further submitted that based on the observations of SEBI post the inspection, the Noticee settled all the accounts of the inactive clients, with or without their consent, thereby ensuring appropriate standard of due-diligence. The Noticee also undertakes to do so in the future.

37. I have considered the abovementioned submissions of the Noticee. I note that number of inactive clients having credit of more than Rs.100 whose accounts were found unsettled was 363 which is a large number. While the Noticee claims to have subsequently settled accounts of all inactive clients, the non-settlement of such large number of accounts within the mandated timeline clearly shows the Noticee's non-compliance with the Circular dated December 03, 2009 and the same needs to be viewed seriously.

38. In view of the Noticee's failure to settle the accounts of active and inactive clients, as mentioned above, the charges of violation of the provisions of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009 against the Noticee stand established.

***(ix) Procedure for dividend distribution:***

39. The inspection had observed that frequent transfers were made from the Dividend account of the Noticee to one of its business accounts which were

allegedly questionable in nature. The Noticee did not provide any explanation for the same nor did it provide the dividend-wise breakup of amounts transferred to business account. Hence, the Noticee was alleged to have violated provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 which mandates segregation of clients' funds and securities.

40. In regard to the above issue, I note that the DA has accepted the Noticee's contention that the dividend received on account of shares held by the Noticee were the sole funds that were transferred to the business account of the Noticee. However, I note that the Noticee had raised the above contention for the first time vide its letter dated August 18, 2018 and not before. Further, the Noticee has not provided any detailed break-up of such transferred funds which it claims as its own. It is pertinent to note that the SCN issued by the DA had categorically alleged that the Noticee had neither submitted any explanation nor had provided the dividend-wise breakup of amounts transferred to its business accounts. Considering that the Noticee has not submitted the required details in support of its claim, either during the inspection or any time subsequently, the claim of the Noticee cannot be accepted as credible. Considering the same, I differ with the findings of the DA in this regard and conclude that the charges of violation of provisions of SEBI Circular dated November 18, 1993 against the Noticee stand established.

**Summary**

41. The Noticee by allotting multiple client codes has violated SEBI Circular No. SMDPR/Policy/CIR-39/2001 dated July 18, 2001. Further, the Noticee, by pledging the securities of the clients in violation of the applicable norms and by transferring funds from the dividend accounts to its business accounts without proper explanation, has failed to maintain the segregation of clients' funds, thereby violating the provisions of SEBI circular nos. SMD/SED/CIR/93/23321 dated 18 November, 1993 and MRD/DoP/SE/Cir-11/2008 dated 17 April, 2008. Further, the Noticee by failing to provide a copy of its DPC Policy to the clients and by failing to settle the running accounts of active and inactive clients, as mentioned above, has violated of the provisions of SEBI Circular no. MIRSD/SE/Cir-19/2009 dated December 03, 2009. Further, the abovementioned violations established against the Noticee also amount to violation of the provisions of Clause A(1), A(2) and A(5) of the Code of Conduct for Stock Brokers. I note that the DA has recommended that the Noticee be barred from taking any new clients for a period of 6 months or till it confirmed compliance with the provisions of SEBI Circulars the violations of which were established against it. The DA further recommended that the Noticee may be warned to be careful in future and to ensure compliance with applicable SEBI circulars and regulations. However, I note from the submissions of the Noticee that it has already taken corrective

steps in respect of various violations established above. Considering the same, I am inclined to take a lighter action against the Noticee than what has been recommended by the DA. Accordingly, this order is being passed under Regulation 27(5) of the Intermediaries Regulations, which substituted Regulation 28 of the Intermediaries Regulations, with effect from January 21, 2021.

**ORDER –**

42. In view of the above, I, in exercise of powers conferred on me under Section 12 (3) read with Section 19 of the SEBI Act and Regulation 27 (5) of the Intermediaries Regulations, and upon consideration of the facts and circumstances as above, hereby prohibit the Noticee from taking new clients for its broking operations for a period of 3 months from the date of this order.

**PLACE: MUMBAI** **G. MAHALINGAM**

**DATE: APRIL 20, 2021** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**