BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/129/2018-19]

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

K A Gunderia & Co.

(INB010437128)

In the matter of K A Gunderia & Co.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an inspection of the books of accounts and other records of K. A. Gunderia & Co. (hereinafter referred to as '**the Noticee'**), a SEBI registered stock broker, to examine its compliance with various regulatory norms prescribed by SEBI.

2. Based on the findings of the inspection, SEBI initiated Adjudication Proceedings against the Noticee under Section 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') for the alleged violation of the following provisions:

    (a) SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009;

(b) Clause A (2) & A (5) of the Code of Conduct specified under Schedule II, read with Regulation 9(f) of the SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992 (hereinafter referred to as '**Broker Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide communique dated September 19, 2017 to inquire into and adjudge, under the provisions of Section 15HB of the SEBI Act, the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated February 08, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee under the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules'), to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on the Noticee under the provisions of Section 15HB of the SEBI Act, for aforesaid alleged violations.

5. The details in respect of alleged violations by the Noticee are as given below:

5.1. It is alleged that in 9 instances, funds are not settled and the amounts held in such clients' accounts during the quarter ended 30.06.2015, 30.09.2015, 31.12.2015, 31.03.2016 and 30.06.2016 which has credit balance of more than Rs.10,000/-, details of the same are placed in Table - 1:

Table -1

Sr. No.	Client code	Quarter ended balance				
		30.6.2015	**30.09.2015**	**31.12.2015**	**31.03.2016**	**30.06.2016**
1	13230	2179337	1490088	2521700	4664685	2214848

Sr. No.	Client code	Quarter ended balance				
2	20813	144806	112102	42584	42584	42584
3	22036	12732	0	0	0	0
4	18272	35956	0	31769	0	0
5	20601	109366	0	0	48085	22860
6	17402	0	16257	0	0	29345
7	18546	0	0	0	0	20347
8	18640	0	0	0	16936	0
9	18676	0	0	0	0	20965
	TOTAL	**2482197**	**1618447**	**2596053**	**4772290**	**2350949**

5.2. Further, it is alleged that on 24 instances securities are not settled during the quarter ended 30.06.2015, 30.09.2015, 31.12.2015, 31.03.2016 and 30.06.2016. Details of the same are placed in Table - 2:

Table - 2

Sr. No.	Client code	Quarter ended				
		Valuation 30.06.2015	**Valuation 30.09.2015**	**Valuation 31.12.2015**	**Valuation 31.3.2016**	**Valuation 30.6.2016**
1	13230	9069271.28	11685891.40	10974153.10	7940278.00	10908394.70
2	19264	21972.70	930.00	1035.00	10120.00	94902.57
3	20625	377237.50	315852.40	261486.50	255796.60	227013.00
4	22028	355037.50	293090.00	143160.00	0.00	0.00
5	20813	153532.50	0.00	0.00	0.00	0.00
6	22036	1372145.08	2210033.82	2120091.40	1712243.40	2058429.16
7	18272	92013.50	62208.00	62382.00	56997.50	61432.00
8	20601	0.00	0.00	0.00	287550.00	0.00
9	5854	6288.75	6176.25	13571.25	6344.25	14151.50
10	7044	10840.00	9215.70	62732.50	47554.00	36763.62

Sr. No.	Client code	Quarter ended				
11	8613	86181.10	141455.48	0.00	0.00	0.00
12	8653	69650.00	0.00	0.00	0.00	0.00
13	10518	0.00	0.00	5900.00	0.00	0.00
14	17042	0.00	0.00	22095.00	0.00	0.00
15	18546	0.00	0.00	67020.00	0.00	0.00
16	20032	0.00	541738.00	4760.00	0.00	0.00
17	20037	0.00	274.00	420.00	0.00	0.00
18	20091	25790.00	81720.00	34070.00	16365.00	0.00
19	20101	0.00	67400.00	110455.00	12179.50	248040.00
20	22518	14.50	16.00	12644.25	11.25	2469.75
21	22522	2712.75	2878.95	2968.80	2822.40	572.10
22	22548	68240.00	73642.50	86120.00	66915.50	172734.50
23	23018	0.00	17180.00	7586.70	0.00	0.00
24	23063	3405.00	17180.00	0.00	0.00	0.00
Total		**1,17,14,332.16**	**1,55,26,882.50**	**1,39,92,651.50**	**1,04,15,177.40**	**1,38,24,902.90**

5.3. It is alleged that the Noticee has not settled for the given client accounts funds and securities both during the various quarters ended as brought out in Table - 3:

Table - 3

Sr. No.	Quarter ended	Total value of unsettled fund (Rs.)	Total value of unsettled securities (Rs.)
1	30.06.2015	2482197.00	11714332.16
2	30.09.2015	1618447.00	15526882.50
3	31.12.2015	2596053.00	13992651.50
4	31.03.2016	4772290.00	10415177.40
5	30.06.2016	2350949.00	13824902.90

5.4. It is alleged that on 4 instances Noticee has not settled the fund account on bill to bill basis and on 6 instances Noticee has not settled the securities account on bill to bill basis. Details of the same is placed in Table - 4:

Table – 4

Client Code	Observations	bill to bill settlement
13922	BB: After settling the account in June 2015 quarter on 26 June 2015, credit balance is 17,333	after settling the bill of September, balance 17333 left
19164	BB: CR balance on 25 June, 2015 is 3,40,223. Next transaction (debit) is on 09 July 2015. Account is not settled.	bill to bill not settled
20106	There are some securities which are not settled quarterly.	securities not settled
20602	There is credit balance at the end of September, 2015 and December quarter, 2015	bill to bill not settled
22027	Securities are not settled in many quarters viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016.	securities not settled
22032	Funds not settled for December 2016 quarter	bill to bill not settled
22093	Securities not settled for the quarter March 2016 to June 2016	securities not settled
22133	Securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June 2016	securities not settled
22148	Securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June 2016	securities not settled
23076	Securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June 2016	securities not settled

5.5. It is alleged that the Noticee is sending entire fund ledger and securities ledger to the clients without explaining the retention of funds/securities and details of pledge if any.

5.6. It is also alleged that in some instances the client's credit balance for two consecutive quarters have remain unchanged and were not settled in

compliance of the provisions of running account settlement. The summary of these observation out of the abovementioned analysis is placed in Table - 5:

Table - 5

Sr. No	Quarter	Inactive Not Settled	
		No. of UCCs whose balances have remained on successive quarters	Amount (Rs.)
1	Jun 15 - Sep 15	19	2,26,027
2	Sep 15 - Dec 15	22	2,30,085
3.	Dec 15 - Mar 16	28	4,28,187
4.	Mar 16 - Jun 16	27	3,02,933
5.	Jun 15 - Jun 16	15	2,15,468

5.7. It is observed from Stock Exchange Internal Audit Reports that internal auditor has alleged that in few cases stock broker has not done settlement of funds & securities either monthly/quarterly where specific instructions have been received from the clients.

In view of the same, it was also alleged that the Noticee has failed to exercise due care, skill and diligence as required in the conduct of its business as a Stock Broker and therefore had not complied with the provisions of SEBI Circular No. MIRSD/SE/Cir-19/2009 dated December 03, 2009 and Clauses A(2) and A(5) of the Code of Conduct prescribed for stock brokers contained in Schedule II read with Regulation 9(f) of the Broker Regulations.

6. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due ('**SPAD**'), Hand Delivery and digitally signed email. As per available records, the SCN was delivered to the Noticee. The Noticee vide email dated February 21, 2018 requested for additional 15 day time for submission of its reply to the SCN.

In view of the same, vide email dated February 21, 2018, the Noticee was advised to submit its reply to the SCN on or before March 07, 2018 and was advised to attend a hearing in the matter on March 14, 2018. Further, the Noticee vide email dated March 07, 2018 requested for another extension in time for submission of its reply to the SCN and also requested another date for personal hearing. The Noticee vide email dated March 13, 2018 was granted final opportunity of hearing on March 21, 2018 and the Noticee was also asked to submit its reply of the SCN before date of hearing.

7. The Noticee vide its letter dated March 19, 2018 submitted its reply to SCN. In the said reply, the Noticee *inter alia* submitted its point wise reply to the allegations in the SCN as below:

i. *At the outset we deny each and every statement, submission, averment and allegation contained in the notice under reply, and nothing contained therein, which is not admitted hereinafter by us, be deemed to have been admitted by us merely on account of non-traverse. We vehemently deny that we have committed any of the violation and/or contravention of the provisions of PFUTP Regulation as alleged in live nonce under reply or otherwise, which would render us to be subjected to an inquiry. in terms of Rule 4 of SFBI Adjudication Rules read with Sections 15 I (1) & (2) of SEBI Act and imposition of penalty under Section I5HB of SEBI Act Therefore, the nonce under reply issued to us deserves u» be recalled and die inquiry proceedings as sought to be initiated against us deserve to be quashed and terminated.*

ii. *With reference to paragraph I of the notice under reply we repeatedly deny that we have violated:*

   a. *Securities and Exchange Board of India circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009: or*
   b. *Clauses A(2) and/or A(5) of the code of conduct specified under Schedule II, read with Regulation 9(f) of the SEBI (Stock Brokers & Sub brokers) Regulations. 1992*

iii. *With reference lo paragraph 2 of your notice under reply, we have extended all our co-operation and assistance lo the Inspection Team appointed by Securities and Exchange Board of India and have replied in all the queries raised by them. However, we shall he dealing with the alleged violations as sought to be pointed out in the notice under reply.*

iv. *With reference to paragraph 3.1 of your notice under reply, we say and submit that we are settling the accounts of our client in every quarter. With respect to 9 clients set out in the Table 1. the accounts were settled in every quarter The table 1 produced in paragraph under reply shows the quarter ended balance, as on quarter ended 30th June 2015, 30th September, 2015. 31th December 2015. 31st March. 2016 &. 30th June. 2016. However in fact we have settled the accounts of our respective clients at least once in every quarter it is our understanding of the said Circular dated 3rd December, 2009. particularly clause 12(e) set out in Annexure - A thereto the accounts of respective client is required to be settled at least once in every quarter or in even- month During the course of inspection we have pointed out to the inspection team that Lite clients have authorized us to maintain the running Accounts. The Authority letters to that effect were produced before the inspection team Copies of the said Authority Letters are annexed lo the notice under reply. Our clients have opted for quarterly settlement of accounts as set out in their respective KYC documents which were also produced before. the inspection team Upon perusal of Table1 appended to para under reply, it is evident that in the instances*

set out at serial no. 3 to 9 the accounts have been settled quarterly. whereas in the instances at serial nos 1 & 2, the accounts Appears to have not been settled The said two instances are set out herein below

a. *With respect to client Code 13230 which belongs to Mr Ronak Saileshkumar Jogani the said client is a non resident Indian therefore the said client has specifically instructed us to hold his funds and securities and to pay/transfer his funds and securities in his accounts only on his specific instructions. For your ready reference we are enclosing herewith specific instruction letter given by the said Mr. Jogani, as Annexure -1 hereto. We may bring to your notice that after inspection was carried out, we had insisted the said Mr. Jogani for settlement of his account at least once in quarter, however he was not agreeable to it. Therefore the said Mr. Jogani vide his Setter dated 24/05/2017 instructed us to close this Account. Accordingly, in die month of May, 2017 we have closed this account of said Mr Jogani arid transferred all the securities lying to the credit of his account, to this De-mat account with Indianivesh Securities Ltd and also paid a sum of Rs 45,36,261.80 in settlement of his account, as recorded in our letter dated 26th May. 2017. For your ready reference we are enclosing herewith copies of Setter dated 24/05/2017 addressed by Mr Jogani and our letter dated 26th May, 2017. (Encl. I)*

b. *With regard to client code No. 20813 belonging to Haresh Sacbdev even the said client has specifically instructed us not to make any payment or transfer any shares to his account unless and until specifically demanded by him. We are enclosing herewith a printout of his email. (Encl. II)*

c. *With respect to our clients at serial no. 3 to 9, the accounts were settled in every quarter. For your ready reference, we arc enclosing herewith a Table and also the Statements of Accounts of respective clients reflecting therein the settlement of account.*

v. *With reference to para no.3.2, we say and submit that save and submit the clients mentioned at serial nos. 1 & 6, set out in table 2 appended to paragraph under reply with respect to all other clients, the securities were settled during every quarter*

   a. *With regard to client code 13230 which belongs to Mr. Jogani as pointed out herein above, the said Mr Jogani is a nonresident Indian and had specifically instructed us not to deliver the securities unless specifically demanded by him. Further as pointed out herein above, as we insisted for settlement of funds and securities in every quarter, the said Mr. Jogani has closed his account with us in May, 2017.*

   b. *The client Code 22036 belongs to Mrs. Nirmala J Shah. The said Mrs. Nirmala J. Shah suffers from stiffness of her limps and fingers and therefore unable to operate her Demat Account. The Depository Participant has classified her Demat account as Inactive Account. The said Mrs. Nirmala J. Shah has specifically instructed us to withhold live securities in her account.*

vi. *With reference to paragraph 3.3, we deny that we have not settled the account of given clients of both funds and securities during the various quarters ended As explained herein above the Active Client's funds were settled by us in every quarter, similarly, securities of the Active Clients were also settled in every quarter save and except the account of the said Mr Jogani with respect to Securities as well as Funds, and account of the said Mrs. Nirmala J Shah with respect to Securities. Upon perusal of the valuation of unsettled securities, vis-a-vis details set out in Table -2. it is evident that the value of unsettled securities comprises majorly of securities of the said Mr. Jogani and Mrs. Nirmala J Shah.*

vii. *With reference to paragraph 3.4 we deny that we have not settled the fund account on bill to bill basis on 4 instances, and on 6 instances we have not settled the securities account on bill to bill basis. The explanation to each and every instance in Table- 4 appended to the paragraph under reply has been dealt with by us in the Table annexed herewith.*

viii. *With reference to paragraph 4.1, at the outset we say and submit that we have not used and/or appropriated the funds of the clients for our benefit and/or for benefit of other clients. You will appreciate that at all material times, the funds of the respective clients were lying in our designated client bank account. With regard to the credits of the inactive clients as set out in Table -5 and Annexure V to the notice under reply we say and submit as under –*

a. *Out of the said 15 clients set out in the last table, the credits with respect to the two Clients, viz. Farah Kabir Bhogilal (6513) and Shermin P. Gheesta (18723), were already paid on 15th September, 2016 and 31st August, 2016 respectively.*

b. *With respect to account of Mr.Vivek P Bhagwat, the said Mr.Vivek P. Bhagwat was serving in Economic Offences Wing, Mumbai. The said Mr Bhagwat retired from services in the year 2011-12 and since then he has been shifting between Pune arid Nasik. The said Mr. Bhagwat had instructed us to hold the said credit. On 03/04/2017 we had issued a cheque bearing no.023329 for the said sum of Rs.65.300/- and had informed the said Mr. Bhagwat to collect the same. The said Mr. Bhagwat, had assured lo collect the said cheque on his visit to Mumbai. However, till date the said Mr. Bhagwat did not collect the said cheque. Thereafter, we had cancelled the said cheque.*

c. *With regard to the credits in the account of Bipin Thakker (Trading A*/c) *(19007), the said Mr. Bipin Thakker as well as his family members have been carrying out transactions through us. As per the instructions of the said Mr. Bipin Thakker we were maintaining a deposit of approximately Rs 1,00.000/- for the trades in his account and the account of the family members and as per instructions of the said Mr. Thakkker we have been holding the said credit of Rs. 1,00,000/-.*

d. *With respect to the balance* 12 *accounts, we have already intimated to the respective clients again regarding their accounts and have asked them to come and settle the same.*

ix. *With reference to paragraph 4.2. the non-settlement of accounts of funds and securities have already been explained herein above. For the sake of brevity and to avoid repetitions, we repeat and reiterate what is stated hereinabove.*

x. *With reference to paragraphs 5,6 and 7 of the notice under reply we repeatedly deny that we have committed any of the violations as alleged in the notice under reply, which would render us liable for the monetary penalty under Section 15HB of SEBI Act.*

xi. *In the facts and circumstances set out herein above you are requested to recall the notice under reply and to quash and/or terminate the inquiry proceedings as sought to be initiated against us.*

8. On the scheduled dated of hearing on March 21, 2018, Shri Amit Gunderia, Partner, K. A. Gunderia & Co., appeared as the Authorized Representative ('AR') on behalf of the Noticee. The ARs reiterated the submissions given by the Noticee in its reply dated March 19, 2018 to the SCN. The AR did not seek any further hearing in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

(a) Whether the Noticee has violated the provisions of SEBI circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

(b) Whether further the Noticee has violated the provisions of Clause A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 9(f) of the Broker Regulations?

(c) Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act?

(d) If yes, what should be the quantum of penalty?

10. Before proceeding further, I would like to refer to the circular under reference and the relevant provisions of Broker Regulations and the SEBI Act.

*"**Subject: Dealings between a client and a stock broker (trading members included)***

1. This is in continuation of circulars (a) No. SMD/SED/CIR/93/23321 dated November 18, 1993 specifying the norms for regulation of transactions between clients and brokers, (b) No. SEBI/MIRSD/DPS-1/Cir-31/2004 dated August 26, 2004 specifying the model format for the Member Clients Agreements, and (c) No. MRD/DoP/SE/Cir-20/2005 dated September 8, 2005 specifying the conditions for issuing electronic contract notes.

2. With a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers, it has been decided, in consultation with Investor Associations, Secondary Market Advisory Committee of SEBI (SMAC), market participants and major stock exchanges, that the stock brokers shall comply with the requirements as annexed to this circular.

3. The stock brokers shall take necessary steps to implement this circular immediately and ensure its full compliance in respect of all clients – existing or new – at the latest by 31st March 2010.

4. The Stock Exchanges are directed to:

a. bring the provisions of this circular to the notice of the Stock Brokers and also disseminate the same on their websites.

b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another to achieve uniformity in approach.

c. communicate to SEBI, the status of the implementation of the provisions of this circular in their Monthly Development Reports.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

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 subbroker 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. The Client shall indicate the stock exchange as well as the market segment where he intends his trades to be executed. He shall do so in the KYC form in his own hand and sign against these.

5. The KYC form shall capture the identity and the address of the introducer instead of his MAPIN/UID. The KYC form shall be modified to this extent.

6. The stock broker shall have documentary evidence of financial details provided by the clients who opt to deal in the derivative segment. In respect of other clients, the stock broker shall obtain the documents in accordance with its risk management system.

7. The Stock Broker shall also capture details of action taken against a client by SEBI or other authorities during the last 3 years.

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. the right to sell clients' securities or close clients' positions, without giving notice to the client, on account of non-payment of client's dues (This shall be limited to the extent of settlement/margin obligation),

f. shortages in obligations arising out of internal netting of trades,

g. conditions under which a client may not be allowed to take further position or the broker may close the existing position of a client,

h. temporarily suspending or closing a client's account at the client's request, and

i. deregistering a client.

Non-mandatory Documents

9. Any term or condition other than those stated in the mandatory part shall form part of non-mandatory documents.

10. The clauses in the non-mandatory part shall not be in contravention of any of the clauses in the mandatory documents, as also the Rules, Regulations, Articles, Byelaws, circulars, directives and guidelines of SEBI and Exchanges.

Any such contravening clause shall be null and void.

11. Any authorization sought in non-mandatory part shall be a separate document and shall have specific consent of the client.

Running Account Authorization

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

a. The authorization shall be renewed at least once a year and shall be dated.

b. The authorization shall be signed by the client only and not by any authorised person on his behalf or any holder of the Power of Attorney.

c. The authorization shall contain a clause that the Client may revoke the authorization at any time.

d. For the clients having outstanding obligations on the settlement date, the stock broker may retain the requisite securities/funds towards such obligations and may also retain the funds expected to be required to meet margin obligations for next 5 trading days, calculated in the manner specified by the exchanges.

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

f. The client shall bring any dispute arising from the statement of account or settlement so made to the notice of the broker preferably within 7 working days from the date of receipt of funds/securities or statement, as the case may be.

g. Such periodic settlement of running account may not be necessary:

i. for clients availing margin trading facility as per SEBI circular

ii. for funds received from the clients towards collaterals/margin in the form of bank guarantee (BG)/Fixed Deposit receipts (FDR).

h. The stock broker shall transfer the funds / securities lying in the credit of the client within one working day of the request if the same are lying with him and within three working days from the request if the same are lying with the Clearing Member/Clearing Corporation.

i. There shall be no inter-client adjustments for the purpose of settlement of the 'running account'.

j. These conditions shall not apply to institutional clients settling trades through custodians. The existing practice may continue for them.

Authorization for Electronic Contract Notes

13. The stock broker may issue electronic contract notes (ECN) if specifically authorized by the client subject to the following conditions:

a. The authorization shall be in writing and be signed by the client only and not by any authorised person on his behalf or holder of the Power of Attorney.

b. 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.

c. The authorization shall have a clause to the effect that that any change in the email-id shall be communicated by the client through a physical letter to the broker. In respect of internet clients, the request for change of email id may be made through the secured access by way of client-specific user id and password.

General

14. All the documents in both the mandatory and the non-mandatory parts shall be printed in minimum font size of 11.

15. A copy of all the documents executed by client shall be given to him, free of charge, within 7 days from the date of execution of documents by the client. The stock broker shall take client's acknowledgement for receipt of the same.

16. The stock brokers having own web-sites shall display all the documents executed by a client, client's position, margin and other related information, statement of accounts, etc. in the web-site and allow secured access by way of client-specific user id and password.

17. No term of the agreement, other than those prescribed by SEBI, shall be changed without the consent of the client. Such change needs to be preceded by a notice of 15 days.

18. The stock broker shall frame the policy regarding treatment of inactive accounts which should, inter-alia, cover aspects of time period, return of client assets and procedure for reactivation of the same. It shall display the same on its web site, if any.

19. As on 31st March of every year, a statement of balance of Funds and Securities in hard form and signed by the broker shall be sent to all the clients."

"Code of conduct for Stock-brokers

A. General.

….

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

…

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

Conditions of registration.

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

…

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

….

11. I find from the SCN that the Noticee is a stock broker registered with the BSE.

12. I observe that the inspection team of SEBI has analysed a sample of 43 active clients out of total 422 active clients of the Noticee who were maintaining running accounts with the Noticee. From the said sample, it is alleged that in 9 instances funds were not settled and the amounts held in each of such clients'

accounts during the quarter ended 30.06.2015, 30.09.2015, 31.12.2015, 31.03.2016 and 30.06.2016 were more than Rs.10,000/-(Credit). The documents submitted by the noticee in this regard were perused and I find the following.

Active client's funds not settled (quarter wise)

Table -6

Sr. No.	Client code	Quarter ended balance					Comments based on party ledger submitted by the noticee
		30.6.2015	30.09.2015	31.12.2015	31.03.2016	30.06.2016	
1	13230	2179337	1490088	2521700	4664685	2214848	Dealt Separately
2	20813	144806	112102	42584	42584	42584	Dealt Separately
3	22036	12732	0	0	0	0	(i) An amount of Rs. 12732 was due to be settled by the noticee to the client as on June 30, 2015. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2015, the clients account balance has turned positive. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
4	18272	35956	0	31769	0	0	(i). An amount of Rs. 35956 was due to be settled by the noticee to the client as on June 30, 2015. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2015, the clients account balance has reduced to Rs. 3817. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009. (ii). An amount of Rs. 31769 was due to be settled by the noticee to the client as on December 31, 2015. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in January 2016, the clients account balance has reduced to Rs. 887. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
5	20601	109366	0	0	48085	22860	(i). An amount of Rs. 109366 was due to be settled by the noticee to the client as on June 30, 2015. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2015, the clients account balance has turned positive. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009. (ii). An amount of Rs. 48085 was due to be settled by the

Sr. No.	Client code	Quarter ended balance					Comments based on party ledger submitted by the noticee
							noticee to the client as on March 31, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in April, 2016, the clients account balance has turned positive. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009. (iii). An amount of Rs. 22860 was due to be settled by the noticee to the client as on June 30, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2016, the clients account balance has turned positive. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
6	17402 (17042)	0	16257	0	0	29345	(i). An amount of Rs. 16257 was due to be settled by the noticee to the client as on September 30, 2015. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in October, 2015, the clients account balance has reduced to Rs. 3544. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009. (ii). An amount of Rs. 29345 was due to be settled by the noticee to the client as on June 30, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2016, the clients account balance has reduced to Rs. 6777. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
7	18546	0	0	0	0	20347	(i). An amount of Rs. 20347 was due to be settled by the noticee to the client as on June 30, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2016, the clients account balance has turned positive. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
8	18640	0	0	0	16936	0	(i). An amount of Rs. 16936 was due to be settled by the noticee to the client as on March 31, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in April, 2016, the clients account balance has reduced to Rs. 7135. Thus it is amply clear that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
9	18676	0	0	0	0	20965	(i). An amount of Rs. 20965 was due to be settled by the noticee to the client as on June 30, 2016. From the available records it is observed that the noticee has not settled the same. Further, it is also observed that owing to the subsequent transaction by the client in July, 2016, the clients account balance has turned positive. Thus it is amply clear

Sr. No.	Client code	Quarter ended balance					Comments based on party ledger submitted by the noticee
							that the noticee has not settled fund account quarterly as required in terms of SEBI Circular dated December 03,, 2009.
	TOTAL	**2482197**	**1618447**	**2596053**	**4772290**	**2350949**	

13. I further note that the Noticee has replied that Mr. Ronak Saileshkumar Jogani (Client code 13230) had instructed to hold funds and securities. The Noticee has also mentioned that the said client had instructed the Noticee to close his account as he was not agreeable to quarterly settlement. In this regard I find that the Noticee has submitted an undated letter from the said client instructing the Noticee to hold his funds and securities. The Noticee has further, submitted client authorization letters dated 16/05/2013, 08/05/2014 and 09/05/2016 for withholding funds and securities have also been submitted. The Noticee also submitted an unsigned letter from the said client dated May 24, 2017 requesting for closure of accounts and settlement thereof. The Noticee has further claimed that all securities lying to the credit of the said client were transferred to the demat account of the client and also paid a sum of Rs.45,36,261.80. From the reply of the Noticee I note that the Noticee has not disputed with regard to non settlement of funds and securities of Mr. Ronak Jogani pertaining to the period of inspection. I further observe that the Noticee, though no conclusive evidence submitted, has claimed settlement of funds and securities to the clients in May 2017.

14. With regard to client Mr. Haresh Sachdev (Client Code 20813) the Noticee has submitted an unsigned and undated authorisation letter from the client to withhold funds and securities. The Noticee has replied that the client had authorised it through an email. Copy of the email correspondence has not been produced.

15. In view of the above I observe that the noticee has violated provisions of SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

16. I also note that there is an observation that securities of active clients have not been settled quarterly, for the quarter ending June 30, 2015, September 30, 2015, December 31, 2015, March 31, 2015 and June 30, 2016 in respect of 24 clients. The details of the unsettled accounts and the respective valuation thereof are set out in Table 2 of the SCN and which have been reproduced herein below for ready reference:-

Active client's securities not settled (quarter wise)

Table - 7

Sr. No.	Client code	Quarter ended				
		Valuation 30.06.2015	Valuation 30.09.2015	Valuation 31.12.2015	Valuation 31.3.2016	Valuation 30.6.2016
1	13230	9069271.28	11685891.40	10974153.10	7940278.00	10908394.70
2	19264	21972.70	930.00	1035.00	10120.00	94902.57
3	20625	377237.50	315852.40	261486.50	255796.60	227013.00
4	22028	355037.50	293090.00	143160.00	0.00	0.00
5	20813	153532.50	0.00	0.00	0.00	0.00
6	22036	1372145.08	2210033.82	2120091.40	1712243.40	2058429.16
7	18272	92013.50	62208.00	62382.00	56997.50	61432.00
8	20601	0.00	0.00	0.00	287550.00	0.00
9	5854	6288.75	6176.25	13571.25	6344.25	14151.50
10	7044	10840.00	9215.70	62732.50	47554.00	36763.62
11	8613	86181.10	141455.48	0.00	0.00	0.00
12	8653	69650.00	0.00	0.00	0.00	0.00
13	10518	0.00	0.00	5900.00	0.00	0.00
14	17042	0.00	0.00	22095.00	0.00	0.00

15	18546	0.00	0.00	67020.00	0.00	0.00
16	20032	0.00	541738.00	4760.00	0.00	0.00
17	20037	0.00	274.00	420.00	0.00	0.00
18	20091	25790.00	81720.00	34070.00	16365.00	0.00
19	20101	0.00	67400.00	110455.00	12179.50	248040.00
20	22518	14.50	16.00	12644.25	11.25	2469.75
21	22522	2712.75	2878.95	2968.80	2822.40	572.10
22	22548	68240.00	73642.50	86120.00	66915.50	172734.50
23	23018	0.00	17180.00	7586.70	0.00	0.00
24	23063	3405.00	17180.00	0.00	0.00	0.00
	Total	**11714332.16**	**15526882.50**	**13992651.50**	**10415177.40**	**13824902.90**

17. I note in this regard that the Noticee has confirmed settlement of securities every quarter to all clients, other than the ones at Sr. No. 1 and 6. I note that the Noticee has submitted statement of holding of the clients generated from its back office (other than at Sl.No.1 and 6) towards evidence of settlement of securities. However, the Noticee did not submit authentic evidence like demat statement to support its claim of settlement/ bank statement, despite giving an opportunity to produce the same. The reply of the Noticee in this regard is reproduced as below, *"We would like to mention that in a few cases the shares have been transferred to the respective accounts of the clients and in a few cases shares have been sold by some of the clients. Further, IL&FS who is our DP does not send a physical copy of our account (Transaction Statement) but only provides fortnightly statement which they send to us by email. Hence it will be very difficult for us to send to you the details as required by you. Also the clients have sold the shares on different dates and as such there will be more than one contract note for each client. Therefore, as the number of contract notes to be scanned and sent will be many and highlighting DP statement for shares transferred is not possible (as DP statement is sent by email), we request you to depute a person from your team to visit our office and inspect the records."* I note that it is the responsibility of the Noticee to produce the documentary evidences in support of its defence. Thus in this entire order the documents as submitted by the noticee in its reply has been relied upon. Inspection of documents, as

mentioned in the reply of the Noticee, is not within the jurisdiction of the present proceedings. I also note that the Noticee has replied to the SEBI that in certain accounts securities were not settled as clients had debit balances with the noticee and to protect the notice from volatility the settlements had not happened. However I find from the inspection report that for 16 clients securities were not settled despite clients having credit balances in their accounts. The Noticee has submitted statement of holdings as per its records the data given below:-

Table - 8

Sl. No.	Client Code	Quarter ended				
		June 30, 2015	September 30, 2015	December 31, 2015	March 31, 2016	June 30, 2016
1	19264	Submitted	Not Submitted	Not Submitted	Submitted	Submitted
2	20625	Submitted	Submitted	Submitted	Submitted	Submitted
3	22028	Submitted	Submitted	Submitted	Not Relevant	Not Relevant
4	20813	Submitted	Not Relevant	Not Relevant	Not Relevant	Not Relevant
5	18272	Submitted	Submitted	Submitted	Submitted	Submitted
6	20601	Not Relevant	Not Relevant	Not Relevant	Submitted	Not Relevant
7	5854	Not submitted	Not submitted	Submitted	Submitted	Not submitted
8	8613	Submitted	Submitted	Not Relevant	Not Relevant	Not Relevant
9	8653	Submitted	Not Relevant	Not Relevant	Not Relevant	Not Relevant
10	17042	Not Relevant	Not Relevant	Submitted	Not Relevant	Not Relevant
11	18546	Not Relevant	Not Relevant	Submitted	Not Relevant	Not Relevant
12	20032	Not Relevant	Submitted	Not submitted	Not Relevant	Not Relevant
13	20101	Not Relevant	Submitted	Submitted	Submitted	Submitted
14	22518	Not submitted	Not submitted	Submitted	Not submitted	Not submitted
15	225480	Submitted	Submitted	Submitted	Submitted	Submitted
16	23018	Not Relevant	Submitted	Not submitted	Not Relevant	Not Relevant
17	23063	Not submitted	Submitted	Not Relevant	Not Relevant	Not Relevant

On a perusal of the documents made available by the Noticee, I find delays in transferring of securities to clients. The delay in settlement of securities ranges from 20 days to more than 1 year 9 months. For instance in the case of client 20601, I observe from the statement of holding for the period from March 29, 2015 to March 31, 2016,as submitted by the noticee, that the client had purchased 150 shares and 750 shares of Tata Steel Limited in settlement nos.

Y1516210 (Settlement Date 02/02/2016) & Y1516241(Settlement Date 17/03/2016) respectively. The shares under question were sold by the client on April 06, 2016. As per the circular dated December 03, 2009 alleged to have been violated by the noticee, the settlement ought to have happened on March 31, 2016. However from available records I find that the said security settlement has not happened and the client has sold the securities subsequently. Similarly, in the case of client 22028, I observe from the statement of holding for the period from March 29, 2015 to September 30, 2015, that 1000 shares of RTN Power pertaining to settlement no. Y1415009 (Settlement date 09/04/2014) were transferred on January 05, 2016 which is approximately after one year and eight months. The above two transactions have been cited here only as examples to bring to light the delays committed by the noticee. Similarly delays in settling securities have been observed with other clients /other transactions of the above client(s) also. Therefore, the allegation against the noticee regarding non-settlement of securities of clients stands established.

18. I note that the cleint at Sr. No.1 is (Client Code 13230) Mr. Ronak Saileshkumar Jogani and the submissions of the Noticee with respect to this client have already been dealt with in earlier paragraphs.

19. With respect to the client Mrs. Nirmala J Shah (Sr. No. 6 and client code 22036), I find the Noticee has produced an authorization letter dated March 23, 2017 claimed to have been signed by the son of the client, instructing the broker to transfer the shares into a new DP account to be opened as the present DP account has been classified ‘inactive’. From the reply and the authorization letter of the client I find that the letter has been obtained only on March 23, 2017 while I note that as per the inspection report the said account remains unsettled since the quarter ending June 30, 2015. I also find it difficult to agree with the view that shares cannot be transferred to the DP account of the client as the same has

been classified as inactive. Though the DP account may be inactive credits are allowed and debits can be made with a limited due diligence by the DP as the account is only inactive but not frozen. I also note that since quarterly settlement is mandatory such authorization letters may not serve a purpose. Therefore, the allegation against the noticee regarding non-settlement of securities of client stands established.

20. I also further note from the inspection report that the Noticee has not settled the funds and securities, quarterly for various quarters as set out in Table 3 in the SCN and which table is reproduced herein below for ready reference:-

Active clients funds and securities not settled (quarter wise)

Table – 9

Sr. No.	Quarter ended	Total value of unsettled funds (Rs.)	Total value of unsettled securities (Rs.)
1	30.06.2015	24,82,197.00	1,17,14,332.16
2	30.09.2015	16,18,447.00	1,55,26,882.50
3	31.12.2015	25,96,053.00	1,39,92,651.50
4	31.03.2016	47,72,290.00	1,04,15,177.40
5	30.06.2016	23,50,949.00	1,38,24,902.90

21. From the reply I note that the Noticee has submitted to have settled the accounts of clients mentioned in the table above of both funds and securities, quarterly. Also, the Noticee has claimed that the majority of the unsettled securities / funds pertain to the clients namely Mr. Ronak Saileshkumar Jogani and /or Mrs. Nirmala J Shah. As discussed in pre- paragraphs the Noticee has not submitted any authentic documentary evidence in support of its claims. Even from the documents made available by the Noticee, as has been observed in earlier paragraphs, I find delays in settling. Also, the allegations pertaining to Mr. Ronak Saileshkumar Jogani and /or Mrs. Nirmala J Shah have already been discussed

and the same stand established. Therefore, I hold that the Noticee has violated SEBI Circular SEBI/MIRSD/SE/Cir-19/2009 dated December 03, 2009.

22. I also note that the Noticee has not settled accounts of client on a bill to bill basis of 10 clients selected on a random basis. I further note that on four instances and on six instances the Noticee has not settled funds and securities, respectively, on a bill to bill basis. The details are set out in the Table 4 in the SCN and the same are reproduced here below for easy reference:-

Bill to bill transactions not settled

Table – 10

Client Code	Observations	bill to bill settlement
13922	BB: After settling the account in June 2015 quarter on 26 June 2015, credit balance is 17,333	after settling the bill of sept., balance 17333 left
19164	BB: CR balance on 25 June 2015 is 3,40,223. Next transaction (debit) is on 09 July 2015. Account is not settled.	bill to bill not settled
20106	There are some securities which are not settled quarterly.	securities not settled
20602	There is credit balance at the end of September, 2015 and December quarter, 2015	bill to bill not settled
22027	Securities are not settled in many quarters viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016.	securities not settled
22032	Funds not settled for December 2016 quarter	bill to bill not settled
22093	Securities not settled for the quarter March 2016 to June 2016	securities not settled
22133	securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June 2016	securities not settled
22148	securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June 2016	securities not settled
23076	securities not settled for the quarter viz. June 2015 to September 2015, September 2015 to December 2015, December 2015 to March 2016 and March 2016 to June	securities not settled

Client Code	Observations	bill to bill settlement
	2016	

23. I note that the noticee has denied non-settlement of fund account on bill to bill basis on 4 instances and securities account on bill to bill basis on 6 instances as alleged in the SCN. I note that the Noticee has submitted statement of holding pertaining to the client's 20106, 22027, 22093, 22133, 22148 and 23076 generated from its back office towards evidence of settlement of securities. However, the Noticee did not submit authentic evidence like demat statement and bank account statement to support is claim of settlement. I also note that the Noticee has replied to the SEBI that where consecutive buy and sells are done by the clients, then the settlement might have been done on a net basis. Based on the documents made available on record, I find delays in settling securities with clients. The below appended table, drawn on the basis of material available on record, carries details of such delays / non – transfer of securities for some of the transactions for some of the clients.

Table – 11

Client code	settlement no	settlement date	scrip	quantity	Relevant quarter	Date of Subsequent sale by the client (No. of shares)	Date of transfer by the broker (No. of shares)
20106	Y1314250	25/01/2014	SJVN Ltd	300	01/0//2014 - 31/03/2014	14/09/2015 (300)	
20106	Y1516076	17/07/2015	RTN Power	10000	01/06/2015 - 30/09/2015	29/03/2016 (6800)	05/04/2016 (3200)
20106	Y1516160	19/11/2015	Infosys Technology	10	01/10/2015 - 31/12/2015		05/04/2016 (10)
20106	Y1516197	13/01/2016	Ess Dee Alum	100	01/01/2016 - 31/03/2016		05/04/2016 (100)
20106	Y1516228	26/02/2016	IDFC Bank	200	01/01/2016 - 31/03/2016		05/04/2016 (200)
20106	Y1516228	26/02/2016	Lanco Infra	1000	01/01/2016 - 31/03/2016		05/04/2016 (1000)
20106	Y1516196	12/01/2016	Sanforg	500	01/01/2016 - 31/03/2016		05/04/2016 (500)
20106	Y1617033	18/05/2016	Punj ALK CHE	2139	01/04/2016 - 30/06/2016		17/03/2017 (2139)
22027	Y1415047	06/06/2014	Adani Power	1000	01/04/2014 - 30/06/2014	28/03/2016 (500+500)	
22027	Y1415219	20/02/2015	FCEL	3000	01/01/2015 - 31/03/2015	27/12/2017 (710)	
22027	Y1516216	10/02/2016	Fineo texch	1	01/01/2016 - 31/03/2016		
22027	Y1516067	06/07/2015	Lycos intern	1900	01/07/2015 - 30/09/2015	28/06/2016 (1100)	

22027	Y1213136	15/10/2012	Marson Ltd	999	01/10/2012 - 31/12/2012	16/02/2016 (Only sale date given, quantity not given in the reply)	
22027	Y1415054	07/06/2014	Marson Ltd	4001	01/06/2014 – 30/09/2014	16/02/2016 (Only sale date given, quantity not given in the reply)	
22027	Y1516201	19/01/2016	Marson Ltd	3000	01/01/2016 - 31/03/2016	26/05/2016 (Only sale date given, quantity not given in the reply)	
22027	Y1516240	16/03/2016	Marson Ltd	2000	01/01/2016 - 31/03/2016	26/05/2016 (930); 04/08/2016(1047); 08/09/2016 (23);	
22027	Y1617038	25/05/2016	Marson Ltd	3930	01/04/2016 - 30/06/2016	08/09/2016 (1977)	
22027	Y1415193	13/01/2015	MMTC Ltd	1000	01/01/2015 - 31/03/2015	22/06/2016 (200); 28/06/2016 (100); 28/09/2016 (700)	
22027	Y1415193	13/01/2015	MMTC Ltd	700	01/01/2015 - 31/03/2015	28/09/2016 (Only sale date given, quantity not given in the reply)	
22027	Y1617055	17/06/2016	MMTC Ltd	300	01/04/2016 - 30/06/2016	29/09/2016 (Only sale date given, quantity not given in the reply)	
22027	Y1516146	29/10/2015	Opto Circuit	2500	01/10/2015 - 31/12/2015	23/03/2016 (2000)	
22027	Y1516146	29/10/2015	Opto Circuit	500	01/10/2015 - 31/12/2015		
22027	Y1415201	23/01/2015	Pennar Stel	2600	01/01/2015 - 31/03/2015		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415203	28/01/2015	Pennar Stel	400	01/01/2015 - 31/03/2015		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415024	16/05/2014	Sun Phar Adv	273	01/04/2015 – 30/06/2014		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415061	25/06/2014	Sun Phar Adv	25	29/03/2015 - 31/03/2016		29/09/2016(Only transfer date given, quantity not given in the reply)
22027	Y1415093	12/08/2014	Sun Phar Adv	300	01/07/2014 - 30/09/2014		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415103	27/08/2014	Sun Phar Adv	1	01/07/2014 - 30/09/2014		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415151	13/11/2014	Suven Pharm	1000	01/10/2014 - 31/12/2014		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1516151	05/11/2015	Tata Power Ltd	1000	10/10/2015 - 31/12/2015		29/09/2016 (Only transfer date given, quantity not given in the reply)
22027	Y1415159	25/11/2014	Essel Prop	200	01/10/2014 – 31/12/2014	08/10/2015 (Only sale date given, quantity not given in the reply)	
22027	Y1516016	23/04/2015	Axis IT & T	100	01/04/2015 - 30/06/2015	11/08/2015 (Only sale date given, quantity not given in	

						the reply)	
22027	Y1516017	24/04/2015	HCL Info Ltd.	500	01/04/2015 - 30/06/2015	07/07/2015 (Only sale date given, quantity not given in the reply)	
22027	Y1516025	07/05/2015	Jai. P. Ashoca	200	01/04/2015 - 30/06/2015	29/12/2015 (Only sale date given, quantity not given in the reply)	
22027	Y1415146	29/10/2015	Neuland Lab	100	01/10/2015 – 31/12/2015	29/09/2015 (25); 30/09/2015 (75)	
22027	Y1516028	12/05/2015	Hind Const.	900	01/04/2015 – 30/06/2015	22/09/2015 (424); 23/09/2015 (476)	

24. Similarly delays in settling securities have been observed with respect to other clients also. Therefore, the allegations against the noticee regarding non-settlement of securities account stands established. In respect to the allegations that funds of clients have not been settled by the noticee, I find the noticee has not tendered any documentary evidence to negate the allegation. In this regard I rely upon the decision of the the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI [2007] 76 SCL 51 (SAT - MUM) inter alia held that – "*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". Thus I find the above allegation stands established.

25. I also note that the SEBI has observed that the Noticee has not settled the accounts of certain inactive clients and have brought out the details of the same as set out in Table 5 in the SCN and the same are reproduced below for easy reference:-

Table - 12

Sr. No	Quarter	Inactive Not Settled	
		No. of UCCs whose balances have remained unsettled on successive quarters	Amount (Rs.)
1	Jun 15 - Sep 15	19	2,26,027
2	Sep 15 - Dec 15	22	2,30,085
3.	Dec 15 - Mar 16	28	4,28,187

4.	Mar 16 - Jun 16	27	3,02,933
5.	Jun 15 - Jun 16	15	2,15,468

26. The Noticee has submitted that out of the 15 clients as mentioned in Table 5, credits with respect to two clients namely Farah Kabir Bhogilal (6513) and Shermin P Gheesta (18723) have already been settled on September 15, 2016 and August 31, 2016 respectively. The Noticee has also attached party ledger for the said two clients. I note that the Noticee was under an obligation to settle the funds and securities of clients compulsorily on a quarterly/monthly basis. Here I find the Noticee has settled these two accounts only in August 2016 and September 2016. Thus, it is evident that the Noticee has not complied with the SEBI Circular December 03, 2009 with respect to these two clients.

27. With respect to settlement of account of Mr Vivek P. Bhagwat, I find the Noticee has mentioned that it had informed the client to collect the cheque; however the client has not collected. Here I find the reason to be unacceptable, as the Noticee could have easily settled the funds through means such as on line banking and need not had to wait for the client to collect the cheque. This only shows that the Noticee is not interested in complying with the attendant law and adducing trivial excuses.

28. Also, the Noticee has replied in regard to the client Mr Bipin Thakker (19007) that as per the instructions of the client and his family members, Rs.1,00,000/- has been held. Also, in respect of 12 clients the Noticee has merely submitted that it had advised the clients to come and settle their accounts. I note that the obligation is on the Noticee to settle the accounts periodically as per the circular under reference. I find that the reply of the Noticee that it had advised the clients to come and settle the accounts has no merit and it only shows that the Noticee is not showing any seriousness in complying with the applicable circular referred above.

29. I also observe that there is an allegation that the Noticee was sending entire fund ledger and securities ledger to the clients without explaining the retention of funds/securities and details of pledge if any. From the reply letter of the noticee I find that the noticee has not tendered any reason(s)/reply in regard to the allegation. In this regard I rely upon the decision of the Hon'ble SAT in the matter of Classic Credit Ltd. vs. SEBI [2007] 76 SCL 51 (SAT - MUM) inter alia held that – "the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them". Thus I find the above allegation stands established.

30. I also note from the inspection report that there are observations by the internal auditor in regard to non-settlement of funds and securities by the Noticee. To this extent I find the Noticee had an opportunity to settle the accounts in compliance with the observations of the internal auditor. I, however, note that the Noticee has failed to settle the accounts despite such internal audit observations. Thus the violations are repetitive in nature.

31. Further, in view of such non-compliance, I note that the Noticee has failed to adhere to the prescribed code of conduct in respect of due care, skill and diligence, and thereby did not abide by Clause A(2) and A(5) of the Code of Conduct prescribed for stock brokers contained in Schedule II read with Regulation 9(f) of the Broker Regulations. 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 and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

32. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15HB of the SEBI Act which reads as under:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be (liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.)*

33. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

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.

34. In the instant matter, it is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure on the part of the Noticee to comply with SEBI Circular. The defaults on the part of the Noticee are

repetitive in nature for the reasons mentioned elsewhere in this order. I find that the Noticee being a registered intermediary is required to comply with various Circulars, Rules and Regulations as laid down by the Regulator to ensure smooth and stable functioning of the capital market. The very purpose of the SEBI Circulars dated December 03, 2009 is that it shall be mandatory for all the member brokers to settle the running accounts of the clients on a monthly / quarterly basis is to protect the interest of the investors.

ORDER

35. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 10,00,000 (Rupees Ten Lakh only) on the Noticee viz. K. A. Gunderia & Co. under the provisions of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

36. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

37. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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)	

38. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. K. A. Gunderia & Co. and also to the Securities and Exchange Board of India.

Date: May 22, 2018 **K SARAVANAN**

Place: Mumbai **ADJUDICATING OFFICER**